

96th Congress }
1st Session }

COMMITTEE PRINT

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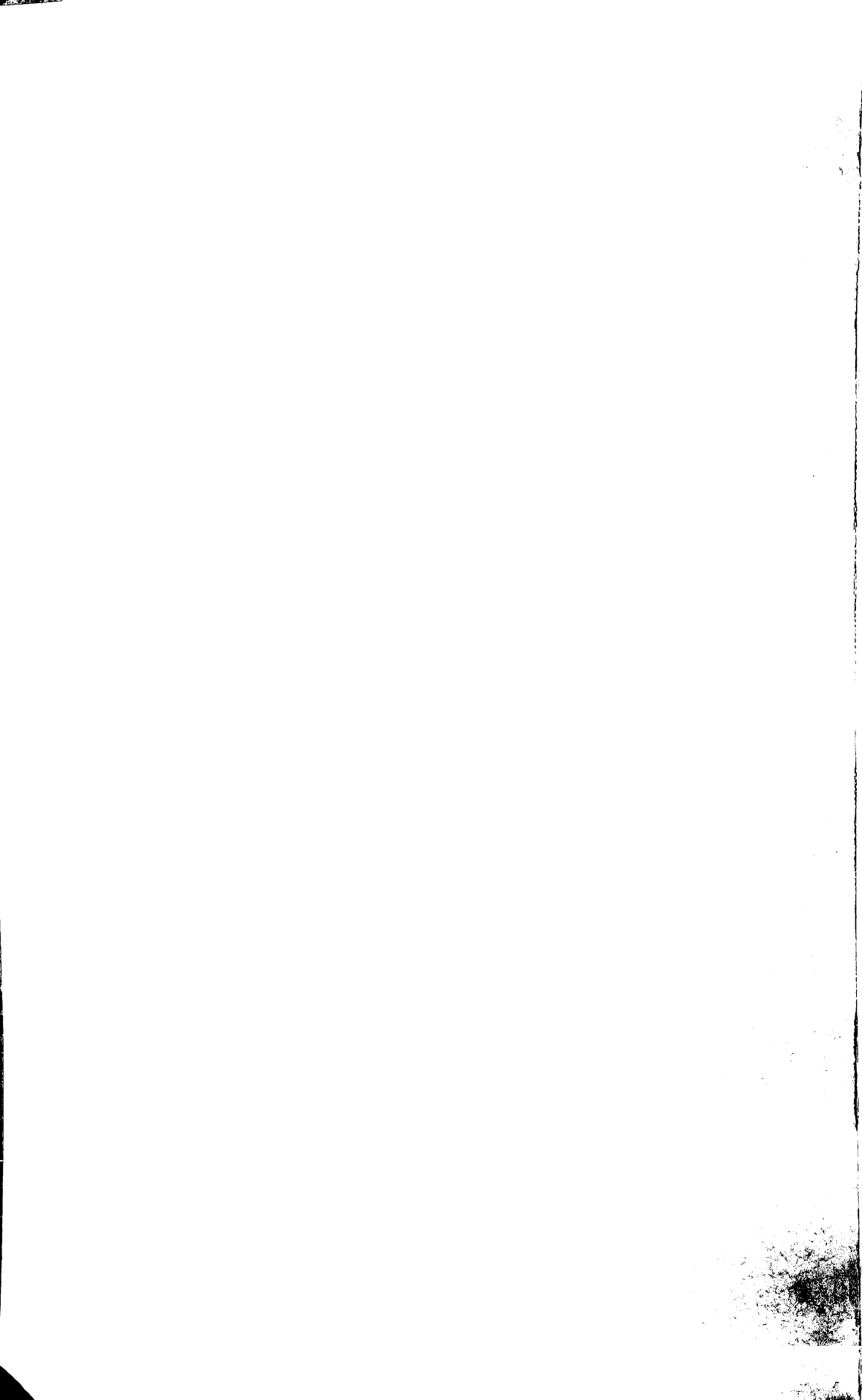
LEGISLATIVE HISTORY OF THE FEDERAL
SERVICE LABOR-MANAGEMENT RELATIONS
STATUTE, TITLE VII OF THE CIVIL
SERVICE REFORM ACT OF 1978

SUBCOMMITTEE ON
POSTAL PERSONNEL AND MODERNIZATION
OF THE
COMMITTEE ON POST OFFICE AND
CIVIL SERVICE
HOUSE OF REPRESENTATIVES
NINETY-SIXTH CONGRESS
FIRST SESSION



NOVEMBER 19, 1979

Printed for the use of the Committee on Post Office and Civil Service



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WASHINGTON : 1979

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LETTER OF TRANSMITTAL

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTAL PERSONNEL AND MODERNIZATION,
Washington, D.C., November 19, 1979.

HON. JAMES M. HANLEY,
*Chairman, Post Office and Civil Service Committee, Cannon House
Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: Enactment of the Federal service labor-management regulations statute in title VII of the Civil Service Reform Act of 1978 marks a genuine watershed in the development of Federal sector labor relations. Title VII is the culmination of more than two decades of congressional attention to the issue of collective bargaining rights for Federal employees. Together with Reorganization Plan No. 2 of 1978 creating the independent Federal Labor Relations Authority, title VII establishes for the first time a statutory framework for the relationship between employee representatives and Government managers with the opportunity for third-party resolution of disputes between the parties.

Although eventually passed as part of the Civil Service Reform Act, the labor-management provisions were themselves the focus of considerable attention both on their own and as part of the act. During the 95th Congress, the Subcommittee on Civil Service held a briefing on labor-management relations by the Civil Service Commission, distributed a report on the Executive order program by the Federal Labor Relations Council, and held hearings on H.R. 13, H.R. 1589, and H.R. 9094. Earlier versions of these labor-management bills had been the subject of hearings in 1974 by the Subcommittee on Manpower and Civil Service.

H.R. 9094 was later modified and used in committee print form for purposes of markup on title VII by the full Committee on Post Office and Civil Service. The committee amended the print before reporting it out as title VII of H.R. 11280 and the full House later adopted a substitute title VII. Both as reported and as passed, the House version of title VII reflected the earlier concentration on labor-management relations by the committee which lead to development of the Committee print used in markup. A conference committee then resolved the differences between the House action and that of the Senate in adopting a title VII based primarily on Executive Order 11491.

In order that the background for congressional action on both title VII and the Reorganization Plan would be more readily accessible, I asked the subcommittee staff to prepare a comprehensive legislative history. Such a history is necessarily complex; a dozen different versions of complete labor-management legislation received considera-

tion in the congressional activity leading ultimately to adoption of title VII.

By combining the legislative history of the new statute together with background materials on the labor-management program under various Executive orders and on the proposals of the Personnel Management Project, this document should be a complete single-volume primer on Federal sector labor-management relations. It is hoped that the volume will prove valuable both as an aid to practitioners in the field and as a reference guide for continuing congressional oversight in this area.

Preparation of the legislative history has been under the supervision of Lloyd A. Johnson, staff director for the subcommittee, whose familiarity with labor-management legislation now extends through several Congresses. Donald Haines of the subcommittee staff provided liaison and developed the materials for publication.

The subcommittee worked together with the staff of the Federal Labor Relations Authority in compiling the materials and preparing the reference aids and wishes to express its appreciation for their assistance. At the Authority, overall supervision and coordination has been supplied by Harold D. Kessler, Acting Executive Director, and William F. Daily, Chief of the Program Office. The sectional indexing was done by J. Felix Sanders, Marian R. Fox, Jeffrey Michael Goldberg, Lee Mingledorff and Roni N. Schnitzer of the Authority's staff.

Gail Weiss, Beverly Roderick, and James Brozo of the subcommittee staff each made substantial contributions to the final product. At the Congressional Research Service, additional assistance was provided by Christine Benagh, Allison Porter and Morton Rosenberg of the American Law Division, Sherry Shapiro of the Library Services Division, and Charles Ciccone, Sally Kelly, and Jeffrey Burton of the Economics Division's Labor Section.

The subcommittee is grateful to all the people who participated in this project and it is hoped that this document will satisfy the need, both inside the Congress and out, for a comprehensive legislative history of the labor-management legislation found in title VII of the Civil Service Reform Act of 1978.

Sincerely,

HON. WILLIAM L. CLAY,
Chairman.

USER'S GUIDE

This volume is a compilation of the basic records constituting the legislative history of the Federal service labor-management relations statute found in title VII of the Civil Service Reform Act of 1978. It includes early versions of the title, the Senate, House, and conference reports, and pertinent excerpts from the Congressional Record.

In order to present a compact history of the labor-management provisions, comments relating to other parts of the Civil Service Reform Act are generally omitted with the omission indicated by asterisks. For reports and bills, their original pagination is retained for reference purposes. Full citations precede excerpts from the Congressional Record.

A chronological statement of the legislative history is presented with some citations to materials not reproduced in the history itself. In this way, information on how to find related materials may be obtained from the chronological statement while the legislative history is not encumbered with related but not genuinely relevant documents. In addition a list of background congressional hearings and documents is included at the back of the volume.

Three indexes are included. The sectional index contains references to the sectional structure of title VII. The sectional headings in this index also provide a convenient outline of the new statute. The topical index contains some references that do not fit neatly into a sectional framework as well as those references included in the sectional index. The third index contains references to congressional speakers and the names of particular agencies and organizations.

The volume also includes a table of cases cited in the legislative history, including decisions and policy statements of the Federal Labor Relations Council.

It is suggested that the table of contents be consulted for a listing of the appended materials since in general these items are not included in the indexes.

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CHRONOLOGICAL STATEMENT OF THE LEGISLATIVE HISTORY OF THE FEDERAL SERVICE LABOR-MAN- AGEMENT RELATIONS STATUTE, TITLE VII OF THE CIVIL SERVICE REFORM ACT OF 1978

This chronological statement sets forth the more significant proceedings in the 95th Congress regarding enactment of the Federal service labor-management relations statute, title VII of the Civil Service Reform Act of 1978, Public Law 95-454. In addition related events are fully cited here in order to facilitate access elsewhere to materials which are not included in this legislative history.

Where documents or excerpts are included in the legislative history, a page reference is listed in the right column. Except where otherwise noted, page references appearing in brackets are to the daily edition of the Congressional Record, Volumes 123 (1977) and 124 (1978).

January 4, 1977

	Page
H.R. 13 (the Clay Labor-Management Bill) was introduced by Mr. Clay and referred to the House Committee on Post Office and Civil Service (this Bill was a revised version of H.R. 13 and S. 351 in the 93d Congress and H.R. 13 in the 94th) [H 78]-----	121

January 10, 1977

H.R. 1589 (the Ford Labor-Management Bill) was introduced by Mr. Ford with Mr. Solarz, Mrs. Schroeder, and Mr. Eilberg as cosponsors, and referred to the House Committee on Post Office and Civil Service (this Bill was earlier introduced as H.R. 9784 in the 93d Congress and as H.R. 1837 in the 94th) [H 256]-----	183
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January 26, 1977

Statement by Mr. Clay on H.R. 13 [E 333] with a summary of the Bill [E 334-35]-----	831
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February 22, 1977

H.R. 3793 (the Right to Representation Bill) was introduced by Mrs. Shroeder and referred to the House Committee on Post Office and Civil Service (this Bill was virtually identical to H.R. 6227 in the 94th Congress which passed the House on October 8, 1975) [H 1313]-----	229
---	-----

March 2, 1977

Page

H.R. 4342 (identical to H.R. 13) was introduced by Mr. Clay with Mr. Badillo, Mr. Carney, Mrs. Collins of Illinois, Mr. Conyers, Mr. Dellums, Mr. Diggs, Mr. Fauntroy, Mr. Fraser, Mr. Hawkins, Mr. Leggett, Mr. Metcalfe, Mrs. Meyner, Ms. Mikulski, Mr. Mitchell of Maryland, Mr. Moakley, Mr. Murphy of Pennsylvania, Mr. Rangel, Mr. Roybal, Mr. Solarz, Mr. Stark, Mr. Stokes, Mr. Thompson, Mr. Charles H. Wilson of California, and Mr. Oberstar as cosponsors, and referred to the House Committee on Post Office and Civil Service [1661]).

March 15, 1977

Briefing on the Federal Labor Relations Program by the Civil Service Commission was held before the House Subcommittee on Civil Service [Serial No. 95-3].

March 22, 1977

S. 1090 (identical to H.R. 13) was introduced by Mr. Inouye and referred to the Senate Committee on Governmental Affairs [S 4561].

Statement by Mr. Inouye on S. 1090 [S 4575] with text of the Bill [S 4575-82]-----

1005

April 1977

Report of the Federal Labor Relations Council on the Federal Service Labor-Management Relations Program was submitted to the House Subcommittee on Civil Service [Committee Print No. 95-5].

April 21, 1977

H.R. 6527 (identical to H.R. 13) was introduced by Mr. Clay with Mr. Heftel, Mr. Rosenthal, and Mr. Vento as cosponsors, and referred to the House Committee on Post Office and Civil Service [H 3427].

April 21 through May 10, 1977

Hearings on H.R. 13 and H.R. 1589 were held before the House Subcommittee on Civil Service with written submissions through September 1, 1977 [Serial No. 95-30].

May 2, 1977

Hearing on Nomination of Alan K. Campbell to be Chairman of the Civil Service Commission was held before the Senate Committee on Governmental Affairs (the hearing included a written response to prehearing questions on labor-management relations) [Hearing, page 53].

June 14, 1977

Hearing on oversight of the Civil Service Commission was held before the House Committee on Post Office and Civil Service (the hearing included discussions of H.R. 13, H.R. 1589, and the nature and timing of any Administration proposal on labor-management relations) [Serial No. 95-21, pages 4, 7-8, 10-13, 16-17, 21].

Page

July 21, 1977

Hearing on H.R. 3793 was held before the House Subcommittee on Civil Service with written submissions through August 25, 1977 [Serial No. 95-33].

September 14, 1977

H.R. 9094 (the Clay/Ford Labor-Management Bill) was introduced by Mr. Clay with Mr. Ford as cosponsor, and referred to the House Committee on Post Office and Civil Service [H 9422]-----

235

Statement by Mr. Clay on H.R. 9094 [E 5566]-----

833

September 15, 1977

Hearings on H.R. 13, H.R. 1589, and H.R. 9094 was held before the House Subcommittee on Civil Service with written submissions through September 29, 1977 [Serial No. 95-31].

March 2, 1978

Message from the President transmitting a draft of proposed legislation to reform the civil service laws was received in the Senate and referred to the Committee on Governmental Affairs [S 2779-81].

Statement by Mr. Percy on the Administration proposal for civil service reform with reference to labor-management relations legislation [S 2777]-----

1005

March 3, 1978

Message from the President transmitting a draft of proposed legislation to reform the civil service laws was read in the House and referred to the Committee on Post Office and Civil Service (the March 2nd/3rd Presidential message referred specifically to creation of a new Federal Labor Relations Authority and otherwise to development of Administration labor-management proposals with no Title VII on labor-management relations included in the draft legislation) [1661-63] [House Document No. 95-299, page 4]-----

622

H.R. 11280 (the Administration Civil Service Reform Bill) was introduced (by request) by Mr. Nix with Mr. Derwinski as cosponsor, and referred to the House Committee on Post Office and Civil Service (the Bill as introduced did not include a Title VII on labor-management relations) [H 1684.]

Statement by Mr. Nix on H.R. 11280 [H 1660].
 S. 2640 (the Administration Civil Service Reform Bill) (identical to H.R. 11280) was introduced by Mr. Ribicoff with Mr. Percy, Mr. Sasser, and Mr. Javits as cosponsors, and referred to the Senate Committee on Governmental Affairs (the Bill as introduced did not include a Title VII on labor-management relations) [S 2854].
 Statement by Mr. Ribicoff on S. 2640 [S 2855] with a summary of the Bill [S 2855-58].
 Statement by Mr. Percy on S. 2640 with reference to labor-management relations legislation [S 2858]----- 1006

March 14 through May 23, 1978

Hearings on H.R. 11280 were held before the House Committee on Post Office and Civil Service [Serial No. 95-65].

March 22, 1978

Statement by Walsh inserting remarks opposing Administration proposals on civil service reform with reference to labor-management relations [E 1547-49]----- 836

April 6 through May 9, 1978

Hearings on S. 2640, S. 2707 (the Leahy Whistleblower Bill), and S. 2830 (the Abourezk Whistleblower Bill) were held before the Senate Committee on Governmental Affairs with written submissions through June 15, 1978, in an Appendix volume printed June 1978.

May 10, 1978

Statement transmitting Administration proposal for a new Title VII on labor-management relations [May 15, 1978, at page S 7469] ----- 1007

May 12, 1978

Administration's Proposed New Title VII to H.R. 11280 (identical to Senate Amendment No. 2084) was printed for use of the House Committee on Post Office and Civil Service. Notice was printed that the Senate Committee on Governmental Affairs would begin consideration of S. 2640 on May 18, 1978 [D 700].

May 15, 1978

Amendment No. 2084 (the Administration's Title VII on labor-management relations) to S. 2640 was introduced by Mr. Ribicoff with Mr. Percy, Mr. Sasser, and Mr. Javits as cosponsors, and referred to the Senate Committee on Government Affairs [S 7469] ----- 443
 Statements by Mr. Ribicoff and Mr. Percy on Amendment No. 2084 [S 7469]----- 1007

May 22 through June 29, 1978

Markup session on S. 2640 were held by the Senate Committee on Governmental Affairs during which a revised version of Amendment No. 2084 was accepted without debate on June 14, the only day in which Title VII was discussed [D 753, 828, 837, 852, 867, 960].

Page

May 23, 1978

Message from the President transmitting Reorganization Plan No. 2 of 1978 on Federal Personnel Management, providing for the consolidation of labor-management functions in a new Federal Labor Relations Authority, was received in the House and referred to the Committee on Governmental Operations [House Document No. 95-341]----- 630

June 6 through June 15, 1978

Hearings on Reorganization Plan No. 2 of 1978 were held before the House Committee on Governmental Operations with written submissions through July 14, 1978.

June 9, 1978

Statement by Mr. Derwinski on consideration of civil service reform by the House Committee on Post Office and Civil Service [H 5248]----- 836

June 13, 1978

Statement by Mr. Biden on civil service reform [S 9107]----- 1008

June 14, 1978

Markup session on Title VII of S. 2640 was held by the Senate Committee on Governmental Affairs during which a revised version of Amendment No. 2084 was accepted as Title VII of S. 2640 without debate.

June 21 through July 19, 1978

Markup sessions on H.R. 11280 were held by the House Committee on Post Office and Civil Service with markup on Title VII held on July 19 and other references relevant to Title VII on June 21, June 22, June 23, June 28, and July 12.

June 29, 1978

Notice was printed that the Senate Committee on Governmental Affairs had favorably reported S. 2640 with amendments [D 960].

July 10, 1978

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Committee Print of Title VII to be used for House markup (the Clay-Ford-Solarz Print) was printed.....	311
S. 2640 was favorably reported with amendments by the Senate Committee on Governmental Affairs with permission to postpone printing of the report until July 12 to include additional or minority views [S 10315] [Senate Report No. 95-969].....	494 (bill) ; 740 (rept.)
Notice was printed that Mr. Eagleton and Mrs. Humphrey had been added as cosponsors for S. 2640 [S 10339].	

July 11, 1978

Notice that Mr. Jackson, Mr. Nunn, M. Glenn, Mr. Chiles, and Mr. Muskie had been added as cosponsors of S. 2640 [S 10449].

July 18, 1978

Statement by Mr. Garn indicating his intention to engage in extended debate in opposition to any civil service reform bill that included Hatch Act revisions like those added in markup on H.R. 11280 [S 11063].

July 19, 1978

Markup session on Title VII of H.R. 11280 was held by the House Committee on Post Office and Civil Service during which:

The Clay-Ford-Solarz Committee Print was used as original text for purposes of markup.

Udall amendment, expanding the management rights clause to include number of employees, assigning work, determining personnel, and taking emergency actions, was adopted on a roll call vote 14-10.

Heftel (Administration) substitute for the Udall amendment, codifying the Executive Order and case-law thereunder on the scope of bargaining, management rights, and limited bargaining on procedures, was defeated on a roll call vote, 8-16.

Udall amendment, deleting the agency shop provisions while retaining statutory right of dues withholding at no cost to the union, was adopted on a roll call vote, 15-10.

Derwinski (Administration) substitute to the Udall amendment, deleting agency shop provisions and allowing negotiation of dues withholding agreements, was defeated on a roll call vote, 9-16.

Hanley amendment, excluding intelligence agencies from Title VII and providing for FLRA exclusion of internal security and intelligence units, was adopted by voice vote.

Lehman (Administration) amendment, providing for no restriction on Presidential removal of FLRA members, the General Counsel, and Impasses Panel members, and allowing the Director of OPM to intervene in certain cases, was proposed.

Udall substitute for the Lehman amendment, providing for no restriction on Presidential removal of the General Counsel and Impasses Panel members and allowing for nonbinding Panel actions, if the parties so agree, was adopted by voice vote.

As thus amended, the Lehman amendment was adopted by voice vote.

Udall amendment, providing that the statutory grievance sections did not apply to matters involving certain political activities, retirement, life insurance, health insurance, national security removals, position classification, or discrimination complaints, was proposed.

Clay amendment removing discrimination complaints from the Udall amendment was accepted.

Lehman (Administration) substitute for the Udall amendment, removing authority to award attorneys fees in backpay cases, providing for unfair labor practices as under the Executive Order, and excluding from the grievance procedure matters related to political activities, retirement, life insurance, health insurance, national security, classification, the Fair Labor Standards Act, examination, certification and appointment, or suitability, was defeated on a roll call vote, 9-16.

Ford amendment, removing position classification from the Udall amendment, was adopted by voice vote.

As thus amended, the Udall amendment was adopted on a voice vote.

Lehman (Administration) amendment, removing the statutory grant of official time to process grievances and negotiate agreements, the FLRA's authority to grant official time to participate in its proceedings, and the authority of the parties to negotiate additional official time, and providing instead for official time for negotiations as agreed between the parties up to 40 hours or half of duty time, was proposed.

Udall substitute for the Lehman amendment, replacing the statutory grant of official time to process grievances with the right to negotiate such time but retaining the statutory grant of time for negotiations, was adopted by voice vote.

As thus amended, the Lehman amendment was adopted on a voice vote.

Heftel (Administration) amendment, requiring an election under all circumstances in order to obtain exclusive recognition, was defeated by voice vote.

Heftel (Administration) amendment, limiting judicial review of FLRA decisions to constitutional questions, restricting judicial enforcement of FLRA orders, and changing the section on findings and purpose to conform to the Senate Bill, was defeated by voice vote.

Clay amendment, expanding the definition of "labor organization" to include organizations with other primary purposes in addition to dealing with agencies on conditions of employment, was adopted by voice vote.

Leach amendment, prohibiting receipt of gifts by employees and union officers, was defeated by voice vote.

Leach amendment, providing for complaints and penalties against air traffic controllers who engaged in slowdowns, was defeated on a roll call vote, 4-18.

Ford amendment, adding a new section to Title VII that retained the status quo in the scope of bargaining for prevailing rate employees, was adopted by voice vote.

Udall (Administration) amendment, allowing agency disbursing officers to request a decision from the Comptroller General on the legality of any payment, including payments connected with grievances and arbitration awards, was defeated by voice vote.

As thus amended, the Clay-Ford-Solarz Committee Print of Title VII was adopted by the House Committee on Post Office and Civil Service as Title VII of H.R. 11280 ordered reported.

July 20, 1978

Statement by Mr. Derwinski on action on civil service reform by the House Committee on Post Office and Civil Service [H 7105]-----

837

Notice was printed that the House Committee on Post Office and Civil Service had favorably reported H.R. 11280 with amendments on June 19 [D 1052].

July 25, 1978

Mathias Amendment No. 3297, providing for payment of attorneys fees when "in the interests of justice," was submitted and ordered printed [S 11755]-----

1051

July 26, 1978

H. Res. 1201, disapproving Reorganization Plan No. 2 of 1978, was reported unfavorably by the House Committee on Governmental Operations and referred to the Committee of the Whole House on the State of the Union [H 74033] [House Report No. 93-1396]-----

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July 27, 1978

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Stevens Amendment No. 3323, providing that the standard of review in performance appraisal cases be the substantial evidence test, was submitted and ordered printed [S 11977]-----	1052
Stevens Amendment No. 3324, requiring that an agency establish by a preponderance of the evidence that an adverse action would promote the efficiency of the service, was submitted and ordered printed [S 11977]-----	1053

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Stevens Amendment No. 3413, restricting removal of the FLRA members to that for specified cause only, was submitted and ordered printed [S 12379]-----	1059
Stevens Amendment No. 3413, restricting removal of the FLRA Chairman to that for specified cause only, was submitted and ordered printed [S 12379]-----	1060
Stevens Amendment No. 3415, restricting removal of the FLRA General Counsel to that for specified cause only, was submitted and ordered printed [S 12379]-----	1061
Stevens Amendment No. 3416, providing for judicial review of FLRA unfair labor practices decisions in the Court of Claims and the courts of appeal, was submitted and ordered printed [S 12379]-----	1062
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Stevens Amendment No. 3418, allowing arbitrators and FLRA to award attorneys fees if "warranted on the grounds that the agency's action was taken in bad faith," was submitted and ordered printed [S 12379]-----	1068

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Statement by Mr. Clay on the scope of bargaining under Title VII of H.R. 11280 as reported by the House Committee on Post Office and Civil Service [E 4293]-----	839

August 9, 1978

S. Res. 530, waiving Budget Act requirements to allow for consideration of S. 2640, was adopted by the Senate [S 12597] as reported by the Senate Committee on the Budget [S 12862] [Senate Report No. 95-1074].	
H. Res. 1201, disapproving Reorganization Plan No. 2 of 1978, was debated and reported unfavorably by the Committee of Whole House on the State of the Union [H 8155-58] and defeated by the House on a roll call vote, 19-381 [H 8158]--	840

August 10, 1978

H. Res. 1307, providing the rule for House consideration of H.R. 11280 and allowing a point of order against only Titles IX on Hatch Act reform and X on the workweek for Federal firefighters, was reported by the House Committee on Rules [H 8434] [House Report No. 95-1473]-----	846
Clay amendment, reinserting a Title IX on Hatch Act reform in H.R. 11280 (if Title IX were to be removed on a point of order), was submitted and printed in the Record [H 8437-39].	
Leach amendments were submitted and printed in the Record to:	
Provide for complaints and penalties against air traffic controllers who engaged in slowdowns [H 8446]-----	1044
Prohibit receipt of gifts by employees and union officers [H 8446]-----	1044
Statement by Mr. Clay on action on Title VII by the House Committee on Post Office and Civil Service [E 4497]-----	842
Statement by Mr. Clay summarizing Title VII as reported by the House Committee on Post Office and Civil Service [E 4509-10]-----	844

August 11, 1978

H. Res. 1307, providing the rule for House consideration of H.R. 11280, was debated and adopted by the House on a roll call vote, 357-18 [H 8451-59]-----	846
H.R. 11280, was taken up in general debate by the Committee of the Whole House on the State of the Union, after roll call votes adopting the motion to resolve into the Committee of the Whole [H 8460] and rejecting reconsideration of that motion [H8460-1], with the Committee rising without reaching points of order or amendments [H 8460-75]-----	849

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Frenzel amendment, adding the Federal Election Commission to that list of agencies excluded from Title VII, was submitted and printed in the Record [H 8510]-----	1045
Statement by Mr. Sasser on Reorganization Plan No. of 1978 [S 13184]-----	1008

August 14, 1978

Gilman amendment, adding a new Section 1107 to establish a Personnel Policy Advisory Committee to discuss and make recommendations on personnel policies affecting more than one agency (identical to Stevens Amendment No. 3411, except for new section number), was submitted and printed in the Record [H 8586].

August 15, 1978

Derwinsky substitute amendment, codifying the Executive Order and providing for Title VII essentially as reported by the Senate Committee on Governmental Affairs (eventually proposed in the September 13th debate by Mr. Collins of Texas [H 9618-24]), was submitted and printed in the Record [H 8702-08].

August 24, 1978

S. 2640, was debated by the Senate during which:

Mathias/Stevens/Ribicoff/Percy Amendment No. 3533 was proposed [S 14292] to:

Allow arbitrators to award attorneys fees in discrimination cases under Civil Rights Act standards and otherwise allow arbitrators and the FLRA to award attorneys fees when "warranted on the grounds that the agency's action was taken in bad faith" [S 14292-93]----- 1017, 1076

Add a new Section 7205 to title VII providing for a Personnel Policy Advisory Committee to discuss and make recommendations on personnel policies affecting more than one agency [S 14293]----- 1017, 1077

Amendment No. 3533 was accepted by the Senate as original text for purposes of further amendment----- 1020

Hatch unprinted Amendment No. 1774, deleting the Personnel Policy Advisory Committee provisions added by Amendment No. 3533, was proposed and adopted [S 14310]----- 1020

Hatch unprinted Amendment No. 1775 contained three separate amendments that were proposed en bloc [S 14311], modified individually, and adopted en bloc [S 14319]:
 Amendment No. 1, requiring a secret ballot election before an agency must bargain with a representative, was proposed [S 14311] and modified [S 14314, 14318] ----- 1022

Amendment No. 2, decertifying a representative who failed to take action to prevent a strike, work stoppage, slowdown, or picketing, was proposed [S 14311] and modified [S 14316, 14319]----- 1022

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Amendment No. 3, providing that certain statements would not constitute or be evidence of an unfair labor practice or justify setting aside an election under certain circumstances, was proposed [S 14311] and modified [S 14315, 14319]-----	1022
As thus modified, Hatch unprinted Amendment No. 1775 was adopted [S 14319]-----	1035
Heinz unprinted Amendment No. 1776, lowering one level the salaries of the Presidential appointees to the FLRA, MSPB, and OPM was proposed and adopted [S 14317]-----	1031
Stevens Amendment No. 3416, providing for judicial review of FLRA unfair labor practice decisions in the Court of Claims and the courts of appeals, was proposed, modified [S 14321], and adopted [S 14322]-----	1036
As thus amended, S. 2640 was passed by the Senate on a roll call vote, 87-1 [S 14324]-----	1038

September 6, 1978

Erlenborn amendments were submitted and printed in the Record to:

Strike all of Title VII [H 9169]-----	1045
Revise the definition of "labor organization" [H 9169]-----	1045
Exclude from the definition of "labor organization" an organization which assists or participates in a strike against the Government or an agency [H 9169]-----	1045
Remove assessments and fees other than initiation fees from the definition of "dues" [H 9169]-----	1045
Bar Federal Election Commission employees from being represented by or affiliated with an organization maintaining a political action committee [H 9169]-----	1045
Bar employees administering a labor-management relations law from being represented by or affiliated with an organization subject to that law [H 9169]-----	1045
Restrict removal of the FLRA General Counsel to that for specified cause only [H 9169]-----	1045
Bar delegation of FLRA functions to regional directors and administrative law judges [H 9169]-----	1045
Require resolution of issues before recognition election [H. 9167]-----	1046
Require an election before granting exclusive recognition [H 9169]-----	1046
Strike all of Section 7113 on national consultation rights [H 9169]-----	1046
Strike the certification and dues withholding provisions for representatives of 10 percent of employees where there is no exclusive representative [H 9169]-----	1046
Add picketing an agency in a labor-management dispute to the list of unfair labor practices [H 9169]-----	1046
Bar certain statements from constituting or being evidence of an unfair labor practice or justification for setting aside an election under certain circumstances [H 9169]--	1046

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Clay amendment, reinserting a Title IX on Hatch Act reform in H.R. 11280 (if Title IX were to be removed on a point of order), was submitted and printed in the Record [H 9167-69].	
Mitchell amendments were submitted and printed in the Record to:	
Include within the definition of "labor organization" a special interest organization that enjoys exclusive representative status immediately before the effective date of Title VII [H 9173]-----	1046
Allow an employee to select a representative other than an exclusive representative for any appeal action or grievance procedure [H 9173]-----	1046
Allow an employee to pursue additional remedies after using the negotiated grievance procedure [H 9173]-----	1046
Rudd amendment, excluding strikers from the definition of "employee," excluding organizations assisting in a strike against the Government or an agency thereof from the definition of "labor organization," and deleting as an unfair labor practice engaging in a strike, work stoppage, or slowdown but continuing to make condoning such activity an unfair labor practice, was submitted and printed in the Record [H 9173]--	1046
Udall substitute amendment for Title VII as reported by the House Committee on Post Office and Civil Service was submitted and printed in the Record [H 9174-82].	
Statement by Mr. Mitchell discussing his proposed amendments to H.R. 11280 [E 4802-03]-----	859

September 7, 1978

H.R. 11280 was debated in the Committee of the Whole House on the State of the Union during which a point of order removing Titles IX on Hatch Act reform and X on firefighters was sustained and amendment of Title I was begun but not concluded [H 9277-85]-----	866
Corcoran amendment, requiring an election before granting exclusive recognition, was submitted and printed in the Record [H 9296]-----	1046

September 11, 1978

H.R. 11280 was debated in the Committee of the Whole House on the State of the Union with debate and action on Titles I through VII of the bill during which:	
Mr. Clay announced that he would discontinue efforts to attach Title IX on Hatch Act reform to H.R. 11280 and inserted a letter from the President pledging continued support for such reform [H 9358]-----	869
Hanley amendment, statutorily requiring a pretermination hearing in performance appraisal and adverse action cases when selected by an employee, was proposed [H 9370] and defeated on a division vote, 15-23 [H 9370]-----	869

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Debate on Title VII was begun [H 9446]-----	878
Erlenborn amendment, striking all of Title VII, was proposed [H 9453] and defeated on a roll call vote, 125-217 [H 9458]-----	878
Wilson preferential motion that the Committee on the Whole rise and report H.R. 11280 back to the House with the recommendation that the enacting clause be stricken, was proposed [H 9458] and defeated on a roll call vote, 46-286 [H 9459]-----	888
Udall unanimous consent request, limiting to 2 hours all further debate on Title VII and amendments thereto, was made and denied [H 9460]-----	890
Udall motion, limiting to 2 hours all further debate on Title VII and amendments thereto, was made and adopted [H 9460]-----	891
Edwards amendment to the Udall substitute amendment, making numbers, types and grades of employees and positions and the technology, method and means of performing work prohibited instead of permissive subjects of bargaining, was submitted and printed in the Record [H 9474]-----	1046
Erlenborn amendments to the Udall substitute amendment were submitted and printed in the Record to:	
Revise the definition of "labor organization" [H 9474]---	1047
Exclude from the definition of "labor organization" an organization which assists or participates in a strike against the Government or an agency [H 9474]-----	1047
Remove assessments and fees other than initiation fees from the definition of "dues" [H 9474]-----	1047
Restrict removal of the FLRA General Counsel to that for specified cause only [H 9474]-----	1047
Bar delegation of FLRA functions to regional directors and administrative law judges [H 9474]-----	1047
Require resolution of outstanding issues before an election is held [H 9474]-----	1047
Require an election before granting exclusive recognition [H 9474]-----	1047
Bar Federal Election Commission employees from being represented by or affiliated with an organization maintaining a political action committee [H 9474]-----	1047
Strike all of Sections 7113 on national consultation rights and 7117(d) on Government-wide consultation rights [H 9474]-----	1047
Strike the certification and dues withholding provisions for representatives of 10 percent of employees where there is no exclusive representative [H 9474]-----	1047
Require a secret ballot election before an agency must bargain with a representative [H 9474]-----	1047
Bar certain statements from constituting or being evidence of an unfair labor practice or justification for setting aside an election under certain circumstances [H 9474]--	1047

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Frenzel amendment to the Udall substitute amendment, adding the Federal Election Commission to the list of agencies excluded from Title VII, was submitted and printed in the Record [H 9475]-----	1048

September 12, 1978

Snyder substitute amendment to the Leach amendment, prohibiting air traffic controllers from willfully hindering work performance or engaging in a strike, work stoppage, or slowdown, was submitted and printed in the Record [H 9613]----	1048
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September 13, 1978

H.R. 11280 was debated in the Committee of the Whole House on the State of the Union during which :

Collins substitute amendment for Title VII as reported was proposed [H 9618]-----	894
Udall substitute amendment for the Collins amendment was proposed [H 9625]-----	907
Rudd amendment to the Udall substitute, excluding illegal strikers from the definition of "employee," was proposed [H 9640] and adopted [H 9641]-----	936
Erlenborn amendment to the Udall substitute, barring Federal Election Commission employees from being represented by or affiliated with an organization maintaining a political action committee, was proposed [H 9641] and defeated on a roll call vote, 166-217 [H 9643]-----	942
Erlenborn amendment to the Udall substitute, restricting removal of the FLRA General Counsel to that for specified cause only, was proposed [H 9643] and adopted [H 9644]-----	944
Erlenborn amendment to the Udall substitute, requiring resolution of outstanding issues before an election is held, was proposed and adopted [H 9644]-----	944
Erlenborn amendment to the Udall substitute, requiring an election before granting exclusive recognition, was proposed [H 9644] and adopted [H 9645]-----	945
Erlenborn amendment to the Udall substitute, excluding from the definition of "labor organization" an organization which assists or participates in a strike against the Government or an agency, was proposed, modified, and adopted [H 9645]-----	946
Erlenborn amendment to the Udall substitute, striking all of Sections 7113 on national consultation rights and 7117(d) on government-wide consultation rights, was proposed [H 9645] and withdrawn [H 9646]-----	947

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As thus amended, the Udall amendment was adopted as a substitute for the Collins amendment [H 9653]---	962
As thus amended by the Udall substitute as amended, the Collins amendment was adopted on a roll call vote, 381-0, as a substitute for Title VII as reported [9653]-----	962
H.R. 11280 as amended by the Committee of the Whole was reported back to the House [H 9669] and adopted [H 9670]---	964
Ashbrook motion to recommit H.R. 11280 to the House Committee on Post Office and Civil Service was made and defeated on a roll call vote, 385-10 [H 9670]-----	965
Udall unanimous consent request for House consideration of S. 2640 as passed by the Senate was made and granted [H 9671]-----	967
Udall motion to strike all of S. 2640 after the enacting clause and substitute instead H.R. 11280 as passed by the House was proposed [H 9671] and adopted [H 9703]-----	967
Udall unanimous consent request that the House insist on its amendment to S. 2640 and request a conference with the Senate was made and granted [H 9703]-----	983
Appointment of Mssrs. Nix, Udall, Hanley, Ford of Michigan, and Clay, Mrs. Schroeder, Mrs. Spellman, and Mssrs. Derwinsky, Rousselot, and Taylor as House conferees on S. 2640 [H 9703]-----	983

September 14, 1978

Senate agreed to a conference with the House on S. 2640 and appointed Mssrs. Ribicoff, Eagleton, Chiles, and Sasser, Mrs. Humphrey, and Messrs. Percy, Javits, Stevens, and Mathias as Senate conferees on S. 2640 [S 15121]-----	1039
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September 18 through October 3, 1978

House-Senate Conference on S. 2640.

September 23, 1978

Statement by Mr. Lehman on House passage of civil service reform and Title VII [E 5200]-----	983
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October 3, 1978

Notice that the House-Senate Conference Committee had approved S. 2640 was printed in the Record [D 1484].

October 4, 1978

S. 2640 as reported by the Conference Committee [Senate Report No. 95-1272] was considered and adopted by the Senate [S 17082-84]-----	1039
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October 5, 1978

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S. 2640 as reported by the Conference Committee [House Report No. 95-1717] was submitted and printed in the Record [H 11624-68]-----	985
Udall unanimous consent request to consider the Conference Report on S. 2640 the following day was made and denied [H 11668] -----	985

October 6, 1978

S. 2640 as reported by the Conference Committee was considered and adopted by the House [H 11821-27]-----	985
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October 10, 1978

S. Con. Res. 110, making corrections in the enrollment of S. 2640, was considered and passed by the Senate [S 18079-80]-----	1041
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October 11, 1978

S. Con. Res. 110, making corrections in the enrollment of S. 2630, was considered and passed by the House [H 11255-56]--	989
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October 13, 1978

S. 2640 was signed by the President [S 19072, D 1561]-----	639
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October 14, 1978

Statement by Mr. Ford on the Civil Service Reform Act of 1978 [H 13605-11]-----	989
Statement by Mr. Clay on the Federal Labor-Management Relations Program [E 5724-25]-----	1001
Statement by Mrs. Schroeder on Civil Service Reform [E 5727]-----	1002
Statement by Mr. Sasser on the Civil Service Reform Act of 1978 [S 19426-27]-----	1042

Public Law 95-454
95th Congress

An Act

To reform the civil service laws.

*Be it enacted by the Senate and House of Representatives of the
 United States of America in Congress assembled,*

Oct. 13, 1978
 [S. 2640]

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Service Reform Act of 1978".

Civil Service
 Reform Act of
 1978.
 5 USC 1101 note.

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Sec. 101. Merit system principles; prohibited personnel practices.

**TITLE II—CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL;
 ADVERSE ACTIONS**

- Sec. 201. Office of Personnel Management.
 Sec. 202. Merit Systems Protection Board and Special Counsel.
 Sec. 203. Performance appraisals.
 Sec. 204. Adverse actions.
 Sec. 205. Appeals.
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TITLE III—STAFFING

- Sec. 301. Volunteer service.
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 Sec. 303. Probationary period.
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 Sec. 305. Travel, transportation, and subsistence.
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 Sec. 309. Civil service employment information.
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TITLE IV—SENIOR EXECUTIVE SERVICE

- Sec. 401. General provisions.
 Sec. 402. Authority for employment.
 Sec. 403. Examination, certification, and appointment.
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- Sec. 701. Federal service labor-management relations.
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- Sec. 905. Reorganizations plans.
- Sec. 906. Technical and conforming amendments.
- Sec. 907. Effective date.

FINDINGS AND STATEMENT OF PURPOSE

5 USC 1101 note.

SEC. 3. It is the policy of the United States that—

(1) in order to provide the people of the United States with a competent, honest, and productive Federal work force reflective of the Nation's diversity, and to improve the quality of public service, Federal personnel management should be implemented consistent with merit system principles and free from prohibited personnel practices;

(2) the merit system principles which shall govern in the competitive service and in the executive branch of the Federal Government should be expressly stated to furnish guidance to Federal agencies in carrying out their responsibilities in administering the public business, and prohibited personnel practices should be statutorily defined to enable Federal employees to avoid conduct which undermines the merit system principles and the integrity of the merit system;

(3) Federal employees should receive appropriate protection through increasing the authority and powers of the Merit Systems Protection Board in processing hearings and appeals affecting Federal employees;

(4) the authority and power of the Special Counsel should be increased so that the Special Counsel may investigate allegations involving prohibited personnel practices and reprisals against Federal employees for the lawful disclosure of certain information and may file complaints against agency officials and employees who engage in such conduct;

(5) the function of filling positions and other personnel functions in the competitive service and in the executive branch should

be delegated in appropriate cases to the agencies to expedite processing appointments and other personnel actions, with the control and oversight of this delegation being maintained by the Office of Personnel Management to protect against prohibited personnel practices and the use of unsound management practices by the agencies;

(6) a Senior Executive Service should be established to provide the flexibility needed by agencies to recruit and retain the highly competent and qualified executives needed to provide more effective management of agencies and their functions, and the more expeditious administration of the public business;

(7) in appropriate instances, pay increases should be based on quality of performance rather than length of service;

(8) research programs and demonstration projects should be authorized to permit Federal agencies to experiment, subject to congressional oversight, with new and different personnel management concepts in controlled situations to achieve more efficient management of the Government's human resources and greater productivity in the delivery of service to the public;

(9) the training program of the Government should include retraining of employees for positions in other agencies to avoid separations during reductions in force and the loss to the Government of the knowledge and experience that these employees possess; and

(10) the right of Federal employees to organize, bargain collectively, and participate through labor organizations in decisions which affect them, with full regard for the public interest and the effective conduct of public business, should be specifically recognized in statute.

TITLE I—MERIT SYSTEM PRINCIPLES

MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL PRACTICES

SEC. 101. (a) Title 5, United States Code, is amended by inserting after chapter 21 the following new chapter:

“CHAPTER 23—MERIT SYSTEM PRINCIPLES

“Sec.

“2301. Merit system principles.

“2302. Prohibited personnel practices.

“2303. Prohibited personnel practices in the Federal Bureau of Investigation.

“2304. Responsibility of the General Accounting Office.

“2305. Coordination with certain other provisions of law.

“§ 2301. Merit system principles

5 USC 2301.

“(a) This section shall apply to—

“(1) an Executive agency;

“(2) the Administrative Office of the United States Courts;

and

“(3) the Government Printing Office.

“(b) Federal personnel management should be implemented consistent with the following merit system principles:

“(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

"(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

"(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

"(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

"(5) The Federal work force should be used efficiently and effectively.

"(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

"(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

"(8) Employees should be—

"(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

"(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

"(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

"(A) a violation of any law, rule, or regulation, or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"(c) In administering the provisions of this chapter—

"(1) with respect to any agency (as defined in section 2302(a)(2)(C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and

"(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives; which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

Infra.

5 USC 2302.
Definitions.

"§ 2302. Prohibited personnel practices

"(a) (1) For the purpose of this title, 'prohibited personnel practice' means any action described in subsection (b) of this section.

"(2) For the purpose of this section—

"(A) 'personnel action' means—

"(i) an appointment;

"(ii) a promotion;

“(iii) an action under chapter 75 of this title or other disciplinary or corrective action;

“(iv) a detail, transfer, or reassignment;

“(v) a reinstatement;

“(vi) a restoration;

“(vii) a reemployment;

“(viii) a performance evaluation under chapter 43 of this title;

“(ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph; and

“(x) any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level;

with respect to an employee in, or applicant for, a covered position in an agency;

“(B) ‘covered position’ means any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include—

“(i) a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

“(ii) any position excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration.

“(C) ‘agency’ means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

“(i) a Government corporation;

“(ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

“(iii) the General Accounting Office.

“(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

“(1) discriminate for or against any employee or applicant for employment—

“(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

“(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

“(C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

“(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

“(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

“(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

“(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

“(B) an evaluation of the character, loyalty, or suitability of such individual;

“(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

“(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;

“(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

“(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

“(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a) (3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a) (2) of this title) or over which such employee exercises jurisdiction or control as such an official;

“(8) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for—

“(A) a disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

“(i) a violation of any law, rule, or regulation, or

“(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

“(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

“(i) a violation of any law, rule, or regulation, or

“(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

“(9) take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation;

“(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States; or

“(11) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

“(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

“(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

“(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

“(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

“(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

“(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

“(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

“2303. Prohibited personnel practices in the Federal Bureau of Investigation 5 USC 2303.

“(a) Any employee of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any employee of the Bureau as a reprisal for a disclosure of information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose) which the employee or applicant reasonably believes evidences—

“(1) a violation of any law, rule, or regulation, or

“(2) mismanagement; a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

For the purpose of this subsection, ‘personnel action’ means any action described in clauses (i) through (x) of section 2302(a) (2) (A) of this

“Personnel action.”

title with respect to an employee in, or applicant for, a position in the Bureau (other than a position of a confidential, policy-determining, policymaking, or policy-advocating character).

Regulations.

“(b) The Attorney General shall prescribe regulations to ensure that such a personnel action shall not be taken against an employee of the Bureau as a reprisal for any disclosure of information described in subsection (a) of this section.

Presidential enforcement.
Post, p. 1125.
5 USC 2304.

“(c) The President shall provide for the enforcement of this section in a manner consistent with the provisions of section 1206 of this title.

“§ 2304. Responsibility of the General Accounting Office

“(a) If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the General Accounting Office shall conduct audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the executive branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.

Report to President and Congress.

“(b) The General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the Merit Systems Protection Board and the Office of Personnel Management. The report shall include a description of—

“(1) significant actions taken by the Board to carry out its functions under this title; and

“(2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office are in accord with merit system principles and free from prohibited personnel practices.

5 USC 2305.

“§ 2305. Coordination with certain other provisions of law

“No provision of this chapter, or action taken under this chapter, shall be construed to impair the authorities and responsibilities set forth in section 102 of the National Security Act of 1947 (61 Stat. 495; 50 U.S.C. 403), the Central Intelligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following), the Act entitled ‘An Act to provide certain administrative authorities for the National Security Agency, and for other purposes’, approved May 29, 1959 (73 Stat. 63; 50 U.S.C. 402 note), and the Act entitled ‘An Act to amend the Internal Security Act of 1950’, approved March 26, 1964 (78 Stat. 168; 50 U.S.C. 831-835).”

(b) (1) The table of chapters for part III of title 5, United States Code, is amended by adding after the item relating to chapter 21 the following new item:

“23. Merit system principles..... 2301”.

(2) Section 7153 of title 5, United States Code, is amended—

(A) by striking out “Physical handicap” in the catchline and inserting in lieu thereof “Handicapping condition”; and

(B) by striking out “physical handicap” each place it appears in the text and inserting in lieu thereof “handicapping condition”.

TITLE II—CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

OFFICE OF PERSONNEL MANAGEMENT

SEC. 201. (a) Chapter 11 of title 5, United States Code, is amended to read as follows:

“CHAPTER 11—OFFICE OF PERSONNEL MANAGEMENT

“Sec.

“1101. Office of Personnel Management.

“1102. Director; Deputy Director; Associate Directors.

“1103. Functions of the Director.

“1104. Delegation of authority for personnel management.

“1105. Administrative procedure.

“§ 1101. Office of Personnel Management

5 USC 1101.

“The Office of Personnel Management is an independent establishment in the executive branch. The Office shall have an official seal, which shall be judicially noticed, and shall have its principal office in the District of Columbia, and may have field offices in other appropriate locations.

“§ 1102. Director; Deputy Director; Associate Directors

5 USC 1102.

“(a) There is at the head of the Office of Personnel Management a Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The term of office of any individual appointed as Director shall be 4 years.

“(b) There is in the Office a Deputy Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or when the office of Director is vacant.

“(c) No individual shall, while serving as Director or Deputy Director, serve in any other office or position in the Government of the United States except as otherwise provided by law or at the direction of the President. The Director and Deputy Director shall not recommend any individual for appointment to any position (other than Deputy Director of the Office) which requires the advice and consent of the Senate.

“(d) There may be within the Office of Personnel Management not more than 5 Associate Directors, as determined from time to time by the Director. Each Associate Director shall be appointed by the Director.

“§ 1103. Functions of the Director

5 USC 1103.

“(a) The following functions are vested in the Director of the Office of Personnel Management, and shall be performed by the Director, or subject to section 1104 of this title, by such employees of the Office as the Director designates:

“(1) securing accuracy, uniformity, and justice in the functions of the Office;

“(2) appointing individuals to be employed by the Office;

“(3) directing and supervising employees of the Office, distributing business among employees and organizational units of the Office, and directing the internal management of the Office;

“(4) directing the preparation of requests for appropriations for the Office and the use and expenditure of funds by the Office;

“(5) executing, administering, and enforcing—

“(A) the civil service rules and regulations of the President and the Office and the laws governing the civil service; and

“(B) the other activities of the Office including retirement and classification activities;

except with respect to functions for which the Merit Systems Protection Board or the Special Counsel is primarily responsible;

“(6) reviewing the operations under chapter 87 of this title;

“(7) aiding the President, as the President may request, in preparing such civil service rules as the President prescribes, and otherwise advising the President on actions which may be taken to promote an efficient civil service and a systematic application of the merit system principles, including recommending policies relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separation of employees; and

“(8) conducting, or otherwise providing for the conduct of, studies and research under chapter 47 of this title into methods of assuring improvements in personnel management.

Notice of proposed rules or regulations. Publication in Federal Register. 5 USC 553.

“(b) (1) The Director shall publish in the Federal Register general notice of any rule or regulation which is proposed by the Office and the application of which does not apply solely to the Office or its employees. Any such notice shall include the matter required under section 553(b) (1), (2), and (3) of this title.

“(2) The Director shall take steps to ensure that—

“(A) any proposed rule or regulation to which paragraph (1) of this subsection applies is posted in offices of Federal agencies maintaining copies of the Federal personnel regulations; and

“(B) to the extent the Director determines appropriate and practical, exclusive representatives of employees affected by such proposed rule or regulation and interested members of the public are notified of such proposed rule or regulation.

“(3) Paragraphs (1) and (2) of this subsection shall not apply to any proposed rule or regulation which is temporary in nature and which is necessary to be implemented expeditiously as a result of an emergency.

5 USC 1104.

“§ 1104. Delegation of authority for personnel management

“(a) Subject to subsection (b) (3) of this section—

“(1) the President may delegate, in whole or in part, authority for personnel management functions, including authority for competitive examinations, to the Director of the Office of Personnel Management; and

“(2) the Director may delegate, in whole or in part, any function vested in or delegated to the Director, including authority for competitive examinations (except competitive examinations for administrative law judges appointed under section 3105 of this title), to the heads of agencies in the executive branch and other agencies employing persons in the competitive service;

except that the Director may not delegate authority for competitive examinations with respect to positions that have requirements which are common to agencies in the Federal Government, other than in exceptional cases in which the interests of economy and efficiency require such delegation and in which such delegation will not weaken the application of the merit system principles.

Standards.

“(b) (1) The Office shall establish standards which shall apply to the activities of the Office or any other agency under authority delegated under subsection (a) of this section.

Oversight program.

“(2) The Office shall establish and maintain an oversight program to ensure that activities under any authority delegated under subsection (a) of this section are in accordance with the merit system principles and the standards established under paragraph (1) of this subsection.

“(3) Nothing in subsection (a) of this section shall be construed as affecting the responsibility of the Director to prescribe regulations and to ensure compliance with the civil service laws, rules, and regulations.

“(c) If the Office makes a written finding, on the basis of information obtained under the program established under subsection (b) (2) of this section or otherwise, that any action taken by an agency pursuant to authority delegated under subsection (a) (2) of this section is contrary to any law, rule, or regulation, or is contrary to any standard established under subsection (b) (1) of this section, the agency involved shall take any corrective action the Office may require.

“§ 1105. Administrative procedure

5 USC 1105.

“Subject to section 1103(b) of this title, in the exercise of the functions assigned under this chapter, the Director shall be subject to subsections (b), (c), and (d) of section 553 of this title, notwithstanding subsection (a) of such section 553.”

5 USC 553.

(b) (1) Section 5313 of title 5, United States Code, is amended by inserting at the end thereof the following new paragraph:

“(24) Director of the Office of Personnel Management.”

(2) Section 5314 of such title is amended by inserting at the end thereof the following new paragraph:

5 USC 5314.

“(68) Deputy Director of the Office of Personnel Management.”

(3) Section 5316 of such title is amended by inserting after paragraph (121) the following:

5 USC 5316.

“(122) Associate Directors of the Office of Personnel Management (5).”

(c) (1) The heading of part II of title 5, United States Code is amended by striking out “THE UNITED STATES CIVIL SERVICE COMMISSION” and inserting in lieu thereof “CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES”.

(2) The item relating to chapter 11 in the table of chapters for part II of such title is amended by striking out “Organization” and inserting in lieu thereof “Office of Personnel Management”.

MERIT SYSTEMS PROTECTION BOARD AND SPECIAL COUNSEL

SEC. 202. (a) Title 5, United States Code, is amended by inserting after chapter 11 the following new chapter:

“CHAPTER 12—MERIT SYSTEMS PROTECTION BOARD AND SPECIAL COUNSEL

“Sec.

“1201. Appointment of members of the Merit Systems Protection Board.

“1202. Term of office; filling vacancies; removal.

“1203. Chairman; Vice Chairman.

“1204. Special Counsel; appointment and removal.

“1205. Powers and functions of the Merit Systems Protection Board and Special Counsel.

“1206. Authority and responsibilities of the Special Counsel.

“1207. Hearings and decisions on complaints filed by the Special Counsel.

“1208. Stays of certain personnel actions.

“1209. Information.

“§ 1201. Appointment of members of the Merit Systems Protection Board

5 USC 1201.

“The Merit Systems Protection Board is composed of 3 members appointed by the President, by and with the advice and consent of the Senate, not more than 2 of whom may be adherents of the same

political party. The Chairman and members of the Board shall be individuals who, by demonstrated ability, background, training, or experience are especially qualified to carry out the functions of the Board. No member of the Board may hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President. The Board shall have an official seal which shall be judicially noticed. The Board shall have its principal office in the District of Columbia and may have field offices in other appropriate locations.

5 USC 1202.

“§ 1202. Term of office, filling vacancies; removal

“(a) The term of office of each member of the Merit Systems Protection Board is 7 years.

“(b) A member appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of that term. Any appointment to fill a vacancy is subject to the requirements of section 1201 of this title.

“(c) Any member appointed for a 7-year term may not be reappointed to any following term but may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that such member may not continue to serve for more than one year after the date on which the term of the member would otherwise expire under this section.

“(d) Any member may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

5 USC 1203.

“§ 1203. Chairman; Vice Chairman

“(a) The President shall from time to time, appoint, by and with the advice and consent of the Senate, one of the members of the Merit Systems Protection Board as the Chairman of the Board. The Chairman is the chief executive and administrative officer of the Board.

“(b) The President shall from time to time designate one of the members of the Board as Vice Chairman of the Board. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

“(c) During the absence or disability of both the Chairman and Vice Chairman, or when the offices of Chairman and Vice Chairman are vacant, the remaining Board member shall perform the functions vested in the Chairman.

5 USC 1204.

“§ 1204. Special Counsel; appointment and removal

“The Special Counsel of the Merit Systems Protection Board shall be appointed by the President from attorneys, by and with the advice and consent of the Senate, for a term of 5 years. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of the term. The Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

5 USC 1205.

“§ 1205. Powers and functions of the Merit Systems Protection Board and Special Counsel

“(a) The Merit Systems Protection Board shall—

“(1) hear, adjudicate, or provide for the hearing or adjudication, of all matters within the jurisdiction of the Board under this title, section 2023 of title 38, or any other law, rule, or regulation, and, subject to otherwise applicable provisions of law, take final action on any such matter;

“(2) order any Federal agency or employee to comply with any order or decision issued by the Board under the authority granted under paragraph (1) of this subsection and enforce compliance with any such order;

“(3) conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected; and

“(4) review, as provided in subsection (e) of this section, rules and regulations of the Office of Personnel Management.

“(b) (1) Any member of the Merit Systems Protection Board, the Special Counsel, any administrative law judge appointed by the Board under section 3105 of this title, and any employee of the Board designated by the Board may administer oaths, examine witnesses, take depositions, and receive evidence.

5 USC 3105.

“(2) Any member of the Board, the Special Counsel, and any administrative law judge appointed by the Board under section 3105 of this title may—

“(A) issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia; and

Subpoenas.

“(B) order the taking of depositions and order responses to written interrogatories.

“(3) 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.

Witnesses.

“(c) In the case of contumacy or failure to obey a subpoena issued under subsection (b) (2) 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.

“(d) (1) In any proceeding under subsection (a) (1) of this section, any member of the Board may request from the Director of the Office of Personnel Management an advisory opinion concerning the interpretation of any rule, regulation, or other policy directive promulgated by the Office of Personnel Management.

“(2) In enforcing compliance with any order under subsection (a) (2) of this section, the Board may order that any employee charged with complying with such order, other than an employee appointed by the President by and with the advice and consent of the Senate, shall not be entitled to receive payment for service as an employee during any period that the order has not been complied with. The Board shall certify to the Comptroller General of the United States that such an order has been issued and no payment shall be made out of the Treasury of the United States for any service specified in such order.

“(3) In carrying out any study under subsection (a) (3) of this section, the Board shall make such inquiries as may be necessary and, unless otherwise prohibited by law, shall have access to personnel records or information collected by the Office and may require additional reports from other agencies as needed.

“(e) (1) At any time after the effective date of any rule or regulation issued by the Director in carrying out functions under section 1103 of this title, the Board shall review any provision of such rule or regulation—

Ante, p. 1119.

“(A) on its own motion;

“(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

“(C) on the filing of a written complaint by the Special Counsel requesting such review.

“(2) In reviewing any provision of any rule or regulation pursuant to this subsection the Board shall declare such provision—

Ante, p. 1114.

“(A) invalid on its face, if the Board determines that such provision would, if implemented by any agency, on its face, require any employee to violate section 2302(b) of this title; or

“(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision, has required any employee to violate section 2302 (b) of this title.

“(3) (A) The Director of the Office of Personnel Management, and the head of any agency implementing any provision of any rule or regulation under review pursuant to this subsection, shall have the right to participate in such review.

“(B) Any review conducted by the Board pursuant to this subsection shall be limited to determining—

“(i) the validity on its face of the provision under review; and

“(ii) whether the provision under review has been validly implemented.

“(C) The Board shall require any agency—

“(i) to cease compliance with any provisions of any rule or regulation which the Board declares under this subsection to be invalid on its face; and

“(ii) to correct any invalid implementation by the agency of any provision of any rule or regulation which the Board declares under this subsection to have been invalidly implemented by the agency.

“(f) The Board may delegate the performance of any of its administrative functions under this title to any employee of the Board.

Regulations.

“(g) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. All regulations of the Board shall be published in the Federal Register.

Publication in
Federal Register.

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

“(i) The Chairman of the Board may appoint such personnel as may be necessary to perform the functions of the Board. Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33 of this title).

5 USC 3324.
Post, p. 1161.

“(j) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall, as revised, be included as a separate item in the budget required to be transmitted to the Congress under section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11).

“(k) The Board shall submit to the President, and, at the same time, to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title.

Recommendations, submittal to President and Congress.

“§ 1206. Authority and responsibilities of the Special Counsel

“(a) (1) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

“(2) If the Special Counsel terminates any investigation under paragraph (1) of this subsection, the Special Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated a written statement notifying the person of the termination of the investigation and the reasons therefor.

“(3) In addition to authority granted under paragraph (1) of this subsection, the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

“(b) (1) In any case involving—

“(A) any disclosure of information by an employee or applicant for employment which the employee or applicant reasonably believes evidences—

“(i) a violation of any law, rule, or regulation; or

“(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if the disclosure is not specifically prohibited by law and if the information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

“(B) a disclosure by an employee or applicant for employment to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee or applicant reasonably believes evidences—

“(i) a violation of any law, rule, or regulation; or

“(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

the identity of the employee or applicant may not be disclosed without the consent of the employee or applicant during any investigation under subsection (a) of this section or under paragraph (3) of this subsection, unless the Special Counsel determines that the disclosure of the identity of the employee or applicant is necessary in order to carry out the functions of the Special Counsel.

“(2) Whenever the Special Counsel receives information of the type described in paragraph (1) of this subsection, the Special Counsel shall promptly transmit such information to the appropriate agency head.

“(3) (A) In the case of information received by the Special Counsel under paragraph (1) of this section, if, after such review as the Special Counsel determines practicable (but not later than 15 days after the receipt of the information), the Special Counsel determines that there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to the public health or safety, the Special Counsel may, to the extent provided in subparagraph (B) of this paragraph, require the head of the agency to—

Investigation.

“(i) conduct an investigation of the information and any related matters transmitted by the Special Counsel to the head of the agency; and

Written report.

“(ii) submit a written report setting forth the findings of the head of the agency within 60 days after the date on which the information is transmitted to the head of the agency or within any longer period of time agreed to in writing by the Special Counsel.

“(B) The Special Counsel may require an agency head to conduct an investigation and submit a written report under subparagraph (A) of this paragraph only if the information was transmitted to the Special Counsel by—

“(i) any employee or former employee or applicant for employment in the agency which the information concerns; or

“(ii) any employee who obtained the information in connection with the performance of the employee’s duties and responsibilities.

“(4) Any report required under paragraph (3) (A) of this subsection shall be reviewed and signed by the head of the agency and shall include—

“(A) a summary of the information with respect to which the investigation was initiated;

“(B) a description of the conduct of the investigation;

“(C) a summary of any evidence obtained from the investigation;

“(D) a listing of any violation or apparent violation of any law, rule, or regulation; and

“(E) a description of any corrective action taken or planned as a result of the investigation, such as—

“(i) changes in agency rules, regulations, or practices;

“(ii) the restoration of any aggrieved employee;

“(iii) disciplinary action against any employee; and

“(iv) referral to the Attorney General of any evidence of a criminal violation.

“(5) (A) Any such report shall be submitted to the Congress, to the President, and to the Special Counsel for transmittal to the complainant. Whenever the Special Counsel does not receive the report of the agency head within the time prescribed in paragraph (3) (A) (ii) of this subsection, the Special Counsel may transmit a copy of the information which was transmitted to the agency head to the President and to the Congress together with a statement noting the failure of the head of the agency to file the required report.

“(B) In any case in which evidence of a criminal violation obtained by an agency in an investigation under paragraph (3) of this subsection is referred to the Attorney General—

“(i) the report shall not be transmitted to the complainant; and

“(ii) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

“(6) Upon receipt of any report of the head of any agency required under paragraph (3) (A) (ii) of this subsection, the Special Counsel shall review the report and determine whether—

“(A) the findings of the head of the agency appear reasonable; and

“(B) the agency’s report under paragraph (3) (A) (ii) of this subsection contains the information required under paragraph (4) of this subsection.

“(7) Whenever the Special Counsel transmits any information to the head of the agency under paragraph (2) of this subsection but does not require an investigation under paragraph (3) of this subsection, the head of the agency shall, within a reasonable time after the information was transmitted, inform the Special Counsel, in writing, of what action has been or is to be taken and when such action will be completed. The Special Counsel shall inform the complainant of the report of the agency head.

“(8) Except as specifically authorized under this subsection, the provisions of this subsection shall not be considered to authorize disclosure of any information by any agency or any person which is—

“(A) specifically prohibited from disclosure by any other provision of law; or

“(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

“(9) In any case under subsection (b) (1) (B) of this section involving foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

“(c) (1) (A) If, in connection with any investigation under this section, the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken which requires corrective action, the Special Counsel shall report the determination together with any findings or recommendations to the Board, the agency involved, and to the Office, and may report the determination, findings, and recommendations to the President. The Special Counsel may include in the report recommendations as to what corrective action should be taken.

“(B) If, after a reasonable period, the agency has not taken the corrective action recommended, the Special Counsel may request the Board to consider the matter. The Board may order such corrective action as the Board considers appropriate, after opportunity for comment by the agency concerned and the Office of Personnel Management.

“(2) (A) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that a criminal violation by an employee has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

“(B) In any case in which the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken, the Special Counsel may proceed with any investigation or proceeding instituted under

Information,
transmittal to
congressional
committees.

this section notwithstanding that the alleged violation has been reported to the Attorney General.

“(3) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regulation has occurred which is not referred to in paragraph (1) or (2) of this subsection, the violation shall be reported to the head of the agency involved. The Special Counsel shall require, within 30 days of the receipt of the report by the agency, a certification by the head of the agency which states—

“(A) that the head of the agency has personally reviewed the report; and

“(B) what action has been, or is to be, taken, and when the action will be completed.

Public list.

“(d) The Special Counsel shall maintain and make available to the public a list of noncriminal matters referred to heads of agencies under subsections (b)(3)(A) and (c)(3) of this section, together with—

Reports.

“(1) reports by the heads of agencies under subsection (b)(3)(A) of this section, in the case of matters referred under subsection (b); and

Certifications.

“(2) certifications by heads of agencies under subsection (c)(3), in the case of matters referred under subsection (c).

The Special Counsel shall take steps to ensure that any such public list does not contain any information the disclosure of which is prohibited by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs.

“(e)(1) In addition to the authority otherwise provided in this section, the Special Counsel shall, except as provided in paragraph (2) of this subsection, conduct an investigation of any allegation concerning—

5 USC 7321.

“(A) political activity prohibited under subchapter III of chapter 73 of this title, relating to political activities by Federal employees;

“(B) political activity prohibited under chapter 15 of this title, relating to political activities by certain State and local officers and employees;

5 USC 552.

“(C) arbitrary or capricious withholding of information prohibited under section 552 of this title, except that the Special Counsel shall make no investigation under this subsection of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order;

“(D) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

“(E) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

“(2) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in paragraph (1)(D) or (1)(E) of this subsection if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

“(f) During any investigation initiated under this section, no disciplinary action shall be taken against any employee for any alleged

prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

“(g) (1) Except as provided in paragraph (2) of this subsection, if the Special Counsel determines that disciplinary action should be taken against any employee—

“(A) after any investigation under this section, or

“(B) on the basis of any knowing and willful refusal or failure by an employee to comply with an order of the Merit Systems Protection Board,

the Special Counsel shall prepare a written complaint against the employee containing his determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Merit Systems Protection Board in accordance with section 1207 of this title.

“(2) In the case of an employee in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in paragraph (1) of this subsection, together with any response by the employee, shall be presented to the President for appropriate action in lieu of being presented under section 1207 of this title.

“(h) If the Special Counsel believes there is a pattern of prohibited personnel practices and such practices involve matters which are not otherwise appealable to the Board under section 7701 of this title, the Special Counsel may seek corrective action by filing a written complaint with the Board against the agency or employee involved and the Board shall order such corrective action as the Board determines necessary.

Post, p. 1138.

“(i) The Special Counsel may as a matter of right intervene or otherwise participate in any proceeding before the Merit Systems Protection Board, except that the Special Counsel shall comply with the rules of the Board and the Special Counsel shall not have any right of judicial review in connection with such intervention.

“(j) (1) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

“(2) Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33 of this title).

“(k) The Special Counsel may prescribe regulations relating to the receipt and investigation of matters under the jurisdiction of the Special Counsel. Such regulations shall be published in the Federal Register.

5 USC 3324.
Post, p. 1161.
Regulations.
Publication in
Federal Register.

“(l) The Special Counsel shall not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73 of this title).

5 USC 1501 *et*
seq., 7321.
Report to
Congress.

“(m) The Special Counsel shall submit an annual report to the Congress on the activities of the Special Counsel, including the number, types, and disposition of allegations of prohibited personnel practices filed with it, investigations conducted by it, and actions initiated by it before the Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this section, and the actions taken by the agencies as a result of the reports or recom-

mendations. The report required by this subsection shall include whatever recommendations for legislation or other action by Congress the Special Counsel may deem appropriate.

5 USC 1207. **“§ 1207. Hearings and decisions on complaints filed by the Special Counsel**

“(a) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under section 1206(g) of this title is entitled to—

“(1) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

“(2) be represented by an attorney or other representative;

5 USC 3105.

“(3) a hearing before the Board or an administrative law judge appointed under section 3105 of this title and designated by the Board;

“(4) have a transcript kept of any hearing under paragraph (3) of this subsection; and

“(5) a written decision and reasons therefor at the earliest practicable date, including a copy of any final order imposing disciplinary action.

Final order.

“(b) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1,000.

“(c) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this section may obtain judicial review of the order in the United States court of appeals for the judicial circuit in which the employee resides or is employed at the time of the action.

5 USC 1501 *et seq.*

“(d) In the case of any State or local officer or employee under chapter 15 of this title, the Board shall consider the case in accordance with the provisions of such chapter.

5 USC 1208.

“§ 1208. Stays of certain personnel actions

“(a) (1) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 15 calendar days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

“(2) Any member of the Board requested by the Special Counsel to order a stay under paragraph (1) of this subsection shall order such stay unless the member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

“(3) Unless denied under paragraph (2) of this subsection, any stay under this subsection shall be granted within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

“(b) Any member of the Board may, on the request of the Special Counsel, extend the period of any stay ordered under subsection (a) of this section for a period of not more than 30 calendar days.

“(c) The Board may extend the period of any stay granted under subsection (a) of this section for any period which the Board considers appropriate, but only if the Board concurs in the determination of the Special Counsel under such subsection, after an opportunity is provided for oral or written comment by the Special Counsel and the agency involved.

§ 1209. Information

5 USC 1209.

“(a) Notwithstanding any other provision of law or any rule, regulation or policy directive, any member of the Board, or any employee of the Board designated by the Board, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Board, without review, clearance, or approval by any other administrative authority.

“(b) The Board shall submit an annual report to the President and the Congress on its activities, which shall include a description of significant actions taken by the Board to carry out its functions under this title. The report shall also review the significant actions of the Office of Personnel Management, including an analysis of whether the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.”

Report to President and Congress.
5 USC 1201 note.

(b) Any term of office of any member of the Merit Systems Protection Board serving on the effective date of this Act shall continue in effect until the term would expire under section 1102 of title 5, United States Code, as in effect immediately before the effective date of this Act, and upon expiration of the term, appointments to such office shall be made under sections 1201 and 1202 of title 5, United States Code (as added by this section).

(c) (1) Section 5314(17) of title 5, United States Code, is amended by striking out “Chairman of the United States Civil Service Commission” and inserting in lieu thereof “Chairman of the Merit Systems Protection Board”.

5 USC 5315.

(2) Section 5315(66) of such title is amended by striking out “Members, United States Civil Service Commission” and inserting in lieu thereof “Members, Merit Systems Protection Board”.

(3) Section 5315 of such title is further amended by adding at the end thereof the following new paragraph:

“(123) Special Counsel of the Merit Systems Protection Board.”

5 USC 5316.

(4) Paragraph (99) of section 5316 of such title is hereby repealed.

(d) The table of chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 11 the following new item:

“12. Merit Systems Protection Board and Special Counsel..... 1201”.

PERFORMANCE APPRAISAL

SEC. 203. (a) Chapter 43 of title 5, United States Code, is amended to read as follows:

“CHAPTER 43—PERFORMANCE APPRAISAL

“SUBCHAPTER I—GENERAL PROVISIONS

“Sec.

- “4301. Definitions.
- “4302. Establishment of performance appraisal systems.
- “4303. Actions based on unacceptable performance.
- “4304. Responsibilities of Office of Personnel Management.
- “4305. Regulations.

5 USC 4301.

“§ 4301. Definitions

“For the purpose of this subchapter—

“(1) ‘agency’ means—

“(A) an Executive agency;

“(B) the Administrative Office of the United States Courts;
and

“(C) the Government Printing Office;

but does not include—

“(i) a Government corporation;

“(ii) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

“(iii) the General Accounting Office;

“(2) ‘employee’ means an individual employed in or under an agency, but does not include—

“(A) an employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

“(B) an individual in the Foreign Service of the United States;

“(C) a physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans’ Administration whose pay is fixed under chapter 73 of title 38;

“(D) an administrative law judge appointed under section 3105 of this title;

“(E) an individual in the Senior Executive Service;

“(F) an individual appointed by the President; or

“(G) an individual occupying a position not in the competitive service excluded from coverage of this subchapter by regulations of the Office of Personnel Management; and

“(3) ‘unacceptable performance’ means performance of an employee which fails to meet established performance standards in one or more critical elements of such employee’s position.

38 USC 4101 *et seq.*

5 USC 4302.

“§ 4302. Establishment of performance appraisal systems

“(a) Each agency shall develop one or more performance appraisal systems which—

“(1) provide for periodic appraisals of job performance of employees;

“(2) encourage employee participation in establishing performance standards; and

“(3) use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees;

“(b) Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for—

“(1) establishing performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria (which may include the extent of courtesy demonstrated to the public) related to the job in question for each employee or position under the system;

“(2) as soon as practicable, but not later than October 1, 1981, with respect to initial appraisal periods, and thereafter at the beginning of each following appraisal period, communicating to each employee the performance standards and the critical elements of the employee’s position;

“(3) evaluating each employee during the appraisal period on such standards;

“(4) recognizing and rewarding employees whose performance so warrants;

“(5) assisting employees in improving unacceptable performance; and

“(6) reassigning, reducing in grade, or removing employees who continue to have unacceptable performance but only after an opportunity to demonstrate acceptable performance.

“§ 4303. Actions based on unacceptable performance

5 USC 4303.

“(a) Subject to the provisions of this section, an agency may reduce in grade or remove an employee for unacceptable performance.

Removal or reduction in grade.

“(b) (1) An employee whose reduction in grade or removal is proposed under this section is entitled to—

“(A) 30 days’ advance written notice of the proposed action which identifies—

Notice.

“(i) specific instances of unacceptable performance by the employee on which the proposed action is based; and

“(ii) the critical elements of the employee’s position involved in each instance of unacceptable performance;

“(B) be represented by an attorney or other representative;

Representation.

“(C) a reasonable time to answer orally and in writing; and

“(D) a written decision which—

Written decision.

“(i) in the case of a reduction in grade or removal under this section, specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based, and

“(ii) unless proposed by the head of the agency, has been concurred in by an employee who is in a higher position than the employee who proposed the action.

“(2) An agency may, under regulations prescribed by the head of such agency, extend the notice period under subsection (b) (1) (A) of this section for not more than 30 days. An agency may extend the notice period for more than 30 days only in accordance with regulations issued by the Office of Personnel Management.

Extension of notice.

“(c) The decision to retain, reduce in grade, or remove an employee—

“(1) shall be made within 30 days after the date of expiration of the notice period, and

“(2) in the case of a reduction in grade or removal, may be based only on those instances of unacceptable performance by the employee—

“(A) which occurred during the 1-year period ending on the date of the notice under subsection (b) (1) (A) of this section in connection with the decision; and

“(B) for which the notice and other requirements of this section are complied with.

“(d) If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee’s performance continues to be acceptable for 1 year from the date of the advance written notice provided under subsection (b) (1) (A) of this section, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any agency record relating to the employee.

“(e) Any employee who is a preference eligible or is in the competitive service and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701 of this title.

Post. p. 1138.

- 5 USC 3321. “(f) This section does not apply to—
 “(1) the reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under section 3321 (a) (2) of this title,
 “(2) the reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less, or
 “(3) the reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.
- 5 USC 4304. **“§ 4304. Responsibilities of the Office of Personnel Management**
 Technical assistance.
 Review of performance appraisal system.
 “(a) The Office of Personnel Management shall make technical assistance available to agencies in the development of performance appraisal systems.
 “(b) (1) The Office shall review each performance appraisal system developed by any agency under this section and determine whether the performance appraisal system meets the requirements of this subchapter.
 “(2) The Comptroller General shall from time to time review on a selected basis performance appraisal systems established under this subchapter to determine the extent to which any such system meets the requirements of this subchapter and shall periodically report its findings to the Office and to the Congress.
 “(3) If the Office determines that a system does not meet the requirements of this subchapter (including regulations prescribed under section 4305), the Office shall direct the agency to implement an appropriate system or to correct operations under the system, and any such agency shall take any action so required.
- 5 USC 4305. **“§ 4305. Regulations**
 “The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.”
 (b) The item relating to chapter 43 in the chapter analysis for part III of title 5, United States Code, is amended by striking out “Performance Rating” and inserting in lieu thereof “Performance Appraisal”.

ADVERSE ACTIONS

Sec. 204. (a) Chapter 75 of title 5, United States Code, is amended by striking out subchapters I, II, and III and inserting in lieu thereof the following:

“SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS

5 USC 7501.

“§ 7501. Definitions

“For the purpose of this subchapter—

“(1) ‘employee’ means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

“(2) ‘suspension’ means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

“§ 7502. Actions covered

“This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1206 of this title.

5 USC 7502.

Post, p. 1137.
5 USC 7532.
Ante, p. 1125.

“§ 7503. Cause and procedure

“(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service (including discourteous conduct to the public confirmed by an immediate supervisor’s report of four such instances within any one-year period or any other pattern of discourteous conduct).

“(b) An employee against whom a suspension for 14 days or less is proposed is entitled to—

“(1) an advance written notice stating the specific reasons for the proposed action;

Notice.

“(2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

“(3) be represented by an attorney or other representative; and

Representation.

“(4) a written decision and the specific reasons therefor at the earliest practicable date.

“(c) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee’s request.

Availability of information.

“§ 7504. Regulations

5 USC 7504.

“The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

“SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS**“§ 7511. Definitions; application**

5 USC 7511.

“(a) For the purpose of this subchapter—

“(1) ‘employee’ means—

“(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and

“(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

“(2) ‘suspension’ has the meaning as set forth in section 7501 (2) of this title;

Ante, p. 1134.

“(3) ‘grade’ means a level of classification under a position classification system;

“(4) ‘pay’ means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

“(5) ‘furlough’ means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

“(b) This subchapter does not apply to an employee—

“(1) whose appointment is made by and with the advice and consent of the Senate;

“(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

“(A) the Office of Personnel Management for a position that it has excepted from the competitive service; or

“(B) the President or the head of an agency for a position which is excepted from the competitive service by statute.

“(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office.

5 USC 7512.

“§ 7512. Actions covered

“This subchapter applies to—

“(1) a removal;

“(2) a suspension for more than 14 days;

“(3) a reduction in grade;

“(4) a reduction in pay; and

“(5) a furlough of 30 days or less;

but does not apply to—

5 USC 7532.

“(A) a suspension or removal under section 7532 of this title,

5 USC 3502.

“(B) a reduction-in-force action under section 3502 of this title,

“(C) the reduction in grade of a supervisor or manager who has not completed the probationary period under section 3321 (a) (2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager,

Post, p. 1146.

“(D) a reduction in grade or removal under section 4308 of this title, or

Ante, p. 1133.

“(E) an action initiated under section 1206 or 7521 of this title.

Ante, p. 1125.

Post, p. 1137.

5 USC 7513.

“§ 7513. Cause and procedure

“(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

“(b) An employee against whom an action is proposed is entitled to—

Notice.

“(1) at least 30 days’ advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

“(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

Representation.

“(3) be represented by an attorney or other representative; and

“(4) a written decision and the specific reasons therefor at the earliest practicable date.

Hearing.

“(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b) (2) of this section.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

"(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request.

Post, p. 1138.
Availability of
information.

"§ 7514. Regulations

5 USC 7514.

"The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter, except as it concerns any matter with respect to which the Merit Systems Protection Board may prescribe regulations."

"SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

"§ 7521. Actions against administrative law judges

5 USC 7521.

"(a) An action may be taken against an administrative law judge appointed under section 3105 of this title by the agency in which the administrative law judge is employed only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board.

5 USC 3105.

"(b) The actions covered by this section are—

- "(1) a removal;
- "(2) a suspension;
- "(3) a reduction in grade;
- "(4) a reduction in pay; and
- "(5) a furlough of 30 days or less;

but do not include—

- "(A) a suspension or removal under section 7532 of this title; 5 USC 7532.
- "(B) a reduction-in-force action under section 3502 of this title; 5 USC 3502.

or

"(C) any action initiated under section 1206 of this title."

Ante, p. 1125.

(b) So much of the analysis for chapter 75 of title 5, United States Code, as precedes the items relating to subchapter IV is amended to read as follows:

"CHAPTER 75—ADVERSE ACTIONS

"SUBCHAPTER I—SUSPENSION OF 14 DAYS OR LESS

"Sec.

- "7501. Definitions.
- "7502. Actions covered.
- "7503. Cause and procedure.
- "7504. Regulations.

"SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

- "7511. Definitions; application.
- "7512. Actions covered.
- "7513. Cause and procedure.
- "7514. Regulations.

"SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

"7621. Actions against administrative law judges."

APPEALS

SEC. 205. Chapter 77 of title 5, United States Code, is amended to read as follows:

"CHAPTER 77—APPEALS

"Sec.

"7701. Appellate procedures.

"7702. Actions involving discrimination.

"7703. Judicial review of decisions of the Merit Systems Protection Board.

5 USC 1138.

"§ 7701. Appellate procedures

"(a) An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation. An appellant shall have the right—

Hearing.

"(1) to a hearing for which a transcript will be kept; and

Representation.

"(2) to be represented by an attorney or other representative.

Appeals shall be processed in accordance with regulations prescribed by the Board.

5 USC 3105.

"(b) The Board may hear any case appealed to it or may refer the case to an administrative law judge appointed under section 3105 of this title or other employee of the Board designated by the Board to hear such cases, except that in any case involving a removal from the service, the case shall be heard by the Board, an employee experienced in hearing appeals, or an administrative law judge. The Board, administrative law judge, or other employee (as the case may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under subsection (a) (1) of this section. A copy of the decision shall be furnished to each party to the appeal and to the Office of Personnel Management.

Copies of decisions.

"(c) (1) Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision—

Ante, p. 1133.

"(A) in the case of an action based on unacceptable performance described in section 4303 of this title, is supported by substantial evidence, or

"(B) in any other case, is supported by a preponderance of the evidence.

"(2) Notwithstanding paragraph (1), the agency's decision may not be sustained under subsection (b) of this section if the employee or applicant for employment—

"(A) shows harmful error in the application of the agency's procedures in arriving at such decision;

Ante, p. 1114.

"(B) shows that the decision was based on any prohibited personnel practice described in section 2302(b) of this title; or

"(C) shows that the decision was not in accordance with law.

"(d) (1) In any case in which—

"(A) the interpretation or application of any civil service law, rule, or regulation, under the jurisdiction of the Office of Personnel Management is at issue in any proceeding under this section; and

"(B) the Director of the Office of Personnel Management is of the opinion that an erroneous decision would have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office;

the Director may as a matter of right intervene or otherwise participate in that proceeding before the Board. If the Director exercises his right to participate in a proceeding before the Board, he shall do so as early in the proceeding as practicable. Nothing in this title shall be construed to permit the Office to interfere with the independent decisionmaking of the Merit Systems Protection Board.

“(2) The Board shall promptly notify the Director whenever the interpretation of any civil service law, rule, or regulation under the jurisdiction of the Office is at issue in any proceeding under this section. Notification.

“(e) (1) Except as provided in section 7702 of this title, any decision under subsection (b) of this section shall be final unless— Decisions.

“(A) a party to the appeal or the Director petitions the Board for review within 30 days after the receipt of the decision; or

“(B) the Board reopens and reconsiders a case on its own motion.

The Board, for good cause shown, may extend the 30-day period referred to in subparagraph (A) of this paragraph. One member of the Board may grant a petition or otherwise direct that a decision be reviewed by the full Board. The preceding sentence shall not apply if, by law, a decision of an administration law judge is required to be acted upon by the Board.

“(2) The Director may petition the Board for a review under paragraph (1) of this subsection only if the Director is of the opinion that the decision is erroneous and will have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office. Petition for review.

“(f) The Board, or an administrative law judge or other employee of the Board designated to hear a case, may—

“(1) consolidate appeals filed by two or more appellants, or

“(2) join two or more appeals filed by the same appellant and hear and decide them concurrently,

if the deciding official or officials hearing the cases are of the opinion that the action could result in the appeals' being processed more expeditiously and would not adversely affect any party.

“(g) (1) Except as provided in paragraph (2) of this subsection, the Board, or an administrative law judge or other employee of the Board designated to hear a case, may require payment by the agency involved of reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board, administrative law judge, or other employee, as the case may be, determines that payment by the agency is warranted in the interest of justice, including any case in which a prohibited personnel practice was engaged in by the agency or any case in which the agency's action was clearly without merit.

“(2) If an employee or applicant for employment is the prevailing party and the decision is based on a finding of discrimination prohibited under section 2302(b) (1) of this title, the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

Ante, p. 1114.

“(h) The Board may, by regulation, provide for one or more alternative methods for settling matters subject to the appellate jurisdiction of the Board which shall be applicable at the election of an applicant for employment or of an employee who is not in a unit for which a labor organization is accorded exclusive recognition, and shall be in lieu of other procedures provided for under this section. A decision under such a method shall be final, unless the Board reopens

and reconsiders a case at the request of the Office of Personnel Management under subsection (d) of this section.

“(i) (1) Upon the submission of any appeal to the Board under this section, the Board, through reference to such categories of cases, or other means, as it determines appropriate, shall establish and announce publicly the date by which it intends to complete action on the matter. Such date shall assure expeditious consideration of the appeal, consistent with the interests of fairness and other priorities of the Board. If the Board fails to complete action on the appeal by the announced date, and the expected delay will exceed 30 days, the Board shall publicly announce the new date by which it intends to complete action on the appeal.

Report to
Congress.

“(2) Not later than March 1 of each year, the Board shall submit to the Congress a report describing the number of appeals submitted to it during the preceding calendar year, the number of appeals on which it completed action during that year, and the number of instances during that year in which it failed to conclude a proceeding by the date originally announced, together with an explanation of the reasons therefor.

“(3) The Board shall by rule indicate any other category of significant Board action which the Board determines should be subject to the provisions of this subsection.

“(4) It shall be the duty of the Board, an administrative law judge, or employee designated by the Board to hear any proceeding under this section to expedite to the extent practicable that proceeding.

Regulations.

“(j) The Board may prescribe regulations to carry out the purpose of this section.

5 USC 7702.

“§ 7702. Actions involving discrimination

“(a) (1) Notwithstanding any other provision of law, and except as provided in paragraph (2) of this subsection, in the case of any employee or applicant for employment who—

“(A) has been effected by an action which the employee or applicant may appeal to the Merit Systems Protection Board, and

“(B) alleges that a basis for the action was discrimination prohibited by—

“(i) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16c),

“(ii) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)),

“(iii) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791),

“(iv) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), or

“(v) any rule, regulation, or policy directive prescribed under any provision of law described in clauses (i) through (iv) of this subparagraph,

the Board shall, within 120 days of the filing of the appeal, decide both the issue of discrimination and the appealable action in accordance with the Board's appellate procedures under section 7701 of this title and this section.

“(2) In any matter before an agency which involves—

“(A) any action described in paragraph (1) (A) of this subsection; and

“(B) any issue of discrimination prohibited under any provision of law described in paragraph (1) (B) of this subsection;

the agency shall resolve such matter within 120 days. The decision of the agency in any such matter shall be a judicially reviewable action unless the employee appeals the matter to the Board under paragraph (1) of this subsection.

“(3) Any decision of the Board under paragraph (1) of this subsection shall be a judicially reviewable action as of—

“(A) the date of issuance of the decision if the employee or applicant does not file a petition with the Equal Employment Opportunity Commission under subsection (b)(1) of this section, or

“(B) the date the Commission determines not to consider the decision under subsection (b)(2) of this section.

“(b)(1) An employee or applicant may, within 30 days after notice of the decision of the Board under subsection (a)(1) of this section, petition the Commission to consider the decision.

“(2) The Commission shall, within 30 days after the date of the petition, determine whether to consider the decision. A determination of the Commission not to consider the decision may not be used as evidence with respect to any issue of discrimination in any judicial proceeding concerning that issue.

“(3) If the Commission makes a determination to consider the decision, the Commission shall, within 60 days after the date of the determination, consider the entire record of the proceedings of the Board and, on the basis of the evidentiary record before the Board, as supplemented under paragraph (4) of this subsection, either—

“(A) concur in the decision of the Board; or

“(B) issue in writing another decision which differs from the decision of the Board to the extent that the Commission finds that, as a matter of law—

“(i) the decision of the Board constitutes an incorrect interpretation of any provision of any law, rule, regulation, or policy directive referred to in subsection (a)(1)(B) of this section, or

“(ii) the decision involving such provision is not supported by the evidence in the record as a whole.

“(4) In considering any decision of the Board under this subsection, the Commission may refer the case to the Board, or provide on its own, for the taking (within such period as permits the Commission to make a decision within the 60-day period prescribed under this subsection) of additional evidence to the extent it considers necessary to supplement the record.

“(5) (A) If the Commission concurs pursuant to paragraph (3) (A) of this subsection in the decision of the Board, the decision of the Board shall be a judicially reviewable action.

“(B) If the Commission issues any decision under paragraph (3) (B) of this subsection, the Commission shall immediately refer the matter to the Board.

“(c) Within 30 days after receipt by the Board of the decision of the Commission under subsection (b)(5)(B) of this section, the Board shall consider the decision and—

“(1) concur and adopt in whole the decision of the Commission; or

“(2) to the extent that the Board finds that, as a matter of law, (A) the Commission decision constitutes an incorrect interpretation of any provision of any civil service law, rule, regulation or policy directive, or (B) the Commission decision involving

such provision is not supported by the evidence in the record as a whole—

“(i) reaffirm the initial decision of the Board; or

“(ii) reaffirm the initial decision of the Board with such revisions as it determines appropriate.

If the Board takes the action provided under paragraph (1), the decision of the Board shall be a judicially reviewable action.

“(d) (1) If the Board takes any action under subsection (c) (2) of this section, the matter shall be immediately certified to a special panel described in paragraph (6) of this subsection. Upon certification, the Board shall, within 5 days (excluding Saturdays, Sundays, and holidays), transmit to the special panel the administrative record in the proceeding, including—

“(A) the factual record compiled under this section,

“(B) the decisions issued by the Board and the Commission under this section, and

“(C) any transcript of oral arguments made, or legal briefs filed, before the Board or the Commission.

“(2) (A) The special panel shall, within 45 days after a matter has been certified to it, review the administrative record transmitted to it and, on the basis of the record, decide the issues in dispute and issue a final decision which shall be a judicially reviewable action.

“(B) The special panel shall give due deference to the respective expertise of the Board and Commission in making its decision.

“(3) The special panel shall refer its decision under paragraph (2) of this subsection to the Board and the Board shall order any agency to take any action appropriate to carry out the decision.

“(4) The special panel shall permit the employee or applicant who brought the complaint and the employing agency to appear before the panel to present oral arguments and to present written arguments with respect to the matter.

“(5) Upon application by the employee or applicant, the Commission may issue such interim relief as it determines appropriate to mitigate any exceptional hardship the employee or applicant might otherwise incur as a result of the certification of any matter under this subsection, except that the Commission may not stay, or order any agency to review on an interim basis, the action referred to in subsection (a) (1) of this section.

Special panel.

“(6) (A) Each time the Board takes any action under subsection (c) (2) of this section, a special panel shall be convened which shall consist of—

“(i) an individual appointed by the President, by and with the advice and consent of the Senate, to serve for a term of 6 years as chairman of the special panel each time it is convened;

“(ii) one member of the Board designated by the Chairman of the Board each time a panel is convened; and

“(iii) one member of the Commission designated by the Chairman of the Commission each time a panel is convened.

The chairman of the special panel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

5 USC 5332 note.

“(B) The chairman is entitled to pay at a rate equal to the maximum annual rate of basic pay payable under the General Schedule for each day he is engaged in the performance of official business on the work of the special panel.

Administrative assistance.

“(C) The Board and the Commission shall provide such administrative assistance to the special panel as may be necessary and, to the extent practicable, shall equally divide the costs of providing the administrative assistance.

“(e) (1) Notwithstanding any other provision of law, if at any time after—

“(A) the 120th day following the filing of any matter described in subsection (a) (2) of this section with an agency, there is no judicially reviewable action under this section or an appeal under paragraph (2) of this subsection;

“(B) the 120th day following the filing of an appeal with the Board under subsection (a) (1) of this section, there is no judicially reviewable action (unless such action is not as the result of the filing of a petition by the employee under subsection (b) (1) of this section); or

“(C) the 180th day following the filing of a petition with the Equal Employment Opportunity Commission under subsection (b) (1) of this title, there is no final agency action under subsection (b), (c), or (d) of this section:

an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), or section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(d)).

“(2) If, at any time after the 120th day following the filing of any matter described in subsection (a) (2) of this section with an agency, there is no judicially reviewable action, the employee may appeal the matter to the Board under subsection (a) (1) of this section.

“(3) Nothing in this section shall be construed to affect the right to trial de novo under any provision of law described in subsection (a) (1) of this section after a judicially reviewable action, including the decision of an agency under subsection (a) (2) of this section.

“(f) In any case in which an employee is required to file any action, appeal, or petition under this section and the employee timely files the action, appeal, or petition with an agency other than the agency with which the action, appeal, or petition is to be filed, the employee shall be treated as having timely filed the action, appeal, or petition as of the date it is filed with the proper agency.

“§ 7703. Judicial review of decisions of the Merit Systems Protection Board 5 USC 7703.

“(a) (1) Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may obtain judicial review of the order or decision.

“(2) The Board shall be the named respondent in any proceeding brought pursuant to this subsection, unless the employee or applicant for employment seeks review of a final order or decision issued by the Board under section 7701. In review of a final order or decision issued under section 7701, the agency responsible for taking the action appealed to the Board shall be the named respondent.

“(h) (1) Except as provided in paragraph (2) of this subsection, a petition to review a final order or final decision of the Board shall be filed in the Court of Claims or a United States court of appeals as provided in chapters 91 and 158, respectively, of title 28. Notwithstanding any other provision of law, any petition for review must be filed within 30 days after the date the petitioner received notice of the final order or decision of the Board.

“(2) Cases of discrimination subject to the provisions of section 7702 of this title shall be filed under section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), and

28 USC 1491 *et seq.*, 2341 *et seq.*

section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(b)), as applicable. Notwithstanding any other provision of law, any such case filed under any such section must be filed within 30 days after the date the individual filing the case received notice of the judicially reviewable action under such section 7702.

“(c) In any case filed in the United States Court of Claims or a United States court of appeals, the court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be—

“(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

“(2) obtained without procedures required by law, rule, or regulation having been followed; or

“(3) unsupported by substantial evidence;

except that in the case of discrimination brought under any section referred to in subsection (b) (2) of this section, the employee or applicant shall have the right to have the facts subject to trial de novo by the reviewing court.

Petition.

“(d) The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the District of Columbia if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.”

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 206. Section 2342 of title 28, United States Code, is amended—

(1) by striking out “and” at the end of paragraph (4),

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof “; and”, and

(3) by adding at the end thereof the following new paragraph:

“(6) all final orders of the Merit Systems Protection Board except as provided for in section 7703 (b) of title 5.”

Ante, p. 1143.

TITLE III--STAFFING

VOLUNTEER SERVICE

SEC. 301. (a) Chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new section:

5 USC 3111.

“§ 3111. Acceptance of volunteer service

“Student.”

“(a) For the purpose of this section, ‘student’ means an individual who is enrolled, not less than half-time, in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim

between school years if the interim is not more than 5 months and if such individual shows to the satisfaction of the Office of Personnel Management that the individual has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

“(b) Notwithstanding section 3679 (b) of the Revised Statutes (31 U.S.C. 665 (b)), the head of an agency may accept, subject to regulations issued by the Office, voluntary service for the United States if the service—

“(1) is performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experiences for the student;

“(2) is to be uncompensated; and

“(3) will not be used to displace any employee.

“(c) Any student who provides voluntary service under subsection (b) of this section shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).”

5 USC 810 *et seq.*

(b) The analysis of chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new item:

“3111. Acceptance of volunteer service.”

INTERPRETING ASSISTANTS FOR DEAF EMPLOYEES

SEC. 302. (a) Section 3102 of title 5, United States Code, is amended—

(1) by redesignating paragraph (4) of subsection (a) as paragraph (5), by striking out “and” at the end of paragraph (3), and inserting after paragraph (3) the following new paragraph (4):

“(4) ‘deaf employee’ means an individual employed by an agency who, in accordance with regulations prescribed by the head of the agency, establishes to the satisfaction of the appropriate authority of the agency concerned that the employee has a hearing impairment, either permanent or temporary, so severe or disabling that the employment of an interpreting assistant or assistants for the employee is necessary or desirable to enable such employee to perform the work of the employee; and”;

“Deaf employee.”

(2) in subsection (b), by inserting “and interpreting assistant or assistants for a deaf employee” after “or assistants for a blind employee”, and amending the last sentence to read as follows: “A reading assistant or an interpreting assistant, other than the one employed or assigned under subsection (d) of this section, may receive pay for services performed by the assistant by and from the blind or deaf employee or a nonprofit organization, without regard to section 209 of title 18.”;

(3) in subsection (c), by inserting “or deaf” after “blind”; and

(4) by inserting at the end thereof the following new subsection:

“(d) The head of each agency may also employ or assign, subject to section 209 of title 18 and to the provisions of this title governing appointment and chapter 51 and subchapter III of chapter 53 of this title governing classification and pay, such reading assistants for blind employees and such interpreting assistants for deaf employees as may be necessary to enable such employees to perform their work.”

5 USC 5101 *et seq.*, 5331.

(b) (1) The analysis of chapter 31 of title 5, United States Code, is amended by striking out the item relating to section 3102 and inserting in lieu thereof the following:

"3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees."

(2) The heading for section 3102 of title 5, United States Code, is amended to read as follows:

"§ 3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees".

(c) Section 410(b) (1) of title 39, United States Code, is amended by inserting after "open meetings)" a comma and "3102 (employment of reading assistants for blind employees and interpreting assistants for deaf employees),".

PROBATIONARY PERIOD

SEC. 303. (a) Section 3321 of title 5, United States Code, is amended to read as follows:

"§ 3321. Competitive service; probationary period

"(a) The President may take such action, including the issuance of rules, regulations, and directives, as shall provide as nearly as conditions of good administration warrant for a period of probation—

"(1) before an appointment in the competitive service becomes final; and

"(2) before initial appointment as a supervisor or manager becomes final.

"(b) An individual—

"(1) who has been transferred, assigned, or promoted from a position to a supervisory or managerial position, and

"(2) who does not satisfactorily complete the probationary period under subsection (a) (2) of this section,

shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned, or promoted. Nothing in this section prohibits an agency from taking an action against an individual serving a probationary period under subsection (a) (2) of this section for cause unrelated to supervisory or managerial performance.

"(c) Subsections (a) and (b) of this section shall not apply with respect to appointments in the Senior Executive Service."

(b) The item in the analysis for chapter 33 of title 5, United States Code, is amended to read as follows:

"3321. Competitive service; probationary period."

TRAINING

SEC. 304. Section 4103 of title 5, United States Code, is amended by inserting "(a)" before "In order to increase" and by adding at the end thereof the following new subsection:

"(b) (1) Notwithstanding any other provision of this chapter, an agency may train any employee of the agency to prepare the employee for placement in another agency if the head of the agency determines that the employee will otherwise be separated under conditions which would entitle the employee to severance pay under section 5595 of this title.

"(2) Before undertaking any training under this subsection, the head of the agency shall obtain verification from the Office of Person-

nel Management that there exists a reasonable expectation of placement in another agency.

"(3) In selecting an employee for training under this subsection, the head of the agency shall consider—

"(A) the extent to which the current skills, knowledge, and abilities of the employee may be utilized in the new position;

"(B) the employee's capability to learn skills and acquire knowledge and abilities needed in the new position; and

"(C) the benefits to the Government which would result from retaining the employee in the Federal service."

TRAVEL, TRANSPORTATION, AND SUBSISTENCE

SEC. 305. Section 5723(d) of title 5, United States Code, is amended by striking out "not".

RETIREMENT

SEC. 306. Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

"(2) voluntarily, during a period when the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function, as determined by the Office of Personnel Management, and the employee is serving in a geographic area designated by the Office;"

VETERANS AND PREFERENCE ELIGIBLES

SEC. 307. (a) Effective beginning October 1, 1980, section 2108 of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by inserting in paragraph (3) after "means" the following: "except as provided in paragraph (4) of this section";

(3) by striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon; and

(4) by adding at the end thereof the following new paragraphs:

"(4) except for the purposes of chapters 43 and 75 of this title, 'preference eligible' does not include a retired member of the armed forces unless—

"(A) the individual is a disabled veteran; or

"(B) the individual retired below the rank of major or its equivalent; and

"(5) 'retired member of the armed forces' means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member."

5 USC 4301 *et seq.*, 7501 *et seq.*

"Retired member of the Armed Forces."

(b) (1) Chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new section:

§ 3112. Disabled veterans; noncompetitive appointment

5 USC 3112.

"Under such regulations as the Office of Personnel Management shall prescribe, an agency may make a noncompetitive appointment leading to conversion to career or career-conditional employment of a disabled veteran who has a compensable service-connected disability of 30 percent or more."

(2) The Director of the Office of Personnel Management shall include in the reports required by section 2014(d) of title 38, United States Code, the same type of information regarding the use of the

38 USC 2014 note.

authority provided in section 3112 of title 5, United States Code (as added by paragraph (1) of this subsection), as is required by such section 2014 with respect to the use of the authority to make veterans readjustment appointments.

(3) The analysis of chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new item:

“3112. Disabled veterans; noncompetitive appointment.”.

(c) Section 3312 of title 5, United States Code, is amended—

(1) by inserting “(a)” before “In”; and

(2) by adding at the end thereof the following new subsection:

“(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible under section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible’s last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in any such response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.”.

5 USC 2108.

(d) Section 3318(b) of title 5, United States Code, is amended to read as follows:

“(b)(1) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall file written reasons with the Office for passing over the preference eligible. The Office shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Office shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2) of this subsection. When the Office has completed its review of the proposed passover, it shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings of the Office.

“(2) In the case of a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more, the appointing authority shall at the same time it notifies the Office under paragraph (1) of this subsection, notify the preference eligible of the proposed passover, of the reasons therefor, and of his right to respond to such reasons to the Office within 15 days of the date of such notification. The Office shall, before completing its review under paragraph (1) of this subsection, require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible’s last known address.

“(3) A preference eligible not described in paragraph (2) of this subsection, or his representative, shall be entitled, on request, to a copy of—

“(A) the reasons submitted by the appointing authority in support of the proposed passover, and

“(B) the findings of the Office.

“(4) In the case of a preference eligible described in paragraph (2) of this subsection, the functions of the Office under this subsection may not be delegated.”

(e) Section 3502 of title 5, United States Code, is amended by striking out subsection (b) and inserting in lieu thereof the following new subsections:

“(b) A preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.”

5 USC 2108.

“(c) An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees.”

5 USC 4301 *et seq.*

(f) Section 3503 of title 5, United States Code, is amended by striking out in subsection (a) and (b) “each preference eligible employee” and inserting in lieu thereof “each competing employee” both places it appears.

(g) Section 3504 of title 5, United States Code, is amended—

(1) by inserting “(a)” before “In”; and

(2) by adding at the end thereof the following new subsection:

“(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible’s last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in the response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.”

(h) (1) Section 3319 of chapter 33 of title 5, United States Code, is repealed.

Repeal.

(2) The analysis for chapter 33 of title 5, United States Code, is amended by striking out the item relating to section 3319.

DUAL PAY FOR RETIRED MEMBERS OF THE UNIFORMED SERVICES

SEC. 308. (a) Section 5532 of title 5, United States Code, relating to retired officers of the uniformed services, is amended by redesignating subsections (c) and (d) as subsections (d) and (e) and by inserting after subsection (b) the following:

“(c)(1) If any member or former member of a uniformed service is receiving retired or retainer pay and is employed in a position the annual rate of basic pay for which, when combined with the member’s annual rate of retired or retainer pay (reduced as provided under subsection (b) of this section), exceeds the rate of basic pay then currently paid for level V of the Executive Schedule, such member’s retired or retainer pay shall be reduced by an amount computed under paragraph (2) of this subsection. The amounts of the reductions shall be deposited to the general fund of the Treasury of the United States.

5 USC 5316 note.

“(2) The amount of each reduction under paragraph (1) of this subsection allocable for any pay period in connection with employment in a position shall be equal to the retired or retainer pay allocable to the pay period (reduced as provided under subsection (b) of this section), except that the amount of the reduction may not result in—

“(A) the amount of retired or retainer pay allocable to the pay period after being reduced, when combined with the basic pay for the employment during the pay period, being at a rate less than the rate of basic pay then currently paid for level V of the Executive Schedule; or

“(B) the amount of retired pay or retainer pay being reduced to an amount less than the amount deducted from the retired or retainer pay as a result of participation in any survivor’s benefits in connection with the retired or retainer pay or veterans insurance programs.”

(b) Section 5531 of title 5, United States Code is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following:

“(1) ‘member’ has the meaning given such term by section 101 (23) of title 37;”;

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof “; and”; and

(3) by adding at the end thereof the following new paragraph:

“(3) ‘retired or retainer pay’ means retired pay, as defined in section 8311(3) of this title, determined without regard to subparagraphs (B) through (D) of such section 8311(3); except that such term does not include an annuity payable to an eligible beneficiary of a member or former member of a uniformed service under chapter 73 of title 10.”

“Retired or
retainer pay.”
5 USC 8311.

10 USC 1431 *et*
seq.

(c) Section 5532(d) of title 5, United States Code, as amended by subsection (a), is amended—

(1) by striking out “subsection (b) of”;

(2) by striking out “or retirement” each place it appears and inserting in lieu thereof “or retainer”;

(3) by striking out “a retired officer of a regular component of a uniformed service” and inserting in lieu thereof “a member or former member of a uniformed service who is receiving retired or retainer pay”; and

(4) in paragraph (1), by striking out “whose retirement was” and inserting in lieu thereof “whose retired or retainer pay is computed, in whole or in part.”

(d) Section 5532(e) of title 5, United States Code, as amended by subsection (a), is amended to read as follows:

“(e) The Office of Personnel Management may, during the 5-year period after the effective date of the Civil Service Reform Act of 1978 authorize exceptions to the restrictions in subsections (a), (b), and (c) of this section only when necessary to meet special or emergency employment needs which result from a severe shortage of well quali-

Ante, p. 1111.

fied candidates in positions of medical officers which otherwise cannot be readily met. An exception granted by the office with respect to any individual shall terminate upon a break in service of 3 days or more."

(e) Section 5532(b) of title 5, United States Code, is amended by striking out "or retirement" each place it appears and inserting in lieu thereof "or retainer".

(f) (1) The heading for section 5532 of title 5, United States Code, is amended to read as follows:

"§ 5532. Employment of retired members of the uniformed services; reduction in retired or retainer pay".

(2) The item relating to section 5532 in the table of sections for chapter 55 of title 5, United States Code, is amended to read as follows:

"5532. Employment of retired members of the uniformed services; reduction in retired or retainer pay."

(g) (1) Except as provided in paragraph (2) of this subsection, the amendments made by this section shall apply only with respect to pay periods beginning after the effective date of this Act and only with respect to members of the uniformed services who first receive retired or retainer pay (as defined in section 5531(3) of title 5, United States Code (as amended by this section)), after the effective date of this Act.

5 USC 5532 note.

(2) Such amendments shall not apply to any individual employed in a position on the date of the enactment of this Act so long as the individual continues to hold any such position (disregarding any break in service of 3 days or less) if the individual, on that date, would have been entitled to retired or retainer pay but for the fact the individual does not satisfy any applicable age requirement.

(3) The provisions of section 5532 of title 5, United States Code, as in effect immediately before the effective date of this Act, shall apply with respect to any retired officer of a regular component of the uniformed services who is receiving retired pay on or before such date, or any individual to whom paragraph (2) applies, in the same manner and to the same extent as if the preceding subsections of this section had not been enacted.

CIVIL SERVICE EMPLOYMENT INFORMATION

SEC. 309. (a) Chapter 33 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 3327. Civil service employment information

5 USC 3327.

"(a) The Office of Personnel Management shall provide that information concerning opportunities to participate in competitive examinations conducted by, or under authority delegated by, the Office of Personnel Management shall be made available to the employment offices of the United States Employment Service.

"(b) Subject to such regulations as the Office may issue, each agency shall promptly notify the Office and the employment offices of the United States Employment Service of—

"(1) each vacant position in the agency which is in the competitive service or the Senior Executive Service and for which the agency seeks applications from persons outside the Federal service, and

"(2) the period during which applications will be accepted.

As used in this subsection, 'agency' means an agency as defined in section 5102(a)(1) of this title other than an agency all the positions in which are excepted by statute from the competitive service."

"Agency."
5 USC 5102.

(b) The table of sections for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3326 the following new item:

"3327. Civil service employment information."

MINORITY RECRUITMENT PROGRAM

SEC. 310. Section 7151 of title 5, United States Code, is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

"§ 7151. Antidiscrimination policy; minority recruitment program";

(2) by inserting after such section heading the following new subsection:

"(a) For the purpose of this section—

"Underrepresentation."

"(1) 'underrepresentation' means a situation in which the number of members of a minority group designation (determined by the Equal Employment Opportunity Commission in consultation with the Office of Personnel Management, on the basis of the policy set forth in subsection (b) of this section) within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage that the minority constituted within the labor force of the United States, as determined under the most recent decennial or mid-decade census, or current population survey, under title 13, and

"Category of civil service employment."

"(2) 'category of civil service employment' means—

"(A) each grade of the General Schedule described in section 5104 of this title;

"(B) each position subject to subchapter IV of chapter 53 of this title;

"(C) such occupational, professional, or other groupings (including occupational series) within the categories established under subparagraphs (A) and (B) of this paragraph as the Office determines appropriate.";

(3) by inserting "(b)" before "It is the policy"; and

(4) by adding at the end thereof the following new subsection:

Ante, p. 1111.

"(c) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Office of Personnel Management shall, by regulation, implement a minority recruitment program which shall provide, to the maximum extent practicable—

"(1) that each Executive agency conduct a continuing program for the recruitment of members of minorities for positions in the agency to carry out the policy set forth in subsection (b) in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited; and

"(2) that the Office conduct a continuing program of—

"(A) assistance to agencies in carrying out programs under paragraph (1) of this subsection, and

"(B) evaluation and oversight and such recruitment programs to determine their effectiveness in eliminating such minority underrepresentation.

“(d) Not later than 60 days after the date of the enactment of the Civil Service Reform Act of 1978, the Equal Employment Opportunity Commission shall—

Ante, p. 1111.

“(1) establish the guidelines proposed to be used in carrying out the program required under subsection (c) of this section; and

Proposed guidelines.

“(2) make determinations of underrepresentation which are proposed to be used initially under such program; and

Determinations.

“(3) transmit to the Executive agencies involved, to the Office of Personnel Management, and to the Congress the determinations made under paragraph (2) of this subsection.

Transmittal to Executive agencies.

“(e) Not later than January 31 of each year, the Office shall prepare and transmit to each House of the Congress a report on the activities of the Office and of Executive agencies under subsection (c) of this section, including the affirmative action plans submitted under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), the personnel data file maintained by the Office of Personnel Management, and any other data necessary to evaluate the effectiveness of the program for each category of civil service employment and for each minority group designation, for the preceding fiscal year, together with recommendations for administrative or legislative action the Office considers appropriate.”

Report to Congress.

TEMPORARY EMPLOYMENT LIMITATION

SEC. 311. (a) The total number of civilian employees in the executive branch, on September 30, 1979, on September 30, 1980, and on September 30, 1981, shall not exceed the number of such employees on September 30, 1977.

5 USC 3101 note.

(b) (1) For the purpose of this section, “civilian employees in the executive branch” means all civilian employees within the executive branch of the Government (other than in the United States Postal Service or the Postal Rate Commission), whether employed on a full-time, part-time, or intermittent basis and whether employed on a direct hire or indirect hire basis.

“Civilian employees in the executive branch.”

(2) (A) Such term does not include individuals participating in special employment programs established for students and disadvantaged youth.

(B) The total number of individuals participating in such programs shall not at any time exceed 60,000.

(c) In applying the limitation of subsection (a)—

(1) part-time civilian employees in excess of the number of part-time civilian employees in the executive branch employed on September 30, 1977, may be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employees' regularly scheduled workweek; and

(2) the number of civilian employees in the executive branch on September 30, 1977, shall be determined on the basis of the number of such employees as set forth in the Monthly Report of Civilian Employment published by the Civil Service Commission.

(d) (1) The provisions of this section shall not apply during a time of war or during a period of national emergency declared by the Congress or the President.

(2) (A) Subject to the limitation of subparagraph (B) of this paragraph, the President may authorize employment of civilian employees in excess of the limitation of subsection (a) if he deems that such action is necessary in the public interest.

(B) The President may not, under this paragraph, increase the maximum number of civilian employees in the executive branch by more than the percentage increase of the population of the United States since September 30, 1978, as estimated by the Bureau of the Census.

(e) The President shall provide that no increase occurs in the procurement of personal services by contract by reason of the enactment of this section except in cases in which it is to the financial advantage of the Government to do so.

Regulations.

(f) The President shall prescribe regulations to carry out the purposes of this section.

Termination.

(g) The provisions of this section shall terminate on January 31, 1981.

TITLE IV—SENIOR EXECUTIVE SERVICE

GENERAL PROVISIONS

SEC. 401. (a) Chapter 21 of title 5, United States Code, is amended by inserting after section 2101 the following new section:

5 USC 2101a.

“§ 2101a. The Senior Executive Service

Post, p. 1156.

“The ‘Senior Executive Service’ consists of Senior Executive Service positions (as defined in section 3132(a)(2) of this title).”

(b) Section 2102(a)(1) of title 5, United States Code, is amended—

(1) by striking out “and” at the end of subparagraph (A);

(2) by adding “and” at the end of subparagraph (B); and

(3) by adding at the end thereof the following new subparagraph:

“(C) positions in the Senior Executive Service;”

(c) Section 2103(a) of title 5, United States Code, is amended by inserting before the period at the end thereof the following: “or the Senior Executive Service”.

Ante, p. 1147.

(d) Section 2108(5) of title 5, United States Code (as amended in section 307 of this Act), is further amended—

(1) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following:

“but does not include applicants for, or members of, the Senior Executive Service.”

(e) The analysis for chapter 21 of title 5, United States Code, is amended by inserting after the item relating to section 2101 the following new item:

“2101a. The Senior Executive Service.”

AUTHORITY FOR EMPLOYMENT

SEC. 402. (a) Chapter 31 of title 5, United States Code, is amended by inserting after section 3112 (as added by section 307(b) of this Act), the following new subchapter:

Ante, p. 1147.

“SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

5 USC 3131.

“§ 3131. The Senior Executive Service

“It is the purpose of this subchapter to establish a Senior Executive Service to ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals

of the Nation and otherwise is of the highest quality. The Senior Executive Service shall be administered so as to—

“(1) provide for a compensation system, including salaries, benefits, and incentives, and for other conditions of employment, designed to attract and retain highly competent senior executives;

“(2) ensure that compensation, retention, and tenure are contingent on executive success which is measured on the basis of individual and organizational performance (including such factors as improvements in efficiency, productivity, quality of work or service, cost efficiency, and timeliness of performance and success in meeting equal employment opportunity goals);

“(3) assure that senior executives are accountable and responsible for the effectiveness and productivity of employees under them;

“(4) recognize exceptional accomplishment;

“(5) enable the head of an agency to reassign senior executives to best accomplish the agency's mission;

“(6) provide for severance pay, early retirement, and placement assistance for senior executives who are removed from the Senior Executive Service for nondisciplinary reasons;

“(7) protect senior executives from arbitrary or capricious actions;

“(8) provide for program continuity and policy advocacy in the management of public programs;

“(9) maintain a merit personnel system free of prohibited personnel practices;

“(10) ensure accountability for honest, economical, and efficient Government;

“(11) ensure compliance with all applicable civil service laws, rules, and regulations, including those related to equal employment opportunity, political activity, and conflicts of interest;

“(12) provide for the initial and continuing systematic development of highly competent senior executives;

“(13) provide for an executive system which is guided by the public interest and free from improper political interference; and

“(14) appoint career executives to fill Senior Executive Service positions to the extent practicable, consistent with the effective and efficient implementation of agency policies and responsibilities.

“§ 3132. Definitions and exclusions

5 USC 3132.

“(a) For the purpose of this subchapter—

“(1) ‘agency’ means an Executive agency, except a Government corporation and the General Accounting Office, but does not include—

“(A) any agency or unit thereof excluded from coverage by the President under subsection (c) of this section; or

“(B) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, as determined by the President, an Executive agency, or unit thereof, whose principal function is the conduct of foreign intelligence or counterintelligence activities;

5 USC 5332 note.

5 USC 5315,
5316.

28 USC 509 note.

Criteria and
regulations.

“(2) ‘Senior Executive Service position’ means any position in an agency which is in GS-16, 17, or 18 of the General Schedule or in level IV or V of the Executive Schedule, or an equivalent position, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate, and in which an employee—

“(A) directs the work of an organizational unit;

“(B) is held accountable for the success of one or more specific programs or projects;

“(C) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals;

“(D) supervises the work of employees other than personal assistants; or

“(E) otherwise exercises important policy-making, policy-determining, or other executive functions;

but does not include—

“(i) any position in the Foreign Service of the United States;

“(ii) an administrative law judge position under section 3105 of this title; or

“(iii) any position in the Drug Enforcement Administration which is excluded from the competitive service under section 201 of the Crime Control Act of 1976 (5 U.S.C. 5108 note; 90 Stat. 2425);

“(3) ‘senior executive’ means a member of the Senior Executive Service;

“(4) ‘career appointee’ means an individual in a Senior Executive Service position whose appointment to the position or previous appointment to another Senior Executive Service position was based on approval by the Office of Personnel Management of the executive qualifications of such individual;

“(5) ‘limited term appointee’ means an individual appointed under a nonrenewable appointment for a term of 3 years or less to a Senior Executive Service position the duties of which will expire at the end of such term;

“(6) ‘limited emergency appointee’ means an individual appointed under a nonrenewable appointment, not to exceed 18 months, to a Senior Executive Service position established to meet a bona fide, unanticipated, urgent need;

“(7) ‘noncareer appointee’ means an individual in a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee;

“(8) ‘career reserved position’ means a position which is required to be filled by a career appointee and which is designated under subsection (b) of this section; and

“(9) ‘general position’ means any position, other than a career reserved position, which may be filled by either a career appointee, noncareer appointee, limited emergency appointee, or limited term appointee.

“(b) (1) For the purpose of paragraph (8) of subsection (a) of this section, the Office shall prescribe the criteria and regulations governing the designation of career reserved positions. The criteria and regulations shall provide that a position shall be designated as a career

reserved position only if the filling of the position by a career appointee is necessary to ensure impartiality, or the public's confidence in the impartiality, of the Government. The head of each agency shall be responsible for designating career reserved positions in such agency in accordance with such criteria and regulations.

"(2) The Office shall periodically review general positions to determine whether the positions should be designated as career reserved. If the Office determines that any such position should be so designated, it shall order the agency to make the designation.

Review.

"(3) Notwithstanding the provisions of any other law, any position to be designated as a Senior Executive Service position (except a position in the Executive Office of the President) which—

"(A) is under the Executive Schedule, or for which the rate of basic pay is determined by reference to the Executive Schedule, and

5 USC 5312.

"(B) on the day before the date of the enactment of the Civil Service Reform Act of 1978 was specifically required under section 2102 of this title or otherwise required by law to be in the competitive service,

Ante, p. 1111.

shall be designated as a career reserved position if the position entails direct responsibility to the public for the management or operation of particular government programs or functions.

"(4) Not later than March 1 of each year, the head of each agency shall publish in the Federal Register a list of positions in the agency which were career reserved positions during the preceding calendar year.

Publication in Federal Register.

"(c) An agency may file an application with the Office setting forth reasons why it, or a unit thereof, should be excluded from the coverage of this subchapter. The Office shall—

Application for exclusion coverage.

"(1) review the application and stated reasons,

"(2) undertake a review to determine whether the agency or unit should be excluded from the coverage of this subchapter, and

"(3) upon completion of its review, recommend to the President whether the agency or unit should be excluded from the coverage of this subchapter.

If the Office recommends that an agency or unit thereof be excluded from the coverage of this subchapter, the President may, on written determination, make the exclusion for the period determined by the President to be appropriate.

"(d) Any agency or unit which is excluded from coverage under subsection (c) of this section shall make a sustained effort to bring its personnel system into conformity with the Senior Executive Service to the extent practicable.

"(e) The Office may at any time recommend to the President that any exclusion previously granted to an agency or unit thereof under subsection (c) of this section be revoked. Upon recommendation of the Office, the President may revoke, by written determination, any exclusion made under subsection (c) of this section.

Exclusion or revocation.

"(f) If—

"(1) any agency is excluded under subsection (c) of this section, or

"(2) any exclusion is revoked under subsection (e) of this section,

the Office shall, within 30 days after the action, transmit to the Congress written notice of the exclusion or revocation.

Report to Congress.

5 USC 3133.

“§ 3133. Authorization of positions; authority for appointment**“(a) During each even-numbered calendar year, each agency shall—****“(1) examine its needs for Senior Executive Service positions for each of the 2 fiscal years beginning after such calendar year; and**Written request
to OPM.**“(2) submit to the Office of Personnel Management a written request for a specific number of Senior Executive Service positions for each of such fiscal years.****“(b) Each agency request submitted under subsection (a) of this section shall—****“(1) be based on the anticipated type and extent of program activities and budget requests of the agency for each of the 2 fiscal years involved, and such other factors as may be prescribed from time to time by the Office; and****“(2) identify, by position title, positions which are proposed to be designated as or removed from designation as career reserved positions, and set forth justifications for such proposed actions.****“(c) The Office of Personnel Management, in consultation with the Office of Management and Budget, shall review the request of each agency and shall authorize, for each of the 2 fiscal years covered by requests required under subsection (a) of this section, a specific number of Senior Executive Service positions for each agency.****“(d) (1) The Office of Personnel Management may, on a written request of an agency or on its own initiative, make an adjustment in the number of positions authorized for any agency. Each agency request under this paragraph shall be submitted in such form, and shall be based on such factors, as the Office shall prescribe.****“(2) The total number of positions in the Senior Executive Service may not at any time during any fiscal year exceed 105 percent of the total number of positions authorized under subsection (c) of this section for such fiscal year.****“(e) (1) Not later than July 1, 1979, and from time to time thereafter as the Director of the Office of Personnel Management finds appropriate, the Director shall establish, by rule issued in accordance with section 1103(b) of this title, the number of positions out of the total number of positions in the Senior Executive Service, as authorized by this section or section 413 of the Civil Service Reform Act of 1978, which are to be career reserved positions. Except as provided in paragraph (2) of this subsection, the number of positions required by this subsection to be career reserved positions shall not be less than the number of the positions then in the Senior Executive Service which, before the date of such Act, were authorized to be filled only through competitive civil service examination.***Post, p. 1175.***“(2) The Director may, by rule, designate a number of career reserved positions which is less than the number required by paragraph (1) of this subsection only if the Director determines such lesser number necessary in order to designate as general positions one or more positions (other than positions described in section 3132(b) (3) of this title) which—****“(A) involve policymaking responsibilities which require the advocacy or management of programs of the President and support of controversial aspects of such programs;**

“(B) involve significant participation in the major political policies of the President; or

“(C) require the senior executives in the positions to serve as personal assistants of, or advisers to, Presidential appointees.

The Director shall provide a full explanation for his determination in each case.

“§ 3134. Limitations on noncareer and limited appointments

5 USC 3134.

“(a) During each calendar year, each agency shall—

“(1) examine its needs for employment of noncareer appointees for the fiscal year beginning in the following year; and

“(2) submit to the Office of Personnel Management, in accordance with regulations prescribed by the Office, a written request for authority to employ a specific number of noncareer appointees for such fiscal year.

“(b) The number of noncareer appointees in each agency shall be determined annually by the Office on the basis of demonstrated need of the agency. The total number of noncareer appointees in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

“(c) Subject to the 10 percent limitation of subsection (b) of this section, the Office may adjust the number of noncareer positions authorized for any agency under subsection (b) of this section if emergency needs arise that were not anticipated when the original authorizations were made.

“(d) The number of Senior Executive Service positions in any agency which are filled by noncareer appointees may not at any time exceed the greater of—

“(1) 25 percent of the total number of Senior Executive Service positions in the agency; or

“(2) the number of positions in the agency which were filled on the date of the enactment of the Civil Service Reform Act of 1978 by—

“(A) noncareer executive assignments under subpart F of part 305 of title 5, Code of Federal Regulations, as in effect on such date, or

5 CFR 305.101 *et seq.*

“(B) appointments to level IV or V of the Executive Schedule which were not required on such date to be made by and with the advice and consent of the Senate.

5 USC 5315, 5316

This subsection shall not apply in the case of any agency having fewer than 4 Senior Executive Service positions.

“(e) The total number of limited emergency appointees and limited term appointees in all agencies may not exceed 5 percent of the total number of Senior Executive Service positions in all agencies.

“§ 3135. Biennial report

5 USC 3135.

“(a) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted by the President to the Congress during each odd-numbered calendar year, a report on the Senior Executive Service. The report shall include—

Report to Congress.

“(1) the number of Senior Executive Service positions authorized for the then current fiscal year, in the aggregate and by agency, and the projected number of Senior Executive Service positions to be authorized for the next two fiscal years, in the aggregate and by agency;

“(2) the authorized number of career appointees and noncareer appointees, in the aggregate and by agency, for the then current fiscal year;

“(3) the position titles and descriptions of Senior Executive Service positions designated for the then current fiscal year;

“(4) a description of each exclusion in effect under section 3132(c) of this title during the preceding fiscal year;

“(5) the number of career appointees, limited term appointees, limited emergency appointees, and noncareer appointees, in the aggregate and by agency, employed during the preceding fiscal year;

“(6) the percentage of senior executives at each pay rate, in the aggregate and by agency, employed at the end of the preceding fiscal year;

“(7) the distribution and amount of performance awards, in the aggregate and by agency, paid during the preceding fiscal year;

“(8) the estimated number of career reserved positions which, during the two fiscal years following the then current fiscal year, will become general positions and the estimated number of general positions which during such two fiscal years, will become career reserved positions; and

“(9) such other information regarding the Senior Executive Service as the Office considers appropriate.

Report to
Congress.

“(b) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted to the Congress during each even-numbered calendar year, an interim report showing changes in matters required to be reported under subsection (a) of this section.

5 USC 3136.

“§ 3136. Regulations

“The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.”

(b) Section 3109 of title 5, United States Code, is amended by inserting at the end thereof the following new subsection:

“(c) Positions in the Senior Executive Service may not be filled under the authority of subsection (b) of this section.”

(c) The analysis for chapter 31 of title 5, United States Code, is amended—

(1) by striking out the heading for chapter 31 and inserting in lieu thereof the following:

“CHAPTER 31—AUTHORITY FOR EMPLOYMENT

“SUBCHAPTER I—EMPLOYMENT AUTHORITIES”;

and

(2) by inserting at the end thereof the following:

“SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

“Sec.

“3131. The Senior Executive Service.

“3132. Definitions and exclusions.

“3133. Authorization of positions; authority for appointment.

“3134. Limitations on noncareer and limited appointments.

“3135. Biennial report.

“3136. Regulations.”.

EXAMINATION, CERTIFICATION, AND APPOINTMENT

SEC. 403. (a) Chapter 33 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

“SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

“§ 3391. Definitions

5 USC 3391.

“For the purpose of this subchapter, ‘agency’, ‘Senior Executive Service position’, ‘senior executive’, ‘career appointee’, ‘limited term appointee’, ‘limited emergency appointee’, ‘noncareer appointee’, and ‘general position’ have the meanings set forth in section 3132(a) of this title.

“§ 3392. General appointment provisions

“(a) Qualification standards shall be established by the head of each agency for each Senior Executive Service position in the agency—

5 USC 3392.
Qualification standards, establishment.

“(1) in accordance with requirements established by the Office of Personnel Management, with respect to standards for career reserved positions, and

“(2) after consultation with the Office, with respect to standards for general positions.

“(b) Not more than 30 percent of the Senior Executive Service positions authorized under section 3133 of this title may at any time be filled by individuals who did not have 5 years of current continuous service in the civil service immediately preceding their initial appointment to the Senior Executive Service, unless the President certifies to the Congress that the limitation would hinder the efficiency of the Government. In applying the preceding sentence, any break in service of 3 days or less shall be disregarded.

Ante, p. 1158.

“(c) If a career appointee is appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch which is not in the Senior Executive Service, and the rate of basic pay payable for which is equal to or greater than the rate payable for level V of the Executive Schedule, the career appointee may elect (at such time and in such manner as the Office may prescribe) to continue to have the provisions of this title relating to basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement apply as if the career appointee remained in the Senior Executive Service position from which he was appointed. Such provisions shall apply in lieu of the provisions which would otherwise apply—

5 USC 5316.

“(1) to the extent provided under regulations prescribed by the Office, and

“(2) so long as the appointee continues to serve under such Presidential appointment.

“(d) Appointment or removal of a person to or from any Senior Executive Service position in an independent regulatory commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.

“§ 3393. Career appointments

5 USC 3393.

“(a) Each agency shall establish a recruitment program, in accordance with guidelines which shall be issued by the Office of Personnel

Recruitment program.

Management, which provides for recruitment of career appointees from—

“ (1) all groups of qualified individuals within the civil service; or
 “ (2) all groups of qualified individuals whether or not within the civil service.”

Executive resources boards, establishment.

“ (b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees of the agency. The boards shall, in accordance with merit staffing requirements established by the Office, conduct the merit staffing process for career appointees, including—

“ (1) reviewing the executive qualifications of each candidate for a position to be filled by a career appointee; and

“ (2) making written recommendations to the appropriate appointing authority concerning such candidates.

Review boards, establishment.

“ (c) (1) The Office shall establish one or more qualifications review boards, as appropriate. It is the function of the boards to certify the executive qualifications of candidates for initial appointment as career appointees in accordance with regulations prescribed by the Office. Of the members of each board more than one-half shall be appointed from among career appointees. Appointments to such boards shall be made on a non-partisan basis, the sole selection criterion being the professional knowledge of public management and knowledge of the appropriate occupational fields of the intended appointee.

Career appointees, criteria.

“ (2) The Office shall, in consultation with the various qualification review boards, prescribe criteria for establishing executive qualifications for appointment of career appointees. The criteria shall provide for—

“ (A) consideration of demonstrated executive experience;

“ (B) consideration of successful participation in a career executive development program which is approved by the Office; and

“ (C) sufficient flexibility to allow for the appointment of individuals who have special or unique qualities which indicate a likelihood of executive success and who would not otherwise be eligible for appointment.

Probationary period requirement.

“ (d) An individual's initial appointment as a career appointee shall become final only after the individual has served a 1-year probationary period as a career appointee.

“ (e) Each career appointee shall meet the executive qualifications of the position to which appointed, as determined in writing by the appointing authority.

Publication in Federal Register.

“ (f) The title of each career reserved position shall be published in the Federal Register.

5 USC 3394.

“§ 3394. Noncareer and limited appointments

“ (a) Each noncareer appointee, limited term appointee, and limited emergency appointee shall meet the qualifications of the position to which appointed, as determined in writing by the appointing authority.

“ (b) An individual may not be appointed as a limited term appointee or as a limited emergency appointee without the prior approval of the exercise of such appointing authority by the Office of Personnel Management.

“§ 3395. Reassignment and transfer within the Senior Executive Service 5 USC 3395.

“(a) (1) A career appointee in an agency—

“(A) may, subject to paragraph (2) of this subsection, be reassigned to any Senior Executive Service position in the same agency for which the appointee is qualified; and

“(B) may transfer to a Senior Executive Service position in another agency for which the appointee is qualified, with the approval of the agency to which the appointee transfers.

“(2) A career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives a written notice of the reassignment at least 15 days in advance of such reassignment.

“(b) (1) Notwithstanding section 3394(b) of this title, a limited emergency appointee may be reassigned to another Senior Executive Service position in the same agency established to meet a bona fide, unanticipated, urgent need, except that the appointee may not serve in one or more positions in such agency under such appointment in excess of 18 months.

“(2) Notwithstanding section 3394(b) of this title, a limited term appointee may be reassigned to another Senior Executive Service position in the same agency the duties of which will expire at the end of a term of 3 years or less, except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 3 years.

“(c) A limited term appointee or a limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in the aggregate, under any combination of such types of appointment.

“(d) A noncareer appointee in an agency—

“(1) may be reassigned to any general position in the agency for which the appointee is qualified; and

“(2) may transfer to a general position in another agency with the approval of the agency to which the appointee transfers.

“(e) (1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily reassigned—

“(A) within 120 days after an appointment of the head of the agency; or

“(B) within 120 days after the appointment in the agency of the career appointee’s most immediate supervisor who—

“(i) is a noncareer appointee; and

“(ii) has the authority to reassign the career appointee.

“(2) Paragraph (1) of this subsection does not apply with respect to—

“(A) any reassignment under section 4314(b) (3) of this title; *Post*, p. 1169.

or

“(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

“§ 3396. Development for and within the Senior Executive Service 5 USC 3396.

“(a) The Office of Personnel Management shall establish programs for the systematic development of candidates for the Senior Executive Service and for the continuing development of senior executives, or require agencies to establish such programs which meet criteria prescribed by the Office.

“(b) The Office shall assist agencies in the establishment of programs required under subsection (a) of this section and shall monitor the implementation of the programs. If the Office finds that any agency’s program under subsection (a) of this section is not in compliance with the criteria prescribed under such subsection, it shall require the agency to take such corrective action as may be necessary to bring the program into compliance with the criteria.

Sabbatical grant.

“(c) (1) The head of an agency may grant a sabbatical to any career appointee for not to exceed 11 months in order to permit the appointee to engage in study or uncompensated work experience which will contribute to the appointee’s development and effectiveness. A sabbatical shall not result in loss of, or reduction in, pay, leave to which the career appointee is otherwise entitled, credit for time or service, or performance or efficiency rating. The head of the agency may authorize in accordance with chapter 57 of this title such travel expenses (including per diem allowances) as the head of the agency may determine to be essential for the study or experience.

5 USC 5701.

Exclusions.

“(2) A sabbatical under this subsection may not be granted to any career appointee—

“(A) more than once in any 10-year period;

“(B) unless the appointee has completed 7 years of service—

“(i) in one or more positions in the Senior Executive Service;

“(ii) in one or more other positions in the civil service the level of duties and responsibilities of which are equivalent to the level of duties and responsibilities of positions in the Senior Executive Service; or

“(iii) in any combination of such positions, except that not less than 2 years of such 7 years of service must be in the Senior Executive Service; and

“(C) if the appointee is eligible for voluntary retirement with a right to an immediate annuity under section 8336 of this title.

Any period of assignment under section 3373 of this title, relating to assignments of employees to State and local governments, shall not be considered a period of service for the purpose of subparagraph (B) of this paragraph.

Condition for acceptance.

“(3) (A) Any career appointee in an agency may be granted a sabbatical under this subsection only if the appointee agrees, as a condition of accepting the sabbatical, to serve in the civil service upon the completion of the sabbatical for a period of 2 consecutive years.

“(B) Each agreement required under subparagraph (A) of this paragraph shall provide that in the event the career appointee fails to carry out the agreement (except for good and sufficient reason as determined by the head of the agency who granted the sabbatical) the appointee shall be liable to the United States for payment of all expenses (including salary) of the sabbatical. The amount shall be treated as a debt due the United States.

“(d) The Office shall encourage and assist individuals to improve their skills and increase their contribution by service in a variety of agencies as well as by accepting temporary placements in State or local governments or in the private sector.

5 USC 3397.

“§ 3397. Regulations

“The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.”

(b) The analysis for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3385 the following:

"SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

- "Sec.
- "3391. Definitions.
- "3392. General appointment provisions.
- "3393. Career appointments.
- "3394. Noncareer and limited appointments.
- "3395. Reassignment and transfer within the Senior Executive Service.
- "3396. Development for and within the Senior Executive Service.
- "3397. Regulations."

RETENTION PREFERENCE

SEC. 404. (a) Section 3501(b) of title 5, United States Code, is amended by striking out the period at the end thereof and inserting in lieu thereof: "or to a member of the Senior Executive Service."

(b) Chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

"§ 3591. Definitions 5 USC 3591.

"For the purpose of this subchapter, 'agency', 'Senior Executive Service position', 'senior executive', 'career appointee', 'limited term appointee', 'limited emergency appointee', 'noncareer appointee', and 'general position' have the meanings set forth in section 3132(a) of this title. *Ante*, p. 1155.

"§ 3592. Removal from the Senior Executive Service 5 USC 3592.

"(a) Except as provided in subsection (b) of this section, a career appointee may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

"(1) during the 1-year period of probation under section 3393 (d) of this title, or *Ante*, p. 1161.

"(2) at any time for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title, *Post*, p. 1167.

except that in the case of a removal under paragraph (2) of this subsection the career appointee shall, at least 15 days before the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board at which the career appointee may appear and present arguments, but such hearing shall not give the career appointee the right to initiate an action with the Board under section 7701 of this title, nor need the removal action be delayed as a result of the granting of such hearing. *Ante*, p. 1138.

"(b) (1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

"(A) within 120 days after an appointment of the head of the agency; or

“(B) within 120 days after the appointment in the agency of the career appointee’s most immediate supervisor who—

“(i) is a noncareer appointee; and

“(ii) has the authority to remove the career appointee.

“(2) Paragraph (1) of this subsection does not apply with respect to—

Post, p. 1169.

“(A) any removal under section 4314(b)(3) of this title; or

“(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

“(c) A limited emergency appointee, limited term appointee, or noncareer appointee may be removed from the service at any time.

“§ 3593. Reinstatement in the Senior Executive Service

Ante, p. 1162.

“(a) A former career appointee may be reinstated, without regard to section 3393 (b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified if—

“(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

“(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43 of this title.

Post, p. 1167.

“(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

Ante, p. 1154.

5 USC 3594.

“§ 3594. Guaranteed placement in other personnel systems

“(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

Ante, p. 1162.

“(b) A career appointee—

“(1) who has completed the probationary period under section 3393(d) of this title; and

“(2) who is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title; shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

“(c) (1) For purposes of subsections (a) and (b) of this section—

5 USC 5332 note.

“(A) the position in which any career appointee is placed under such subsections shall be a continuing position at GS-15 or above of the General Schedule, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

“(B) any career appointee placed under subsection (a) or (b) of this section shall be entitled to receive basic pay at the highest of—

“(i) the rate of basic pay in effect for the position in which placed;

“(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

“(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b) of this section; and

“(C) the placement of any career appointee under subsection (a) or (b) of this section may not be made to a position which would cause the separation or reduction in grade of any other employee.

“(2) An employee who is receiving basic pay under paragraph (1) (B) (ii) or (iii) of this subsection is entitled to have the basic pay rate of the employee increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) of this section until the rate is equal to the rate in effect under paragraph (1) (B) (i) of this subsection for the position in which the employee is placed.

“§ 3595. Regulations

5 USC 3595.

“The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.”.

(c) The chapter analysis for chapter 35 of title 5, United States Code, is amended by inserting the following new item:

“SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

“Sec.

“3591. Definitions.

“3592. Removal from the Senior Executive Service.

“3593. Reinstatement in the Senior Executive Service.

“3594. Guaranteed placement in other personnel systems.

“3595. Regulations.”.

PERFORMANCE RATING

Sec. 405. (a) Chapter 43 of title 5, United States Code, is amended by adding at the end thereof the following:

“SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

“§ 4311. Definitions

5 USC 4311.

“For the purpose of this subchapter, ‘agency’, ‘senior executive’, and ‘career appointee’ have the meanings set forth in section 3132(a) of this title.

“§ 4312. Senior Executive Service performance appraisal systems

5 USC 4312.

“(a) Each agency shall, in accordance with standards established by the Office of Personnel Management, develop one or more performance appraisal systems designed to—

“(1) permit the accurate evaluation of performance in any position on the basis of criteria which are related to the position and which specify the critical elements of the position;

“(2) provide for systematic appraisals of performance of senior executives;

“(3) encourage excellence in performance by senior executives; and

“(4) provide a basis for making eligibility determinations for retention in the Senior Executive Service and for Senior Executive Service performance awards.

“(b) Each performance appraisal system established by an agency under subsection (a) of this section shall provide—

“(1) that, on or before the beginning of each rating period, performance requirements for each senior executive in the agency are established in consultation with the senior executive and communicated to the senior executive;

“(2) that written appraisals of performance are based on the individual and organizational performance requirements established for the rating period involved; and

“(3) that each senior executive in the agency is provided a copy of the appraisal and rating under section 4314 of this title and is given an opportunity to respond in writing and have the rating reviewed by an employee in a higher executive level in the agency before the rating becomes final.

“(c) (1) The Office shall review each agency's performance appraisal system under this section, and determine whether the agency performance appraisal system meets the requirements of this subchapter.

“(2) The Comptroller General shall from time to time review performance appraisal systems under this section to determine the extent to which any such system meets the requirements under this subchapter and shall periodically report its findings to the Office and to each House of the Congress.

“(3) If the Office determines that an agency performance appraisal system does not meet the requirements under this subchapter (including regulations prescribed under section 4315), the agency shall take such corrective action as may be required by the Office.

“(d) A senior executive may not appeal any appraisal and rating under any performance appraisal system under this section.

Report to OPM
and Congress.

5 USC 4313.

“§ 4313. Criteria for performance appraisals

“Appraisals of performance in the Senior Executive Service shall be based on both individual and organizational performance, taking into account such factors as—

“(1) improvements in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

“(2) cost efficiency;

“(3) timeliness of performance;

“(4) other indications of the effectiveness, productivity, and performance quality of the employees for whom the senior executive is responsible; and

“(5) meeting affirmative action goals and achievement of equal employment opportunity requirements.

§ 4314. Ratings for performance appraisals

5 USC 4314.

“(a) Each performance appraisal system shall provide for annual summary ratings of levels of performance as follows:

- “(1) one or more fully successful levels,
- “(2) a minimally satisfactory level, and
- “(3) an unsatisfactory level.

“(b) Each performance appraisal system shall provide that—

“(1) any appraisal and any rating under such system—

“(A) are made only after review and evaluation by a performance review board established under subsection (c) of this section;

“(B) are conducted at least annually, subject to the limitation of subsection (c) (3) of this section;

“(C) in the case of a career appointee, may not be made within 120 days after the beginning of a new Presidential administration; and

“(D) are based on performance during a performance appraisal period the duration of which shall be determined under guidelines established by the Office of Personnel Management, but which may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance;

“(2) any career appointee receiving a rating at any of the fully successful levels under subsection (a) (1) of this section may be given a performance award under section 5384 of this title;

“(3) any senior executive receiving an unsatisfactory rating under subsection (a) (3) of this section shall be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service, but any senior executive who receives 2 unsatisfactory ratings in any period of 5 consecutive years shall be removed from the Senior Executive Service; and

“(4) any senior executive who twice in any period of 3 consecutive years receives less than fully successful ratings shall be removed from the Senior Executive Service.

“(c) (1) Each agency shall establish, in accordance with regulations prescribed by the Office, one or more performance review boards, as appropriate. It is the function of the boards to make recommendations to the appropriate appointing authority of the agency relating to the performance of senior executives in the agency.

“(2) The supervising official of the senior executive shall provide to the performance review board, an initial appraisal of the senior executive's performance. Before making any recommendation with respect to the senior executive, the board shall review any response by the senior executive to the initial appraisal and conduct such further review as the board finds necessary.

“(3) Performance appraisals under this subchapter with respect to any senior executive shall be made by the appointing authority only after considering the recommendations by the performance review board with respect to such senior executive under paragraph (1) of this subsection.

“(4) Members of performance review boards shall be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal. Notice of the appointment of an individual to serve as a member shall be published in the Federal Register.

Post, p. 1172.Performance
review boards.
Establishment.

Membership.

Publication in
Federal Register.

“(5) In the case of an appraisal of a career appointee, more than one-half of the members of the performance review board shall consist of career appointees. The requirement of the preceding sentence shall not apply in any case in which the Office determines that there exists an insufficient number of career appointees available to comply with the requirement.

Report to
Congress.
Ante, p. 1159.

“(d) The Office shall include in each report submitted to each House of the Congress under section 3135 of this title a report of—

“(1) the performance of any performance review board established under this section,

Ante, p. 1165.

“(2) the number of individuals removed from the Senior Executive Service under subchapter V of chapter 35 of this title for less than fully successful executive performance, and

Post, p. 1172.

“(3) the number of performance awards under section 5384 of this title.

5 USC 4315.

“§ 4315. Regulations

“The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.”.

(b) The analysis for chapter 43 of title 5, United States Code, is amended by inserting at the end thereof the following:

**“SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE
SENIOR EXECUTIVE SERVICE**

“Sec.

“4311. Definitions.

“4312. Senior Executive Service performance appraisal systems.

“4313. Criteria for performance appraisals.

“4314. Ratings for performance appraisals.

“4315. Regulations.”.

AWARDING OF RANK.

Sec. 406. (a) Chapter 45 of title 5, United States Code, is amended by adding at the end thereof the following new section:

5 USC 4507.
Definitions.

“§ 4507. Awarding of ranks in the Senior Executive Service

“(a) For the purpose of this section, ‘agency’, ‘senior executive’, and ‘career appointee’ have the meanings set forth in section 3132(a) of this title.

Recommendations.

“(b) Each agency shall submit annually to the Office recommendations of career appointees in the agency to be awarded the rank of Meritorious Executive or Distinguished Executive. The recommendations may take into account the individual’s performance over a period of years. The Office shall review such recommendations and provide to the President recommendations as to which of the agency recommended appointees should receive such rank.

“(c) During any fiscal year, the President may, subject to subsection (d) of this section, award to any career appointee recommended by the Office the rank of—

“(1) Meritorious Executive, for sustained accomplishment, or

“(2) Distinguished Executive, for sustained extraordinary accomplishment.

A career appointee awarded a rank under paragraph (1) or (2) of this subsection shall not be entitled to be awarded that rank during the following 4 fiscal years.

“(d) During any fiscal year—

“(1) the number of career appointees awarded the rank of Meritorious Executive may not exceed 5 percent of the Senior Executive Service; and

“(2) the number of career appointees awarded the rank of

Distinguished Executive may not exceed 1 percent of the Senior Executive Service.

“(e) (1) Receipt by a career appointee of the rank of Meritorious Executive entitles such individual to a lump-sum payment of \$10,000, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title.

“(2) Receipt by a career appointee of the rank of Distinguished Executive entitles the individual to a lump-sum payment of \$20,000, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title.”

(b) The analysis for chapter 45 of title 5, United States Code, is amended by adding at the end thereof the following new item:

“4507. Awarding of Ranks in the Senior Executive Service.”

PAY RATES AND SYSTEMS

SEC. 407. (a) Chapter 53 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

“SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE

“§ 5381. Definitions

5 USC 5381.

“For the purpose of this subchapter, ‘agency’, ‘Senior Executive Service position’, and ‘senior executive’ have the meanings set forth in section 3132 (a) of this title.

Ante, p. 1155.

“§ 5382. Establishment and adjustment of rates of pay for the Senior Executive Service

5 USC 5382.

“(a) There shall be 5 or more rates of basic pay for the Senior Executive Service, and each senior executive shall be paid at one of the rates. The rates of basic pay shall be initially established and thereafter adjusted by the President subject to subsection (b) of this section.

“(b) In setting rates of basic pay, the lowest rate for the Senior Executive Service shall not be less than the minimum rate of basic pay payable for GS-16 of the General Schedule and the highest rate shall not exceed the rate for level IV of the Executive Schedule. The payment of the rates shall not be subject to the pay limitation of section 5308 or 5373 of this title.

5 USC 5315.

5 USC 5308,
5373.

“(c) Subject to subsection (b) of this section, effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title in the rates of pay under the General Schedule, each rate of basic pay for the Senior Executive Service shall be adjusted by an amount determined by the President to be appropriate. The adjusted rates of basic pay for the Senior Executive Service shall be included in the report transmitted to the Congress by the President under section 5305 (a) (3) or (c) (1) of this title.

5 USC 5305.

“(d) The rates of basic pay that are established and adjusted under this section shall be printed in the Federal Register and shall supersede any prior rates of basic pay for the Senior Executive Service.

Publication in
Federal Register.
5 USC 5383.

“§ 5383. Setting individual senior executive pay

“(a) Each appointing authority shall determine, in accordance with criteria established by the Office of Personnel Management, which of the rates established under section 5382 of this title shall be paid to each senior executive under such appointing authority.

- Ante*, p. 1170. “(b) In no event may the aggregate amount paid to a senior executive during any fiscal year under sections 4507, 5382, and 5384 of this title exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such fiscal year.
- 5 USC 5312. “(c) Except for any pay adjustment under section 5382 of this title, the rate of basic pay for any senior executive may not be adjusted more than once during any 12-month period.
- 5 USC 5384. “(d) The rate of basic pay for any career appointee may be reduced from any rate of basic pay to any lower rate of basic pay only if the career appointee receives a written notice of the reduction at least 15 days in advance of the reduction.
- 5 USC 5384. **“§ 5384. Performance awards in the Senior Executive Service**
- “(a) (1) To encourage excellence in performance by career appointees, performance awards shall be paid to career appointees in accordance with the provisions of this section.
- “(2) Such awards shall be paid in a lump sum and shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 4507 of this title.
- Ante*, p. 1170. “(b) (1) No performance award under this section shall be paid to any career appointee whose performance was determined to be less than fully successful at the time of the appointee’s most recent performance appraisal and rating under subchapter II of chapter 43 of this title.
- Ante*, p. 1167. “(2) The amount of a performance award under this section shall be determined by the agency head but may not exceed 20 percent of the career appointee’s rate of basic pay.
- “(3) The number of career appointees in any agency paid performance awards under this section during any fiscal year may not exceed 50 percent of the number of Senior Executive Service positions in such agency. This paragraph shall not apply in the case of any agency which has less than 4 Senior Executive Service positions.
- “(c) Performance awards paid by any agency under this section shall be based on recommendations by performance review boards established by such agency under section 4314 of this title.
- Ante*, p. 1169. “(d) The Office of Personnel Management may issue guidance to agencies concerning the proportion of Senior Executive Service salary expenses that may be appropriately applied to payment of performance awards and the distribution of awards.
- 5 USC 5385. **“§ 5385. Regulations**
- “The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.”
- 5 USC 5301. (b) The analysis of chapter 53 of title 5, United States Code, is amended by adding at the end thereof the following new items:
- “SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE**
- “Sec.**
- “5381. Definitions.**
- “5382. Establishment and adjustment of rates of pay for the Senior Executive Service.**
- “5383. Setting individual senior executive pay.**
- “5384. Performance awards in the Senior Executive Service.**
- “5385. Regulations.”**

PAY ADMINISTRATION

SEC. 408. (a) Chapter 55 of the title 5, United States Code, is amended—

(1) by inserting “other than an employee or individual excluded by section 5541(2) (xvi) of this section” immediately before the period at the end of section 5504(a) (B); 5 USC 5541.
5 USC 5504.

(2) by amending section 5541(2) by striking out “or” after clause (xiv), by striking out the period after clause (xv) and inserting “; or” in lieu thereof, and by adding the following clause at the end thereof:

“(xvi) member of the Senior Executive Service.”;

and

(3) by inserting “other than a member of the Senior Executive Service” after “employee” in section 5595(a) (2) (i). 5 USC 5595.
5 USC 5311.

(b)(1) Section 5311 of title 5, United States Code, is amended by inserting “, other than Senior Executive Service positions,” after “positions”.

(2) Section 5331(b) of title 5, United States Code, is amended by inserting “, other than Senior Executive Service positions,” after “positions”.

TRAVEL, TRANSPORTATION, AND SUBSISTENCE

Sec. 409. (a) Section 5723(a) (1) of title 5, United States Code, is amended by striking out “; and” and inserting in lieu thereof “or of a new appointee to the Senior Executive Service; and”. 5 USC 5723.

(b) Subchapter IV of chapter 57 of title 5, United States Code, is amended by adding at the end thereof the following new section:

“§ 5752. Travel expenses of Senior Executive Service candidates 5 USC 5752.

“Employing agencies may pay candidates for Senior Executive Service positions travel expenses incurred incident to preemployment interviews requested by the employing agency.”

(c) The analysis for chapter 57 of title 5, United States Code, is amended by inserting after the item relating to section 5751 the following new item:

“5752. Travel expenses of Senior Executive Service candidates.”

LEAVE

Sec. 410. Section 6304 of title 5, United States Code, is amended— 5 USC 6304.

(1) in subsection (a), by striking out “and (e)” and inserting in lieu thereof “(e), and (f)”; and

(2) by adding at the end thereof the following new subsection:

“(f) Annual leave accrued by an individual while serving in a position in the Senior Executive Service shall not be subject to the limitation on accumulation otherwise imposed by this section.”

DISCIPLINARY ACTIONS

Sec. 411. Chapter 75 of title 5, United States Code, is amended—

(1) by inserting the following in the chapter analysis after subchapter IV:

"SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

"Sec.
 "7541. Definitions.
 "7542. Actions covered.
 "7543. Cause and procedure.";

and

(2) by adding the following after subchapter IV:

"SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

5 USC 7541.

"§ 7541. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means a career appointee in the Senior Executive Service who—

Ante, p. 1161.

"(A) has completed the probationary period prescribed under section 3393(d) of this title; or

"(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

Ante, p. 1134.

"(2) 'suspension' has the meaning set forth in section 7501(2) of this title.

5 USC 7542.

"§ 7542. Actions covered

"This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1206 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 of this title.

Ante, p. 1125.

5 USC 7543.

"§ 7543. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

"(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

"(1) at least 30 days' advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

"(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and specific reasons therefor at the earliest practicable date.

Hearing.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b) (2) of this section.

Appeals.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

Ante, p. 1128.
 Record
 maintenance.

"(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an

action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request."

RETIREMENT

SEC. 412. (a) Section 8336 of title 5, United States Code, is amended by redesignating subsection (h) as subsection (i) and inserting immediately after subsection (g) the following new subsection:

"(h) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity."

Ante, p. 1167.

(b) Section 8339(h) of title 5, United States Code, is amended by striking out "section 8336(d)" and inserting in lieu thereof "section 8336 (d) or (h)".

CONVERSION TO THE SENIOR EXECUTIVE SERVICE

SEC. 413. (a) For the purpose of this section, "agency", "Senior Executive Service position", "career appointee", "career reserved position", "limited term appointee", "noncareer appointee", and "general position" have the meanings set forth in section 3132(a) of title 5, United States Code (as added by this title), and "Senior Executive Service" has the meaning set forth in section 2101a of such title 5 (as added by this title).

5 USC 3133 note.

Ante, p. 1151.
Ante, p. 1154.

(b) (1) Under the guidance of the Office of Personnel Management, each agency shall—

(A) designate those positions which it considers should be Senior Executive Service positions and designate which of those positions it considers should be career reserved positions; and

(B) submit to the Office a written request for—

(i) a specific number of Senior Executive Service positions; and

(ii) authority to employ a specific number of noncareer appointees.

(2) The Office of Personnel Management shall review the designations and requests of each agency under paragraph (1) of this subsection, and shall establish interim authorizations in accordance with sections 3133 and 3134 of title 5, United States Code (as added by this Act), and shall publish the titles of the authorized positions in the Federal Register.

Publication in
Federal Register.

Ante, pp. 1158,
1159.

(c) (1) Each employee serving in a position at the time it is designated as a Senior Executive Service position under subsection (b) of this section shall elect to—

(A) decline conversion and be appointed to a position under such employee's current type of appointment and pay system, retaining the grade, seniority, and other rights and benefits associated with such type of appointment and pay system; or

(B) accept conversion and be appointed to a Senior Executive Service position in accordance with the provisions of subsections (d), (e), (f), (g), and (h) of this section.

The appointment of an employee in an agency because of an election

Notice.

under subparagraph (A) of this paragraph shall not result in the separation or reduction in grade of any other employee in such agency.

(2) Any employee in a position which has been designated a Senior Executive Service position under this section shall be notified in writing of such designation, the election required under paragraph (1) of this subsection, and the provisions of subsections (d), (e), (f), (g), and (h) of this section. The employee shall be given 90 days from the date of such notification to make the election under paragraph (1) of this subsection.

(d) Each employee who has elected to accept conversion to a Senior Executive Service position under subsection (c) (1) (B) of this section and who is serving under—

(1) a career or career-conditional appointment; or

(2) a similar type of appointment in an excepted service position, as determined by the Office;

in a position which is designated as a Senior Executive Service position shall be appointed as a career appointee to such Senior Executive Service position without regard to section 3393(b)-(e) of title 5, United States Code (as added by this title).

Ante, p. 1161.

(e) Each employee who has elected conversion to a Senior Executive Service position under subsection (c) (1) (B) of this section and who is serving under an excepted appointment in a position which is not designated a career reserved position in the Senior Executive Service, but is—

(1) a position in Schedule C of subpart C of part 213 of title 5, Code of Federal Regulations;

(2) a position filled by noncareer executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations; or

5 USC 5311.

(3) a position in the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code, other than a career Executive Schedule position;

shall be appointed as a noncareer appointee to a Senior Executive Service position.

(f) Each employee who has elected conversion to a Senior Executive Service position under subsection (c) (1) (B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a career reserved position under subsection (b) of this section shall be appointed as a noncareer appointee to an appropriate general position in the Senior Executive Service or shall be separated.

Publication in
Federal Register.

(g) Each employee who has elected conversion to a Senior Executive Service position under subsection (c) (1) (B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a Senior Executive Service position and who has reinstatement eligibility to a position in the competitive service, may, on request to the Office, be appointed as a career appointee to a Senior Executive Service position. The name of, and basis for reinstatement eligibility for, each employee appointed as a career appointee under this subsection shall be published in the Federal Register.

(h) Each employee who has elected conversion to a Senior Executive Service position under subsection (c) (1) (B) of this section and who is serving under a limited executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations, shall—

(1) be appointed as a limited term appointee to a Senior Execu-

tive Service position if the position then held by such employee will terminate within 3 years of the date of such appointment;

(2) be appointed as a noncareer appointee to a Senior Executive Service position if the position then held by such employee is designated as a general position; or

(3) be appointed as a noncareer appointee to a general position if the position then held by such employee is designated as a career reserved position.

(i) The rate of basic pay for any employee appointed to a Senior Executive Service position under this section shall be greater than or equal to the rate of basic pay payable for the position held by such employee at the time of such appointment.

(j) Any employee who is aggrieved by any action by any agency under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of title 5, United States Code (as added by this title). An agency shall take any corrective action which the Board orders in its decision on an appeal under this subsection.

(k) The Office shall prescribe regulations to carry out the purpose of this section.

Ante, p. 1128.

Regulations.

LIMITATIONS ON EXECUTIVE POSITIONS

SEC. 414. (a) (1) (A) The following provisions of section 5108 of title 5, United States Code, relating to special authority to place positions at GS-16, 17, and 18 of the General Schedule, are hereby repealed:

(i) paragraphs (2), (4) through (11), and (13) through (16) of subsection (c), and

(ii) subsections (d) through (g).

(B) Notwithstanding any other provision of law (other than section 5108 of such title 5), the authority granted to an agency (as defined in section 5102(a)(1) of such title 5) under any such provision to place one or more positions in GS-16, 17, or 18 of the General Schedule, is hereby terminated.

5 USC 5108 note.

(C) Subsection (a) of section 5108 of title 5, United States Code, is amended to read as follows:

“(a) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum numbers of positions (not to exceed an aggregate of 10,777) which may at any one time be placed in—

“(i) GS-16, 17, and 18; and

“(ii) the Senior Executive Service, in accordance with section 3133 of this title.

Ante, p. 1158.

A position may be placed in GS-16, 17, or 18, only by action of the Director of the Office of Personnel Management. The authority of the Director under this subsection shall be carried out by the President in the case of positions proposed to be placed in GS-16, 17, and 18 in the Federal Bureau of Investigation.”

(D) Subsection (c) of section 5108 of title 5, United States Code, is amended—

(i) by redesignating paragraph (3) as paragraph (2) and by inserting “and” at the end thereof; and

(ii) by redesignating paragraph (12) as paragraph (3) and by striking out the semicolon at the end and inserting in lieu thereof a period.

(2) (A) Notwithstanding any other provision of law (other than section 3104 of title 5, United States Code), the authority granted to

5 USC 3104 note.

an agency (as defined in section 5102(a)(1) of such title 5) to establish scientific or professional positions outside of the General Schedule is hereby terminated.

(B) Section 3104 of title 5, United States Code, is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

“(a)(1) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum number of scientific or professional positions (not to exceed 517) for carrying out research and development functions which require the services of specially qualified personnel which may be established outside of the General Schedule. Any such position may be established only by action of the Director.

“(2) The provisions of paragraph (1) of this subsection shall not apply to any Senior Executive Service position (as defined in section 3132(a) of this title).

“(3) In addition to the number of positions authorized by paragraph (1) of this subsection, the Librarian of Congress may establish, without regard to the second sentence of paragraph (1) of this subsection, not more than 8 scientific or professional positions to carry out the research and development functions of the Library of Congress which require the services of specially qualified personnel.”

(C) Subsection (c) of such section 3104 is amended—

(i) by striking out “(c)” and inserting in lieu thereof “(b)”; and

(ii) by striking out “to establish and fix the pay of positions under this section and section 5361 of this title” and inserting in lieu thereof “to fix under section 5361 of this title the pay for positions established under this section”.

(3) (A) The provisions of paragraphs (1) and (2) of this subsection shall not apply with respect to any position so long as the individual occupying such position on the day before the date of the enactment of this Act continues to occupy such position.

(B) The Director—

(i) in establishing under section 5108 of title 5, United States Code, the maximum number of positions which may be placed in GS-16, 17, and 18 of the General Schedule, and

(ii) in establishing under section 3104 of such title 5 the maximum number of scientific or professional positions which may be established,

shall take into account positions to which subparagraph (A) of this paragraph applies.

(b)(1) Section 5311 of title 5, United States Code, is amended by inserting “(a)” before “The Executive Schedule.” and by adding at the end thereof the following new subsection:

“(b)(1) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Director shall determine the number and classification of executive level positions in existence in the executive branch on that date of enactment, and shall publish the determination in the Federal Register. Effective beginning on the date of the publication, the number of executive level positions within the executive branch may not exceed the number published under this subsection.

“(2) For the purpose of this subsection, ‘executive level position’ means—

Ante, p. 1155.

5 USC 3104,
5108 notes.

Publication in the
Federal Register.

“Executive level
position.”

“(A) any office or position in the civil service the rate of pay for which is equal to or greater than the rate of basic pay payable for positions under section 5316 of this title, or

5 USC 5316.

“(B) any such office or position the rate of pay for which may be fixed by administrative action at a rate equal to or greater than the rate of basic pay payable for positions under section 5316 of this title;

but does not include any Senior Executive Service position, as defined in section 3132(a) of this title.”

5 USC 3132.

(2) The President shall transmit to the Congress by January 1, 1980, a plan for authorizing executive level positions in the executive branch which shall include the maximum number of executive level positions necessary by level and a justification for the positions.

Presidential
transmittal to
Congress.
5 USC 5311 note.

EFFECTIVE DATE; CONGRESSIONAL REVIEW

SEC. 415. (a) (1) The provisions of this title, other than sections 413 and 414(a), shall take effect 9 months after the date of the enactment of this Act.

5 USC 3131 note.

(2) The provisions of section 413 of this title shall take effect on the date of the enactment of this Act.

(3) The provisions of section 414(a) of this title shall take effect 180 days after the date of the enactment of this Act.

(b) (1) The amendments made by sections 401 through 412 of this title shall continue to have effect unless, during the first period of 60 calendar days of continuous session of the Congress beginning after 5 years after the effective date of such amendments, a concurrent resolution is introduced and adopted by the Congress disapproving the continuation of the Senior Executive Service. Such amendments shall cease to have effect on the first day of the first fiscal year beginning after the date of the adoption of such concurrent resolution.

(2) The continuity of a session is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(3) The provisions of subsections (d), (e), (f), (g), (h), (i), (j), and (k) of section 5305 of title 5, United States Code, shall apply with respect to any concurrent resolution referred to in paragraph (1) of this subsection, except that for the purpose of this paragraph the reference in such subsection (e) to 10 calendar days shall be considered a reference to 30 calendar days.

(4) During the 5-year period referred to in paragraph (1) of this subsection, the Director of the Office of Personnel Management shall include in each report required under section 3135 of title 5, United States Code (as added by this title) an evaluation of the effectiveness of the Senior Executive Service and the manner in which such Service is administered.

TITLE V—MERIT PAY

PAY FOR PERFORMANCE

Sec. 501. Part III of title 5, United States Code, is amended by inserting after chapter 53 the following new chapter:

"CHAPTER 54—MERIT PAY AND CASH AWARDS

"Sec.

"5401. Purpose.

"5402. Merit pay system.

"5403. Cash award program.

"5404. Report.

"5405. Regulations.

"§ 5401. Purpose

"(a) It is the purpose of this chapter to provide for—

"(1) a merit pay system which shall—

"(A) within available funds, recognize and reward quality performance by varying merit pay adjustments;

"(B) use performance appraisals as the basis for determining merit pay adjustments;

"(C) within available funds, provide for training to improve objectivity and fairness in the evaluation of performance; and

"(D) regulate the costs of merit pay by establishing appropriate control techniques; and

"(2) a cash award program which shall provide cash awards for superior accomplishment and special service.

5 USC 7103.

"(b) (1) Except as provided in paragraph (2) of this subsection, this chapter shall apply to any supervisor or management official (as defined in paragraphs (10) and (11) of section 7103 of this title, respectively) who is in a position which is in GS-13, 14, or 15 of the General Schedule described in section 5104 of this title.

Exclusions.

"(2) (A) Upon application under subparagraph (C) of this paragraph, the President may, in writing, exclude an agency or any unit of an agency from the application of this chapter if the President considers such exclusion to be required as a result of conditions arising from—

"(i) the recent establishment of the agency or unit, or the implementation of a new program,

"(ii) an emergency situation, or

"(iii) any other situation or circumstance.

Presidential reports transmitted to Congress.

"(B) Any exclusion under this paragraph shall not take effect earlier than 30 calendar days after the President transmits to each House of the Congress a report describing the agency or unit to be excluded and the reasons therefor.

Filing of applications.

"(C) An application for exclusion under this paragraph of an agency or any unit of an agency shall be filed by the head of the agency with the Office of Personnel Management, and shall set forth reasons why the agency or unit should be excluded from this chapter. The Office shall review the application and reasons, undertake such other review as it considers appropriate to determine whether the agency or unit should be excluded from the coverage of this chapter, and upon completion of its review, recommend to the President whether the agency or unit should be so excluded.

"(D) Any agency or unit which is excluded pursuant to this paragraph shall, insofar as practicable, make a sustained effort to eliminate the conditions on which the exclusion is based.

Review.

"(E) The Office shall periodically review any exclusion from coverage and may at any time recommend to the President that an exclusion under this paragraph be revoked. The President may at any time revoke, in writing, any exclusion under this paragraph.

“§ 5402. Merit pay system

Establishment.

“(a) In accordance with the purpose set forth in section 5401 (a) (1) of this title, the Office of Personnel Management shall establish a merit pay system which shall provide for a range of basic pay for each grade to which the system applies, which range shall be limited by the minimum and maximum rates of basic pay payable for each grade under chapter 53 of this title.

5 USC 5301.

“(b) (1) Under regulations prescribed by the Office, the head of each agency may provide for increases within the range of basic pay for any employee covered by the merit pay system.

“(2) Determinations to provide pay increases under this subsection—

“(A) may take into account individual performance and organizational accomplishment, and

“(B) shall be based on factors such as—

“(i) any improvement in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

“(ii) cost efficiency;

“(iii) timeliness of performance; and

“(iv) other indications of the effectiveness, productivity, and quality of performance of the employees for whom the employee is responsible;

“(C) shall be subject to review only in accordance with and to the extent provided by procedures established by the head of the agency; and

“(D) shall be made in accordance with regulations issued by the Office which relate to the distribution of increases authorized under this subsection.

“(3) For any fiscal year, the head of any agency may exercise authority under paragraph (1) of this subsection only to the extent of the funds available for the purpose of this subsection.

“(4) The funds available for the purpose of this subsection to the head of any agency for any fiscal year shall be determined before the beginning of the fiscal year by the Office on the basis of the amount estimated by the Office to be necessary to reflect—

“(A) within-grade step increases and quality step increases which would have been paid under subchapter III of chapter 53 of this title during the fiscal year to the employees of the agency covered by the merit pay system if the employees were not so covered; and

5 USC 5331.

“(B) adjustments under section 5305 of this title which would have been paid under such subchapter during the fiscal year to such employees if the employees were not so covered, less an amount reflecting the adjustment under subsection (c) (1) of this section in rates of basic pay payable to the employees for the fiscal year.

5 USC 5305.

“(c) (1) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title, the rate of basic pay for any position under this chapter shall be adjusted by an amount equal to the greater of—

Effective date.

“(A) one-half of the percentage of the adjustment in the annual rate of pay which corresponds to the percentage generally

applicable to positions not covered by the merit pay system in the same grade as the position; or

“(B) such greater amount of such percentage of such adjustment in the annual rate of pay as may be determined by the Office.

“(2) Any employee whose position is brought under the merit pay system shall, so long as the employee continues to occupy the position, be entitled to receive basic pay at a rate of basic pay not less than the rate the employee was receiving when the position was brought under the merit pay system, plus any subsequent adjustment under paragraph (1) of this subsection.

“(3) No employee to whom this chapter applies may be paid less than the minimum rate of basic pay of the grade of the employee's position.

“(d) Under regulations prescribed by the Office, the benefit of advancement through the range of basic pay for a grade shall be preserved for any employee covered by the merit pay system whose continuous service is interrupted in the public interest by service with the armed forces, or by service in essential non-Government civilian employment during a period of war or national emergency.

5 USC 5941.

“(e) For the purpose of section 5941 of this title, rates of basic pay of employees covered by the merit pay system shall be considered rates of basic pay fixed by statute.

“§ 5403. Cash award program

“(a) The head of any agency may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

“(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

“(2) performs a special act or service in the public interest in connection with or related to the employee's Federal employment.

Presidential cash awards.

“(b) The President may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

“(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

“(2) performs an exceptionally meritorious special act or service in the public interest in connection with or related to the employee's Federal employment.

A Presidential cash award may be in addition to an agency cash award under subsection (a) of this section.

“(c) A cash award to any employee under this section is in addition to the basic pay of the employee under section 5402 of this title. Acceptance of a cash award under this section constitutes an agreement that the use by the Government of any idea, method, or device for which the award is made does not form the basis of any claim of any nature against the Government by the employee accepting the award, or the employee's heirs or assigns.

Payment of awards.

“(d) A cash award to, and expenses for the honorary recognition of, any employee covered by the merit pay system may be paid from the fund or appropriation available to the activity primarily benefiting, or the various activities benefiting, from the suggestion, invention,

superior accomplishment, or other meritorious effort of the employee. The head of the agency concerned shall determine the amount to be contributed by each activity to any agency cash award under subsection (a) of this section. The President shall determine the amount to be contributed by each activity to a Presidential award under subsection (b) of this section.

“(e) (1) Except as provided in paragraph (2) of this subsection, a cash award under this section may not exceed \$10,000. Limitation.

“(2) If the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort of an employee for which a cash award is proposed is highly exceptional and unusually outstanding, a cash award in excess of \$10,000 but not in excess of \$25,000 may be awarded to the employee on the approval of the Office.

“(f) The President or the head of an agency may pay a cash award under this section notwithstanding the death or separation from the service of an employee, if the suggestion, invention, superior accomplishment, or other meritorious effort of the employee for which the award is proposed was made or performed while the employee was covered by the merit pay system.

“§ 5404. Report

“The Office of Personnel Management shall include in each annual report required by section 1308(a) of this title a report on the operation of the merit pay system and the cash award program established under this chapter. The report shall include— 5- USC 1308.

“(1) an analysis of the cost and effectiveness of the merit pay system and the cash award program; and

“(2) a statement of the agencies and units excluded from the coverage of this chapter under section 5401(b) (2) of this title, the reasons for which each exclusion was made, and whether the exclusion continues to be warranted.

“§ 5405. Regulations

“The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter.”

INCENTIVE AWARDS AMENDMENTS

Sec. 502. (a) Section 4503(1) of title 5, United States Code, is amended by inserting after “operations” the following: “or achieves a significant reduction in paperwork”.

(b) Section 4504(1) of title 5, United States Code, is amended by inserting after “operations” the following: “or achieves a significant reduction in paperwork”.

TECHNICAL AND CONFORMING AMENDMENTS

Sec. 503. (a) Section 4501(2) (A) of title 5, United States Code, is amended by striking out “; and” and inserting in lieu thereof “, but does not include an employee covered by the merit pay system established under section 5402 of this title; and”.

(b) Section 4502(a) of title 5, United States Code, is amended by striking out “\$5,000” and inserting in lieu thereof “\$10,000”.

(c) Section 4502(b) of title 5, United States Code, is amended—

(1) by striking out “Civil Service Commission” and inserting in lieu thereof “Office of Personnel Management”;

(2) by striking out “\$5,000” and inserting in lieu thereof “\$10,000”; and

(3) by striking out “the Commission” and inserting in lieu thereof “the Office”.

(d) Section 4506 of title 5, United States Code, is amended by striking out “Civil Service Commission may” and inserting in lieu thereof “Office of Personnel Management shall”.

(e) The second sentence of section 5332(a) of title 5, United States Code, is amended by inserting after “applies” the following: “, except an employee covered by the merit pay system established under section 5402 of this title.”.

(f) Section 5334 of title 5, United States Code (as amended in section 801(a)(3)(G) of this Act), is amended—

(1) in paragraph (2) of subsection (c), by inserting “, or for an employee appointed to a position covered by the merit pay system established under section 5402 of this title, any dollar amount,” after “step”; and

(2) by adding at the end thereof the following new subsection: “(f) In the case of an employee covered by the merit pay system established under section 5402 of this title, all references in this section to ‘two steps’ or ‘two step-increases’ shall be deemed to mean 6 percent.”.

(g) Section 5335(e) of title 5, United States Code, is amended by inserting after “individual” the following: “covered by the merit pay system established under section 5402 of this title, or”.

(h) Section 5336(c) of title 5, United States Code, is amended by inserting after “individual” the following: “covered by the merit pay system established under section 5402 of this title, or”.

(i) The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 53 the following new item:

“54. Merit Pay and Cash Awards..... 5401”.

EFFECTIVE DATE

5 USC 5401 note. Sec. 504. (a) The provisions of this title shall take effect on the first day of the first applicable pay period which begins on or after October 1, 1981, except that such provisions may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management.

5 USC 5404 note. (b) The Director of the Office of Personnel Management shall include in the first report required under section 5404 of title 5, United States Code (as added by this title), information with respect to the progress and cost of the implementation of the merit pay system and the cash award program established under chapter 54 of such title (as added by this title).

TITLE VI—RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

SEC. 601. (a) Part III of title 5, United States Code, is amended by adding at the end of subpart C thereof the following new chapter:

**"CHAPTER 47—PERSONNEL RESEARCH PROGRAMS AND
DEMONSTRATION PROJECTS**

"Sec.

- "4701. Definitions.
- "4702. Research programs.
- "4703. Demonstration projects.
- "4704. Allocation of funds.
- "4705. Reports.
- "4706. Regulations.

"§ 4701. Definitions

"(a) For the purpose of this chapter—

"(1) 'agency' means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

"(A) a Government corporation;

"(B) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof which is designated by the President and which has as its principal function the conduct of foreign intelligence or counterintelligence activities; or

"(C) the General Accounting Office;

"(2) 'employee' means an individual employed in or under an agency;

"(3) 'eligible' means an individual who has qualified for appointment in an agency and whose name has been entered on the appropriate register or list of eligibles;

"(4) 'demonstration project' means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management; and

"(5) 'research program' means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

"(b) This subchapter shall not apply to any position in the Drug Enforcement Administration which is excluded from the competitive service under section 201 of the Crime Control Act of 1976 (5 U.S.C. 5108 note; 90 Stat. 2425).

"§ 4702. Research programs

"The Office of Personnel Management shall—

"(1) establish and maintain (and assist in the establishment and maintenance of) research programs to study improved methods and technologies in Federal personnel management;

"(2) evaluate the research programs established under paragraph (1) of this section;

"(3) establish and maintain a program for the collection and public dissemination of information relating to personnel management research and for encouraging and facilitating the exchange of information among interested persons and entities; and

"(4) carry out the preceding functions directly or through agreement or contract.

“§ 4703. Demonstration projects

“(a) Except as provided in this section, the Office of Personnel Management may, directly or through agreement or contract with one or more agencies and other public and private organizations, conduct and evaluate demonstration projects. Subject to the provisions of this section, the conducting of demonstration projects shall not be limited by any lack of specific authority under this title to take the action contemplated, or by any provision of this title or any rule or regulation prescribed under this title which is inconsistent with the action, including any law or regulation relating to—

“(1) the methods of establishing qualification requirements for, recruitment for, and appointment to positions;

“(2) the methods of classifying positions and compensating employees;

“(3) the methods of assigning, reassigning, or promoting employees;

“(4) the methods of disciplining employees;

“(5) the methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay;

“(6) the hours of work per day or per week;

“(7) the methods of involving employees, labor organizations, and employee organizations in personnel decisions; and

“(8) the methods of reducing overall agency staff and grade levels.

“(b) Before conducting or entering into any agreement or contract to conduct a demonstration project, the Office shall—

“(1) develop a plan for such project which identifies—

“(A) the purposes of the project;

“(B) the types of employees or eligibles, categorized by occupational series, grade, or organizational unit;

“(C) the number of employees or eligibles to be included, in the aggregate and by category;

“(D) the methodology;

“(E) the duration;

“(F) the training to be provided; .

“(G) the anticipated costs;

“(H) the methodology and criteria for evaluation;

“(I) a specific description of any aspect of the project for which there is a lack of specific authority; and

“(J) a specific citation to any provision of law, rule, or regulation which, if not waived under this section, would prohibit the conducting of the project, or any part of the project as proposed;

“(2) publish the plan in the Federal Register;

“(3) submit the plan so published to public hearing;

“(4) provide notification of the proposed project, at least 180 days in advance of the date any project proposed under this section is to take effect—

“(A) to employees who are likely to be affected by the project; and

“(B) to each House of the Congress;

“(5) obtain approval from each agency involved of the final version of the plan; and

Plan
development.

Publication in
Federal Register.
Hearing.
Notification.

“(6) provide each House of the Congress with a report at least 90 days in advance of the date the project is to take effect setting forth the final version of the plan as so approved.

Report to Congress.

“(c) No demonstration project under this section may provide for a waiver of—

“(1) any provision of chapter 63 or subpart G of this title; 5 USC 6301,

“(2) (A) any provision of law referred to in section 2302(b) (1) of this title; or 8101.

Ante, p. 1114.

“(B) any provision of law implementing any provision of law referred to in section 2302(b) (1) of this title by—

“(i) providing for equal employment opportunity through affirmative action; or

“(ii) providing any right or remedy available to any employee or applicant for employment in the civil service;

“(3) any provision of chapter 15 or subchapter III of chapter 73 of this title;

5 USC 1501.

5 USC 7321.

“(4) any rule or regulation prescribed under any provision of law referred to in paragraph (1), (2), or (3) of this subsection; or

“(5) any provision of chapter 23 of this title, or any rule or regulation prescribed under this title, if such waiver is inconsistent with any merit system principle or any provision thereof relating to prohibited personnel practices.

Ante, p. 1113.

“(d) (1) Each demonstration project shall—

“(A) involve not more than 5,000 individuals other than individuals in any control groups necessary to validate the results of the project; and

“(B) terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that the project may continue beyond the date to the extent necessary to validate the results of the project.

Termination.

“(2) Not more than 10 active demonstration projects may be in effect at any time.

“(e) Subject to the terms of any written agreement or contract between the Office and an agency, a demonstration project involving the agency may be terminated by the Office, or the agency, if either determines that the project creates a substantial hardship on, or is not in the best interests of, the public, the Federal Government, employees, or eligibles.

“(f) Employees within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of this title shall not be included within any project under subsection (a) of this section—

Post, p. 1191.

“(1) if the project would violate a collective bargaining agreement (as defined in section 7103(8) of this title) between the agency and the labor organization, unless there is another written agreement with respect to the project between the agency and the organization permitting the inclusion; or

Post, p. 1192.

“(2) if the project is not covered by such a collective bargaining agreement, until there has been consultation or negotiation, as appropriate, by the agency with the labor organization.

“(g) Employees within any unit with respect to which a labor organization has not been accorded exclusive recognition under Chapter 71 of this title shall not be included within any project under subsection (a) of this section unless there has been agency consultation regarding the project with the employees in the unit.

Evaluations.

“(h) The Office shall provide for an evaluation of the results of each demonstration project and its impact on improving public management.

“(i) Upon request of the Director of the Office of Personnel Management, agencies shall cooperate with and assist the Office, to the extent practicable, in any evaluation undertaken under subsection (h) of this section and provide the Office with requested information and reports relating to the conducting of demonstration projects in their respective agencies.

“§ 4704. Allocation of funds

“Funds appropriated to the Office of Personnel Management for the purpose of this chapter may be allocated by the Office to any agency conducting demonstration projects or assisting the Office in conducting such projects. Funds so allocated shall remain available for such period as may be specified in appropriation Acts. No contract shall be entered into under this chapter unless the contract has been provided for in advance in appropriation Acts.

“§ 4705. Reports

5 USC 1308.

“The Office of Personnel Management shall include in the annual report required by section 1308(a) of this title a summary of research programs and demonstration projects conducted during the year covered by the report, the effect of the programs and projects on improving public management and increasing Government efficiency, and recommendations of policies and procedures which will improve such management and efficiency.

“§ 4706. Regulations

“The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter.”

(b) The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 45 the following new item:

“47. Personnel Research Programs and Demonstration Projects..... 4701”.

INTERGOVERNMENTAL PERSONNEL ACT AMENDMENTS

SEC. 602. (a) Section 208 of the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728) is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

“TRANSFER OF FUNCTIONS AND ADMINISTRATION OF MERIT POLICIES”;

(2) by redesignating subsections (b), (c), (d), (e), and (f) as subsections (c), (d), (e), (f), and (g), respectively, and by inserting after subsection (a) the following new subsection:

“(b) In accordance with regulations of the Office of Personnel Management, Federal agencies may require as a condition of participation in assistance programs, systems of personnel administration consistent with personnel standards prescribed by the Office for positions engaged in carrying out such programs. The standards shall—

“(1) include the merit principles in section 2 of this Act;

“(2) be prescribed in such a manner as to minimize Federal intervention in State and local personnel administration.”; and

(3) by striking out the last subsection and inserting in lieu thereof the following new subsection:

“(h) Effective one year after the date of the enactment of the Civil Service Reform Act of 1978, all statutory personnel requirements established as a condition of the receipt of Federal grants-in-aid by State and local governments are hereby abolished, except—

Grants-in-aid,
abolition of
certain
requirements.

“(1) requirements prescribed under laws and regulations referred to in subsection (a) of this section;

“(2) requirements that generally prohibit discrimination in employment or require equal employment opportunity;

“(3) the Davis-Bacon Act (40 U.S.C. 276 et seq.); and

“(4) chapter 15 of title 5, United States Code, relating to political activities of certain State and local employees.”

40 USC
276a-276a-5.

(b) Section 401 of such Act (84 Stat. 1920) is amended by striking out “governments and institutions of higher education” and inserting in lieu thereof “governments, institutions of higher education, and other organizations”.

5 USC 3371 note.

(c) Section 403 of such Act (84 Stat. 1925) is amended by inserting “(a)” after “403.”, and by adding at the end thereof the following new subsection:

“(b) Effective beginning on the effective date of the Civil Service Reform Act of 1978, the provisions of section 314(f) of the Public Health Service Act (42 U.S.C. 246(f)) applicable to commissioned officers of the Public Health Service Act are hereby repealed.”

(d) Section 502 of such Act (42 U.S.C. 4762) is amended in paragraph (3) by inserting “the Trust Territory of the Pacific Islands,” before “and a territory or possession of the United States.”

(e) Section 506 of such Act (42 U.S.C. 4766) is amended—

(1) in subsection (b) (2), by striking out “District of Columbia” and inserting in lieu thereof “District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands”; and

(2) in subsection (b) (5), by striking out “and the District of Columbia” and inserting in lieu thereof “, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands”.

AMENDMENTS TO THE MOBILITY PROGRAM

Sec. 603. (a) Section 3371 of title 5, United States Code, is amended—

(1) by inserting “the Trust Territory of the Pacific Islands,” after “Puerto Rico,” in paragraph (1) (A); and

(2) by striking out “and” at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting a semicolon in lieu thereof, and by adding at the end thereof the following:

“(3) ‘Federal agency’ means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management; and

“Federal
agency.”

"Organization."

"(4) 'other organization' means—

"(A) a national, regional, State-wide, area-wide, or metropolitan organization representing member State or local governments;

"(B) an association of State or local public officials; or

"(C) a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, educational, or development services, or related services, to governments or universities concerned with public management."

(b) Sections 3372 through 3375 of title 5, United States Code, are amended by striking out "executive agency" and "an executive agency" each place they appear and inserting in lieu thereof "Federal agency" and "a Federal agency", respectively.

(c) Section 3372 of title 5, United States Code, is further amended—

(1) in subsection (a) (1), by inserting after "agency" the following: "other than a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character,";

(2) in subsection (b) (1), by striking out "and";

(3) in subsection (b) (2), by striking out the period after "agency" and inserting in lieu thereof a semicolon;

(4) by adding at the end of subsection (b) the following:

"(3) an employee of a Federal agency to any other organization; and

"(4) an employee of an other organization to a Federal agency.";

(5) by adding at the end thereof (as amended in paragraph (4) of this subsection) the following new subsection:

"(c) (1) An employee of a Federal agency may be assigned under this subchapter only if the employee agrees, as a condition of accepting an assignment under this subchapter, to serve in the civil service upon the completion of the assignment for a period equal to the length of the assignment.

"(2) Each agreement required under paragraph (1) of this subsection shall provide that in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the head of the Federal agency from which assigned) the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount shall be treated as a debt due the United States."

(d) Section 3374 of title 5, United States Code, is further amended—

(1) by adding at the end of subsection (b) the following new sentence:

"The above exceptions shall not apply to non-Federal employees who are covered by chapters 83, 87, and 89 of this title by virtue of their non-Federal employment immediately before assignment and appointment under this section.";

(2) in subsection (c) (1), by striking out the semicolon at the end thereof and by inserting in lieu thereof the following: "except to the extent that the pay received from the State or local government is less than the appropriate rate of pay which the

duties would warrant under the applicable pay provisions of this title or other applicable authority;"; and

(3) by striking out the period at the end of subsection (c) and inserting in lieu thereof the following: "or for the contribution of the State or local government, or a part thereof, to employee benefit systems."

(e) Section 3375(a) of title 5, United States Code, is further amended by striking out "and" at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following:

"(5) section 5724a(b) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and".

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—

“(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.

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.

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

Report to
President.

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.

Petition.

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

“(1) by any person alleging—

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

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

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

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

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;

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“(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.***Ante*, p. 1114.**“(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—****“(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;****“(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;****“(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;****“(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;****“(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;****“(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;****“(7) (A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or****“(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or****“(8) to otherwise fail or refuse to comply with any provision of this chapter.**

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere 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—

"(A) of the charge;

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

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

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

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

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

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

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

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

Regulations.

Complaint.

Hearing.

- 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.** “(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—

Strike.

“(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.

Ante, p. 1140.

Ante, p. 1133,
1136.

Ante, p. 1138.

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

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

“(2) In matters covered under 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.

Ante, p. 1143.

“(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.

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

“(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—

5 USC 3105.

“(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.”.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 703. (a) Subchapter II of chapter 71 of title 5, United States Code, is amended—

(1) by redesignating sections 7151 (as amended by section 310 of this Act), 7152, 7153, and 7154 as sections 7201, 7202, 7203, and 7204, respectively;

Ante, p. 1191.

Ante, p. 1138.

5 USC 5551,
5552.

Ante, p. 1192.

5 USC 7152-
7154, 7201-
7204.

(2) by striking out the subchapter heading and inserting in lieu thereof the following:

“CHAPTER 72—ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS

“SUBCHAPTER I—ANTIDISCRIMINATION IN EMPLOYMENT

- “Sec.
 “7201. Antidiscrimination policy; minority recruitment program.
 “7202. Marital status.
 “7203. Handicapping condition.
 “7204. Other prohibitions.

“SUBCHAPTER II—EMPLOYEES’ RIGHT TO PETITION CONGRESS

“7211. Employees’ right to petition Congress.”;

and

(3) by adding at the end thereof the following new subchapter:

“SUBCHAPTER II—EMPLOYEES’ RIGHT TO PETITION CONGRESS

“§ 7211. Employees’ right to petition Congress

5 USC 7211.

“The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.”

(b) The analysis for part III of title 5, United States Code, is amended by striking out—

“Subpart F—Employee Relations

“71. Policies..... 7101”;

and inserting in lieu thereof—

“Subpart F—Labor-Management and Employee Relations

“71. Labor-Management Relations..... 7101
 “72. Antidiscrimination; Right to Petition Congress..... 7201”.

(c) (1) Section 2105 (c) (1) of title 5, United States Code, is amended by striking out “7152, 7153” and inserting in lieu thereof “7202, 7203”.

(2) Section 3302 (2) of title 5, United States Code, is amended by striking out “and 7154” and inserting in lieu thereof “and 7204”.

(3) Sections 4540 (c), 7212 (a), and 9540 (c) of title 10, United States Code, are each amended by striking out “7154 of title 5” and inserting in lieu thereof “7204 of title 5”.

(4) Section 410 (b) (1) of title 39, United States Code, is amended by striking out “chapters 71 (employee policies)” and inserting in lieu thereof the following: “chapters 72 (antidiscrimination; right to petition Congress)”.

(5) Section 1002 (g) of title 39, United States Code, is amended by striking out “section 7102 of title 5” and inserting in lieu thereof “section 7211 of title 5”.

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following clause:

“(124) Chairman, Federal Labor Relations Authority.”.

(e) Section 5316 of such title is amended by adding at the end thereof the following clause: 5 USC 5316.

“(145) Members, Federal Labor Relations Authority (2) and its General Counsel.”.

MISCELLANEOUS PROVISIONS

- 5 USC 5343 note. **SEC. 704.** (a) Those terms and conditions of employment and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92-392 applies which were the subject of negotiation in accordance with prevailing rates and practices prior to August 19, 1972, shall be negotiated on and after the date of the enactment of this Act in accordance with the provisions of section 9(b) of Public Law 92-392 without regard to any provision of chapter 71 of title 5, United States Code (as amended by this title), to the extent that any such provision is inconsistent with this paragraph.
- 5 USC 5343 note. (b) The pay and pay practices relating to employees referred to in paragraph (1) of this subsection shall be negotiated in accordance with prevailing rates and pay practices without regard to any provision of—
- Ante*, p. 1191. (A) chapter 71 of title 5, United States Code (as amended by this title), to the extent that any such provision is inconsistent with this paragraph;
- 5 USC 5301, (B) subchapter IV of chapter 53 and subchapter V of chapter 55 of title 5, United States Code; or
5501. (C) any rule, regulation, decision, or order relating to rates of pay or pay practices under subchapter IV of chapter 53 or subchapter V of chapter 55 of title 5, United States Code.

TITLE VIII—GRADE AND PAY RETENTION

GRADE AND PAY RETENTION

- 5 USC 5301. **SEC. 801.** (a) (1) Chapter 53 of title 5, United States Code, relating to pay rates and systems, is amended by inserting after subchapter V thereof the following new subchapter:

“SUBCHAPTER VI—GRADE AND PAY RETENTION

- 5 USC 5361. “§ 5361. Definitions
- 5 USC 5342. “For the purpose of this subchapter—
- 5 USC 5102. “(1) ‘employee’ means an employee to whom chapter 51 of this title applies, and a prevailing rate employee, as defined by section 5342(a)(2) of this title, whose employment is other than on a temporary or term basis;
- 5 USC 5102. “(2) ‘agency’ has the meaning given it by section 5102 of this title;
- 5 USC 5343. “(3) ‘retained grade’ means the grade used for determining benefits to which an employee to whom section 5362 of this title applies is entitled;
- 5 USC 5343. “(4) ‘rate of basic pay’ means, in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343 of this title;
- Ante*, p. 1180. “(5) ‘covered pay schedule’ means the General Schedule, any prevailing rate schedule established under subchapter IV of this chapter, or the merit pay system under chapter 54 of this title;
- 5 USC 5343. “(6) ‘position subject to this subchapter’ means any position under a covered pay schedule; and
- 5 USC 5343. “(7) ‘reduction-in-force procedures’ means procedures applied in carrying out any reduction in force due to a reorganization, due to lack of funds or curtailment of work, or due to any other factor.

***§ 5362. Grade retention following a change of positions or reclassification** 5 USC 5362.

“(a) Any employee—

“(1) who is placed as a result of reduction-in-force procedures from a position subject to this subchapter to another position which is subject to this subchapter and which is in a lower grade than the previous position, and

“(2) who has served for 52 consecutive weeks or more in one or more positions subject to this subchapter at a grade or grades higher than that of the new position,
is entitled, to the extent provided in subsection (c) of this section, to have the grade of the position held immediately before such placement be considered to be the retained grade of the employee in any position he holds for the 2-year period beginning on the date of such placement.

“(b) (1) Any employee who is in a position subject to this subchapter and whose position has been reduced in grade is entitled, to the extent provided in subsection (c) of this section, to have the grade of such position before reduction be treated as the retained grade of such employee for the 2-year period beginning on the date of the reduction in grade.

“(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any reduction in the grade of a position which had not been classified at the higher grade for a continuous period of at least one year immediately before such reduction.

“(c) For the 2-year period referred to in subsections (a) and (b) of this section, the retained grade of an employee under such subsection (a) or (b) shall be treated as the grade of the employee's position for all purposes (including pay and pay administration under this chapter and chapters 54 and 55 of this title, retirement and life insurance under chapters 83 and 87 of this title, and eligibility for training and promotion under this title) except—

“(1) for purposes of subsection (a) of this section,

“(2) for purposes of applying any reduction-in-force procedures,

“(3) for purposes of determining whether the employee is covered by the merit pay system established under section 5402 of this title, or

“(4) for such other purposes as the Office of Personnel Management may provide by regulation.

“(d) The foregoing provisions of this section shall cease to apply to an employee who—

“(1) has a break in service of one workday or more;

“(2) is demoted (determined without regard to this section) for personal cause or at the employee's request;

“(3) is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

“(4) elects in writing to have the benefits of this section terminate.

***§ 5363. Pay retention**

5 USC 5363.

“(a) Any employee—

“(1) who ceases to be entitled to the benefits of section 5362 of this title by reason of the expiration of the 2-year period of coverage provided under such section;

“(2) who is in a position subject to this subchapter and who is subject to a reduction or termination of a special rate of pay established under section 5303 of this title; or

5 USC 5303.

Ante, p. 1180.
5 USC 5501.
5 USC 8301,
8701.

Ante, p. 1181.

“(3) who is in a position subject to this subchapter and who (but for this section) would be subject to a reduction in pay under circumstances prescribed by the Office of Personnel Management by regulation to warrant the application of this section; is entitled to basic pay at a rate equal to (A) the employee’s allowable former rate of basic pay, plus (B) 50 percent of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee’s position immediately after such reduction in pay if such allowable former rate exceeds such maximum rate for such grade.

“(b) For the purpose of subsection (a) of this section, ‘allowable former rate of basic pay’ means the lower of—

“(1) the rate of basic pay payable to the employee immediately before the reduction in pay; or

“(2) 150 percent of the maximum rate of basic pay payable for the grade of the employee’s position immediately after such reduction in pay.

“(c) The preceding provisions of this section shall cease to apply to an employee who—

“(1) has a break in service of one workday or more;

5 USC 5101,
5301.
Ante, p. 1180.

“(2) is entitled by operation of this subchapter or chapter 51, 53, or 54 of this title to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under this section; or

“(3) is demoted for personal cause or at the employee’s request.

5 USC 5364.

“§ 5364. Remedial actions

“Under regulations prescribed by the Office of Personnel Management, the Office may require any agency—

“(1) to report to the Office information with respect to vacancies (including impending vacancies);

“(2) to take such steps as may be appropriate to assure employees receiving benefits under section 5362 or 5363 of this title have the opportunity to obtain necessary qualifications for the selection to positions which would minimize the need for the application of such sections;

“(3) to establish a program under which employees receiving benefits under section 5362 or 5363 of this title are given priority in the consideration for or placement in positions which are equal to their retained grade or pay; and

“(4) to place certain employees, notwithstanding the fact their previous position was in a different agency, but only in circumstances in which the Office determines the exercise of such authority is necessary to carry out the purpose of this section.

5 USC 5365.

“§ 5365. Regulations

“(a) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

“(b) Under such regulations, the Office may provide for the application of all or portions of the provisions of this subchapter—

“(1) to any individual reduced to a grade of a covered pay schedule from a position not subject to this subchapter;

“(2) to individuals to whom such provisions do not otherwise apply; and

“(3) to situations the application to which is justified for purposes of carrying out the mission of the agency or agencies involved.

§ 5366. Appeals

5 USC 5366.

“(a) (1) In the case of the termination of any benefits available to an employee under this subchapter on the grounds such employee declined a reasonable offer of a position the grade or pay of which was equal to or greater than his retained grade or pay, such termination may be appealed to the Office of Personnel Management under procedures prescribed by the Office.

“(2) Nothing in this subchapter shall be construed to affect the right of any employee to appeal—

“(A) under section 5112(b) or 5346(c) of this title, or otherwise, any reclassification of a position; or

“(B) under procedures prescribed by the Office of Personnel Management, any reduction-in-force action.

“(b) For purposes of any appeal procedures (other than those described in subsection (a) of this section) or any grievance procedure negotiated under the provisions of chapter 71 of this title—

“(1) any action which is the basis of an individual's entitlement to benefits under this subchapter, and

“(2) any termination of any such benefits under this subchapter, shall not be treated as appealable under such appeals procedures or grievable under such grievance procedure.”

Ante, p. 1192.

(2) Sections 5334(d), 5337, and 5345 of title 5, United States Code, are hereby repealed. Repeal.

(3) (A) Chapter 53 of title 5, United States Code, is amended—

(i) by redesignating subchapter VI as subchapter VII, and

(ii) by redesignating sections 5361 through 5365 as sections 5371 through 5375, respectively.

(B) (i) The analysis of chapter 53 of title 5, United States Code, is amended by striking out the items relating to subchapter VI thereof and inserting in lieu thereof the following:

“SUBCHAPTER VI—GRADE AND PAY RETENTION

“Sec.

“5361. Definitions.

“5362. Grade retention following a change of positions or reclassification.

“5363. Pay retention.

“5364. Remedial actions.

“5365. Regulations.

“5366. Appeals.

“SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

“Sec.

“5371. Scientific and professional positions.

“5372. Administrative law judges.

“5373. Limitation on pay fixed by administrative action.

“5374. Miscellaneous positions in the executive branch.

“5375. Police force of National Zoological Park.”

(ii) The analysis of such chapter is further amended by striking out the items relating to sections 5337 and 5345, respectively.

(iii) Sections 559 and 1305 of title 5, United States Code, are each amended by striking out “5362,” each place it appears and inserting “5372,” in lieu thereof.

(C) Section 3104(b) of title 5, United States Code, as redesignated by this Act, is amended by striking out “section 5361” and inserting “section 5371” in lieu thereof.

Ante, p. 1178.

(D) Section 5102(c)(5) of title 5, United States Code, is amended by striking out “section 5365” and inserting “section 5375” in lieu thereof.

- (E) Sections 5107 and 8704(d)(1) of title 5, United States Code, are each amended by striking out "section 5337" and inserting in lieu thereof "subchapter VI of chapter 53".
- 5 USC 5361. (F) Section 5334(b) of title 5, United States Code, is amended by striking out "section 5337 of this title" each place it appears and inserting in lieu thereof "subchapter VI of this chapter".
- (G) Section 5334 of title 5, United States Code, is amended by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.
- (H) Section 5349(a) of title 5, United States Code, is amended—
- (i) by striking out "section 5345, relating to retention of pay," and inserting in lieu thereof "subchapter VI of this chapter, relating to grade and pay retention,";
 - (ii) by striking out "section 5345 of this title" and inserting in lieu thereof "subchapter VI of this chapter"; and
 - (iii) by striking out "paragraph (2) of section 5345(a)" and inserting in lieu thereof "section 5361(1)".
- Ante*, p. 1218.
- (I) Sections 4540(c), 7212(a), and 9540(c) of title 10, United States Code, are each amended by inserting after "of title 5" the following: "and subchapter VI of chapter 53 of such title 5".
- (J) Section 1416(a) of the Act of August 1, 1968 (Public Law 90-448; 15 U.S.C. 1715(a)), and section 808(c) of the Act of April 11, 1968 (Public Law 90-284; 42 U.S.C. 3608(b)), are each amended by striking out "5362," and inserting in lieu thereof "5372,".
- 5 USC 5361 note. (4) (A) The amendments made by this subsection shall take effect on the first day of the first applicable pay period beginning on or after the 90th day after the date of the enactment of this Act.
- (B) An employee who was receiving pay under the provisions of section 5334(d), 5337, or 5345 of title 5, United States Code, on the day before the effective date prescribed in subparagraph (A) of this paragraph shall not have such pay reduced or terminated by reason of the amendments made by this subsection and, unless section 5362 of such title 5 (as amended by subsection (a)(1) of this section) applies, such an employee is entitled to continue to receive pay as authorized by those provisions (as in effect on such date).
- Ante*, p. 1218.
- 5 USC 5362 note. (b)(1) Under regulations prescribed by the Office of Personnel Management, any employee—
- (A) whose grade was reduced on or after January 1, 1977, and before the effective date of the amendments made by subsection (a) of this section under circumstances which would have entitled the employee to coverage under the provisions of section 5362 of title 5, United States Code (as amended by subsection (a) of this section) if such amendments had been in effect at the time of the reduction; and
 - (B) who has remained employed by the Federal Government from the date of the reduction in grade to the effective date of the amendments made by subsection (a) of this section without a break in service of one workday or more;
- shall be entitled—
- (i) to receive the additional pay and benefits which such employee would have been entitled to receive if the amendments made by subsection (a) of this section had been in effect during the period beginning on the effective date of such reduction in grade and ending on the day before the effective date of such amendments, and
 - (ii) to have the amendments made by subsection (a) of this section apply to such employee as if the reduction in grade had occurred on the effective date of such amendments.

(2) No employee covered by this subsection whose reduction in grade resulted in an increase in pay shall have such pay reduced by reason of the amendments made by subsection (a) of this section.

(3) (A) For purposes of this subsection, the requirements under paragraph (1) (B) of this subsection, relating to continuous employment following reduction in grade, shall be considered to be met in the case of any employee—

(i) who separated from service with a right to an immediate annuity under chapter 83 of title 5, United States Code, or under another retirement system for Federal employees; or

(ii) who died.

(B) Amounts payable by reason of subparagraph (A) of this paragraph in the case of the death of an employee shall be paid in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code, relating to settlement of accounts in the case of deceased employees.

(4) The Office of Personnel Management shall have the same authority to prescribe regulations under this subsection as it has under section 5365 of title 5, United States Code, with respect to subchapter VI of chapter 53 of such title, as added by subsection (a) of this section.

5 USC 8301 *et seq.*

Ante, p. 1184.

TITLE IX—MISCELLANEOUS

STUDY ON DECENTRALIZATION OF GOVERNMENTAL FUNCTIONS

SEC. 901. (a) As soon as practicable after the effective date of this Act, the Director of the Office of Management and Budget shall conduct a detailed study concerning the decentralization of Federal governmental functions.

(b) The study to be conducted under subsection (a) of this section shall include—

(1) a review of the existing geographical distribution of Federal governmental functions throughout the United States, including the extent to which such functions are concentrated in the District of Columbia; and

(2) a review of the possibilities of distributing some of the functions of the various Federal agencies currently concentrated in the District of Columbia to field offices located at points throughout the United States.

Interested parties, including heads of agencies, other Federal employees, and Federal employee organizations, shall be allowed to submit views, arguments, and data in connection with such study.

(c) Upon completion of the study under subsection (a) of this section, and in any event not later than one year after the effective date of this Act, the Director of the Office of Management and Budget shall submit to the President and to the Congress a report on the results of such study together with his recommendations. Any recommendation which involves the amending of existing statutes shall include draft legislation.

Study.
31 USC 18 note.

Report to OMB,
President and
Congress.

SAVINGS PROVISIONS

SEC. 902. (a) Except as otherwise provided in this Act, all executive orders, rules, and regulations affecting the Federal service shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed by the President, the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority with respect to matters within their respective jurisdictions.

5 USC 1101 note.

(b) No provision of this Act shall affect any administrative proceedings pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

(c) No suit, action, or other proceeding lawfully commenced by or against the Director of the Office of Personnel Management or the members of the Merit Systems Protection Board, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act, shall abate by reason of the enactment of this Act. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act had not been enacted.

AUTHORIZATION OF APPROPRIATIONS

5 USC 5509 note. SEC. 903. There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act.

POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS PROVISIONS

5 USC 1101 note. SEC. 904. Except as otherwise expressly provided in this Act, no provision of this Act shall be construed to—

(1) limit, curtail, abolish, or terminate any function of, or authority available to, the President which the President had immediately before the effective date of this Act; or

(2) limit, curtail, or terminate the President's authority to delegate, redelegate, or terminate any delegation of functions.

REORGANIZATION PLANS

5 USC 1101 note. SEC. 905. Any provision in either Reorganization Plan Numbered 1 or 2 of 1978 inconsistent with any provision in this Act is hereby superseded.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 906. (a) Title 5, United States Code, is amended—

(1) in section 5347, 8713, and 8911, by striking out "Chairman of the Civil Service Commission" and inserting in lieu thereof "Director of the Office of Personnel Management";

(2) in sections 1301, 1302, 1304, 1308, 2105, 2951, 3110, 3304a, 3308, 3312, 3314, 3318, 3324, 3325, 3344, 3351, 3363, 3373, 3502, 3504, 4102, 4106, 4113-4118, 5102, 5103, 5105, 5107, 5110-5115, 5303, 5304, 5333, 5334, 5335(b), 5336, 5338, 5343, 5346, 5347, 5351, 5352, 5371 (as redesignated in section 801(a)(3)(A)(ii) of this Act), 5372 (as redesignated in such section 801(a)(3)(A)(ii)), 5374 (as redesignated in such section 801(a)(3)(A)(ii)), 5504, 5533, 5545, 5548, 5723, 6101, 6304-6306, 6308, 6311, 6322, 6326, 7203 (as redesignated in section 703(a)(1) of this Act), 7204 (as redesignated in such section 703(a)(1)), 7312, 8151, 8331, 8332, 8334, 8337, 8339-8343, 8345, 8346, 8347(a), 8348, 8501, 8701-8712, 8714, 8714a, 8716, 8901-8903, 8905, 8907-8910, and 8913, by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management";

Ante, p. 1218.

Ante, p. 1216.

(3) in sections 1302, 1304, 1308, 2951, 3304a, 3308, 3312, 3317b, 3318, 3324, 3351, 3363, 3504, 4106, 4113-4115, 4117, 4118, 5105, 5107, 5110-5112, 5114, 5333, 5343, 5346, 5545, 5548, 5723, 6304, 6405, 7312, 8331, 8332, 8337, 8339-8343, 8345, 8346, 8347(a)-(c)

and (e)-(h), 8348, 8702, 8704-8707, 8709-8712, 8714a, 8716, 8901-8903, 8905, 8907, 8909, 8910, and 8913 (as such sections are amended in paragraph (2) of this subsection), by striking out "Commission" each place it appears and inserting in lieu thereof "Office";

(4) in sections 1303, 8713 (as amended in paragraph (1) of this subsection), and 8911 (as amended in such paragraph), by striking out "Commission" and inserting in lieu thereof "Office";

(5) in section 3304(d), by striking out "a Civil Service Commission board of examiners" and inserting in lieu thereof "the Office of Personnel Management";

(6) in sections 1505-1508 and 3383, by striking out "Civil Service Commission" and "Commission" each place they appear and inserting in lieu thereof "Merit Systems Protection Board" and "Board", respectively;

(7) in section 1504, by striking out "Civil Service Commission. On receipt of the report, or on receipt of other information which seems to the Commission to warrant an investigation, the Commission shall" and inserting in lieu thereof the following: "Special Counsel. On receipt of the report or on receipt of other information which seems to the Special Counsel to warrant an investigation, the Special Counsel shall investigate the report and such other information and present his findings and any charges based on such findings to the Merit Systems Protection Board, which shall".

(8) in section 5335(c)—

(A) by striking out "Commission" the first place it appears and inserting in lieu thereof "Office of Personnel Management";

(B) by striking out "Commission" the second place it appears and inserting in lieu thereof "Merit Systems Protection Board";

(C) by striking out "Commission" the third place it appears and inserting in lieu thereof "Office"; and

(D) by striking out "Commission" the fourth place it appears and inserting in lieu thereof "Board";

(9) in section 8347(d), by striking out "Commission" the first place it appears and inserting in lieu thereof "Merit Systems Protection Board" and by striking out "Commission" the second time it appears and inserting in lieu thereof "Board";

(10) in section 552(a)(4)(F)—

(A) by striking out "Civil Service Commission" and "Commission" each place they appear and inserting in lieu thereof "Special Counsel"; and

(B) by striking out "its" and inserting in lieu thereof "his";

(11) in section 1303—

(A) by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management, Merit Systems Protection Board, and Special Counsel"; and

(B) in paragraph (1), by striking out "Commission" and inserting in lieu thereof "Office of Personnel Management";

(12) in section 1305, by striking out "For the purpose of sections 3105, 3344, 4301(2)(E), 5362, and 7521 of this title and the provisions of section 5335(a)(B) of this title that relate to administrative law judges the Civil Service Commission may" and inserting in lieu thereof "For the purpose of section 3105, 3344, 4301(2)(D), and 5372 of this title and the provisions of

Ante, p. 1131,
1219, 1137.

- section 5335(a)(B) of this title that relate to administrative law judges, the Office of Personnel Management may, and for the purpose of section 7521 of this title, the Merit Systems Protection Board may”;
- Ante*, p. 1137. (13) in section 1306, to read as follows: “The Director of the Office of Personnel Management and authorized representatives of the Director may administer oaths to witnesses in matters pending before the Office.”;
- (14) in section 8344(a), by striking out “Commission” and inserting in lieu thereof “Office of Personnel Management”;
- (15) in section 8906, by striking out “Commission” each place it appears and inserting in lieu thereof “Office of Personnel Management” the first time it appears and “Office” the other times it appears;
- 5 USC 2901 *et seq.* (16) in the section heading for section 2951 and in the item relating to section 2951 in the analysis for chapter 29, by striking out “Civil Service Commission” and inserting in lieu thereof “Office of Personnel Management”; and
- (17) in the section heading for section 5112 and in the item relating to section 5112 in the analysis for chapter 51, by striking out “Civil Service Commission” and inserting in lieu thereof “Office of Personnel Management”.
- Repealed. (b) (1) Section 5109(b) of title 5, United States Code, is hereby repealed.
- (2) Section 5109 of such title is further amended by redesignating subsection (c) as subsection (b).
- Ante*, p. 1161. (c) (1) Subchapter VIII of chapter 33 of title 5, United States Code (as in effect immediately before the date of the enactment of this Act) is amended—
- (A) by striking out the subchapter heading and inserting in lieu thereof the following:
- “CHAPTER 34—PART-TIME CAREER EMPLOYMENT OPPORTUNITIES**
- “Sec.
 “3401. Definitions.
 “3402. Establishment of part-time career employment programs.
 “3403. Limitations.
 “3404. Personnel ceilings.
 “3405. Nonapplicability.
 “3406. Regulations.
 “3407. Reports.
 “3408. Employee organization representation.”;
- and
- (B) by redesignating sections 3391 through 3398 as sections 3401 through 3408, respectively.
- (2) (A) Section 3401 of such title 5 (as redesignated by this section) is amended by striking out “subchapter” and inserting in lieu thereof “chapter”.
- (B) Section 3402 of such title 5 (as redesignated by this section) is amended—
- (i) in subsection (a) (1) (B), by striking out “section 3393” and inserting in lieu thereof “section 3403”;
- (ii) in subsection (b) (1)—
- (I) by striking out “Civil Service Commission” and inserting in lieu thereof “Office of Personnel Management”; and
- (II) by striking out “subchapter” and inserting in lieu thereof “chapter”; and
- (iii) in subsection (b) (2), by striking out “Commission” and inserting in lieu thereof “Office”.

(C) Sections 3405 and 3406 of such title 5 (as redesignated by this section) are amended by striking out "subchapter" each place it occurs and inserting in lieu thereof "chapter".

(D) Section 3407(a) of such title 5 (as redesignated by this section) is amended—

(i) by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management";

(ii) in paragraph (1), by striking out "section 3392" and inserting in lieu thereof "section 3402"; and

(iii) in paragraph (2), by striking out "subchapter" and inserting in lieu thereof "chapter".

(E) Section 3407(b) of such title 5 (as redesignated by this section) is amended—

(i) by striking out "Commission" and inserting in lieu thereof "Office"; and

(ii) by striking out "subchapter" each place it appears and inserting in lieu thereof "chapter".

(F) Sections 8347(g), 8716(b)(3), 8913(b)(3), and 8906(b)(3) of such title 5 are each amended by striking out "section 3391(2)" and inserting in lieu thereof "section 3401(2)".

(G) Section 8716(b)(3) of such title 5 is amended by striking out "section 3391(2)" and inserting in lieu thereof "section 3401(2)".

(H) Section 8913(b)(3) of such title 5 is amended by striking out "section 3391(2)" and inserting in lieu thereof "section 3401(2)".

(3) Section 5 of the Federal Employees Part-Time Career Employment Act of 1978 is amended by striking out "section 3397(a)" and inserting in lieu thereof "section 3407(a)".

5 USC 3407 note.

(4) The analysis for chapter 33 of title 5, United States Code, is amended by striking out the items (as in effect immediately before the date of the enactment of this Act) following the item relating to section 3385.

(5) The chapter analysis for part III of title 5, United States Code is amended by inserting after the item relating to chapter 33 the following new item:

"34. Part-time career employment opportunities..... 3401".

EFFECTIVE DATE

Sec. 907. Except as otherwise expressly provided in this Act, the provisions of this Act shall take effect 90 days after the date of the enactment of this Act.

5 USC 1101 note.

Approved October 13, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-1403 accompanying H.R. 11280 (Comm. on Post Office and Civil Service) and No. 95-1717 (Comm. of Conference).

SENATE REPORTS: No. 95-969 (Comm. on Governmental Affairs) and No. 95-1272 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Aug. 11, H.R. 11280 considered in House.

Aug. 24, considered and passed Senate.

Sept. 7, 11, 13, H.R. 11280 considered and passed House; proceedings vacated and S. 2640; amended, passed in lieu.

Oct. 4, Senate agreed to conference report.

Oct. 5, 6, House agreed to conference report; receded from amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 14, No. 41:

Oct. 13, Presidential statement.

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95TH CONGRESS
1ST SESSION

H. R. 13

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1977

Mr. CLAY introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To provide for improved labor-management relations in the Federal service, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Service Labor-
4 Management Act of 1977".

5 SEC. 2. So much of subpart F of part III of title 5,
6 United States Code, as precedes subchapter II of chapter
7 71 thereof is amended to read as follows:

I

1 **“Subpart F.—LABOR-MANAGEMENT AND EMPLOYEE**
 2 **RELATIONS**

3 **“Chapter 71.—LABOR-MANAGEMENT RELATIONS**

“SUBCHAPTER I.—GENERAL PROVISIONS

“Sec.

“7101. Findings.

“7102. Employees’ rights.

“7103. Definitions; application.

“7104. Federal Labor Relations Authority.

“7105. Powers and duties of the Authority.

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

“Sec.

“7111. Exclusive recognition of labor organizations.

“7112. National consultation rights.

“7113. Representation rights and duties.

“7114. Allotments to representatives.

“7115. Unfair labor practices.

“7116. Prevention of unfair labor practices.

“7117. Negotiation impasses; Federal Service Impasses Panel.

“7118. Standards of conduct for labor organizations.

**“SUBCHAPTER III.—GRIEVANCES, APPEALS, AND
 REVIEW**

“Sec.

“7119. Appeals from adverse decisions.

“7120. Grievance procedures.

“7121. Exceptions to arbitral awards.

“7122. Judicial review.

**“SUBCHAPTER IV.—ADMINISTRATIVE AND
 OTHER PROVISIONS**

“Sec.

“7131. Reporting requirements for standards of conduct.

“7132. Official time.

“7133. Subpenas.

“7134. Compilation and publication of data.

“7135. Funding.

“7136. Issuance of regulations.

“7137. Continuation of existing laws, recognitions, agreements, and procedures.

4 **“SUBCHAPTER I.—GENERAL PROVISIONS**

5 **“§ 7101. Findings**

6 **“The Congress finds that the participation of employees**
 7 **through labor organizations of their own choosing, in the**

1 formulation and implementation of matters affecting con-
2 ditions of employment is in the public interest.

3 **“§ 7102. Employees’ rights**

4 “Each employee shall have the right to form, join, or
5 assist any labor organization, or to refrain from such activity,
6 freely and without fear of penalty or reprisal, and each such
7 employee shall be protected in his exercising of such right.
8 Except as otherwise provided under this chapter, such right
9 includes the right to participate in the management of a
10 labor organization, the right to act for the organization in
11 the capacity of a representative, and the right, in such
12 capacity, to present the views of the organization to agency
13 heads and other officials of the executive branch of the Gov-
14 ernment, the Congress, or other appropriate authorities; and
15 to bargain collectively over conditions of employment and
16 other matters of mutual concern relating thereto through
17 representatives of their own choosing and to engage in other
18 lawful activities for the purpose of establishing, maintaining,
19 and improving conditions of employment and other matters
20 of mutual concern relating thereto.

21 **“§ 7103. Definitions; application**

22 “(a) For the purpose of this chapter—

23 “(1) ‘person’ means an individual, labor organiza-
24 tion, or agency covered by this chapter;

25 “(2) ‘employee’ means an individual—

4

1 “(A) employed in an agency;

2 “(B) employed in a nonappropriated fund in-
3 strumentality described in section 2105 (c) of this
4 title;

5 “(C) employed in the Veterans’ Canteen Serv-
6 ice, Veterans’ Administration, described in section
7 5102 (c) (14) of this title; or

8 “(D) who was an employee (as defined under
9 subparagraph (A), (B), or (C) of this paragraph)
10 and was separated from service as a consequence
11 of, or in connection with, an unfair labor practice
12 under section 7115 of this title;

13 but does not include—

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

16 “(ii) a member of the uniformed services;

17 “(iii) for the purpose of exclusive recognition
18 or national consultation rights (except as author-
19 ized under the provisions of this chapter), a super-
20 visor or a management official; or

21 “(iv) an employee of the Tennessee Valley
22 Authority;

23 “(3) ‘labor organization’ means any organization
24 (including any national or international union, federa-
25 tion, council, or department, or any affiliate thereof),

5

1 composed in whole or in part of employees of an
2 agency, in which employees participate and pay dues,
3 and which has as its primary purpose the dealing with
4 an agency concerning grievances and the formulation
5 and implementation of matters affecting conditions of
6 employment, except that such term does not include—

7 “(A) an organization whose basic purpose is
8 purely social, fraternal, or limited to special interest
9 objectives which are only incidentally related to
10 matters affecting conditions of employment;

11 “(B) an organization which, by ritualistic
12 practice, constitution, bylaws, tacit agreement
13 among its members, or otherwise denies member-
14 ship because of race, color, creed, national origin,
15 sex, age, or preferential or nonpreferential civil
16 service status;

17 “(C) an organization sponsored or assisted by
18 an agency or by any part of any agency; or

19 “(D) an organization which consists of man-
20 agement officials or supervisors, except as author-
21 ized under this chapter;

22 “(4) ‘Authority’ means the Federal Labor Rela-
23 tions Authority established by section 7104 of this title;

24 “(5) ‘Panel’ means the Federal Service Impasses
25 Panel established by section 7117 (c) of this title;

1 “(6) ‘Board’ means the Federal Personnel Policy
2 Board established by section 7113 (e) of this title;

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

6 “(8) ‘grievance’ means any complaint by any
7 person—

8 “(A) concerning any matter relating to the
9 employment relationship with any agency;

10 “(B) concerning the effect or interpretation,
11 or a claim of breach, of an agreement; or

12 “(C) concerning any claimed violation, mis-
13 interpretation, or misapplication of law, rule, or
14 regulation, affecting conditions of employment;

15 “(9) ‘supervisor’ means any employee having
16 authority in the interest of an employer to hire, direct,
17 assign, promote, reward, transfer, lay off, recall, suspend,
18 discipline, or discharge other employees, or to adjust
19 their grievances, or to effectively recommend such action
20 if in connection with the foregoing the exercise of such
21 authority is not merely routine or clerical in nature but
22 calls for the consistent exercise of independent judgment;
23 except that with respect to firefighters and nurses the
24 term ‘supervisor’ shall include only those employees

1 who perform a preponderance of the above-specified acts
2 of authority;

3 “(10) ‘management official’ means an individual
4 who formulates, determines, effectively influences, or
5 effectuates policies of an agency, or who, in the per-
6 formance of his duties, has discretion to modify the
7 established policies of an agency;

8 “(11) ‘collective bargaining’ or ‘bargaining’ means
9 the performance of the mutual obligation of the repre-
10 sentatives of the agency and the exclusive representative
11 to meet at reasonable times and to confer, consult, and
12 bargain in a good-faith effort to reach agreement with
13 respect to the terms and conditions of employment and
14 other matters of mutual concern relating thereto, and to
15 execute, if requested by either party, a written document
16 incorporating any agreements reached, but such obliga-
17 tion does not compel either party to agree to a proposal
18 or to make a concession. The duty to bargain shall ex-
19 tend to matters which are or may be the subject of any
20 regulation. The agency may not make or apply rules or
21 regulations which restrict the scope of collective bargain-
22 ing permitted by this chapter or which are in conflict
23 with any agreement negotiated under this chapter;

24 “(12) ‘confidential employee’ means an employee

1 who acts in a confidential capacity to a person who for-
2 mulates or effectuates management policies in the field
3 of labor relations;

4 “(13) ‘conditions of employment’ means personnel
5 policies, practices, and matters affecting working condi-
6 tions, including, but not limited to—

7 “(A) pay practices;

8 “(B) work hours and schedules;

9 “(C) overtime practices;

10 “(D) safety;

11 “(E) promotion procedures and assignment,
12 transfer, detail, leave and reduction-in-force prac-
13 tices;

14 “(F) seniority;

15 “(G) procedures for taking disciplinary ac-
16 tions;

17 “(H) grievance and appeal procedures; and

18 “(I) all matters subject to negotiations in
19 any agency on, or prior to, the effective date of this
20 Act;

21 “(14) ‘professional employee’ means—

22 “(A) an employee engaged in the perform-
23 ance of work—

24 “(i) requiring knowledge of an advanced
25 type in a field of science or learning customarily

9

1 acquired by a prolonged course of specialized
2 intellectual instruction and study in an institu-
3 tion of higher learning or a hospital (as distin-
4 guished from knowledge acquired by a general
5 academic education, or from an apprenticeship,
6 or from training in the performance of routine
7 mental, manual, mechanical, or physical activ-
8 ities) ;

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

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

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

19 “ (B) an employee who has completed the
20 courses of specialized intellectual instruction and
21 study described in subparagraph (A) of this para-
22 graph and is performing related work under the
23 direction or guidance of a professional person to
24 qualify himself to become a professional employee;

1 “(15) ‘agency’ means any department, agency,
2 bureau, or organization of the United States Government
3 which employs employees as defined in subsection (a)
4 (2) of this section;

5 “(16) ‘exclusive representative’ includes any em-
6 ployee organization which has been—

7 “(A) selected or designated pursuant to the
8 provisions of section 7111 of this Act as the repre-
9 sentative of the employees in an appropriate collec-
10 tive bargaining unit; or

11 “(B) recognized by an agency prior to the
12 effective date of this Act as the exclusive representa-
13 tive of the employees in an appropriate collective
14 bargaining unit;

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

19 “(18) ‘educational employee’ includes any em-
20 ployee of a school system, college, or university, who—

21 “(A) has regular contact with students;

22 “(B) participates in the development, imple-
23 mentation, or evaluation of an educational program;

24 or

1 “(C) is otherwise involved in the teaching-
2 learning process.

3 “(b) This chapter does not authorize participation in the
4 management of a labor organization or acting as a repre-
5 sentative of such an organization by a management official
6 or a supervisor, except as specifically provided in this chap-
7 ter, or by an employee when the participation or activity
8 would result in a conflict or apparent conflict of interest or
9 would otherwise be incompatible with law or with the
10 official duties of the employee.

11 **“§ 7104. Federal Labor Relations Authority**

12 “(a) There is established the Federal Labor Relations
13 Authority.

14 “(b) The Authority shall be composed of a Chairman
15 and 2 other members. Not more than 2 of the members
16 shall be members of the same political party. A member
17 shall not engage in any other business or employment.

18 “(c) Members of the Authority shall be appointed by
19 the President, by and with the advice and consent of the
20 Senate. Authority members shall be eligible for reappoint-
21 ment. The President shall designate one member to serve
22 as Chairman of the Authority.

23 “(d) One of the original members of the Authority
24 shall be appointed for a term of 1 year, one for a term of

1 3 years, and the Chairman for a term of 5 years. There-
2 after, each member shall be appointed for a term of 5 years.
3 Notwithstanding the preceding provisions of this subsection,
4 the term of any member shall not expire before the earlier
5 of (1) the date on which his successor takes office or (2)
6 the last day of the session of the Congress beginning after
7 the date his term of office would (but for this sentence)
8 expire. An individual chosen to fill a vacancy shall be
9 appointed for the unexpired term of the member he re-
10 places. Any member of the Authority may be removed by
11 the President only for neglect of duty or malfeasance in
12 office.

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

16 “(f) The Authority shall make an annual report to the
17 President for transmittal to the Congress, which shall in-
18 clude information as to the cases it has heard and the deci-
19 sions it has rendered.

20 “(g) There shall be a General Counsel of the Authority
21 who shall be appointed by the President by and with the
22 advice and consent of the Senate for a term of 5 years. The
23 General Counsel shall be authorized to investigate alleged
24 violations of this chapter, to file and prosecute complaints
25 filed under this chapter, to intervene before the Authority

1 in unlawful act proceedings brought under section 7105 of
2 the chapter. He shall have direct authority over, and re-
3 sponsibility for, all field employees of the General Counsel in
4 the regional offices of the Authority. The General Counsel
5 shall exercise such other powers as the Authority may pre-
6 scribe. If a vacancy occurs in the Office of General Counsel,
7 the President shall promptly designate an Acting General
8 Counsel and shall submit a nomination for a replacement to
9 Congress within 40 days after the vacancy has occurred, un-
10 less Congress shall have adjourned before the expiration of
11 said 40-day period, in which event the President shall sub-
12 mit a nomination not later than ten days after Congress
13 reconvenes.

14 **“§ 7105. Powers and duties of the Authority**

15 “(a) The Authority shall provide leadership in estab-
16 lishing labor-management relations policy and guidance un-
17 der this chapter, and, except as otherwise provided, shall be
18 responsible for carrying out the purposes of this chapter.

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

21 “(c) The principal office of the Authority shall be in
22 the District of Columbia but it may meet and exercise any
23 or all of its powers at any time or place. Subject to sub-
24 section (g) of this section, the Authority may, by one or
25 more of its members or by such agents as it may designate,

1 make any inquiry necessary to carry out its duties wherever
2 persons subject to this chapter are located. A member who
3 participates in such inquiry shall not be disqualified from
4 later participating in a decision of the Authority in the same
5 case.

6 “(d) The Authority shall appoint an Executive Direc-
7 tor, such attorneys, regional directors, administrative law
8 judges, and other employees as it may from time to time
9 find necessary for the proper performance of its duties. No
10 administrative law judge’s report shall be reviewed, either
11 before or after its publication, by any person other than a
12 member of the Authority or his legal assistant, and no ad-
13 ministrative law judge shall advise or consult with the Au-
14 thority with respect to exceptions taken to his findings,
15 rulings, or recommendations.

16 “(e) The Authority may delegate to its Regional Di-
17 rectors, its powers under section 7111 to determine the unit
18 appropriate for the purpose of collective bargaining, to in-
19 vestigate and provide for hearings, to determine whether
20 a question of representation exists and to direct an election,
21 conduct a secret ballot election, and certify the results
22 thereof, except that upon the filing of a request therefore
23 with the Authority by any interested person, the Authority
24 may review any action of any Regional Director delegated
25 to him under this paragraph, but such review shall not,

1 unless specifically ordered by the Authority, operate as a
2 stay of any action taken by the Regional Director. The
3 Authority is also authorized to delegate to an administrative
4 law judge its powers under section 7115 to determine
5 whether any person has engaged in an unfair labor practice.

6 “(f) In the event the Authority exercises the power con-
7 ferred by subsection (e) of this section to delegate its powers
8 to a regional director or administrative law judge, it may,
9 upon application to it, review, and upon such review, modify,
10 affirm, or reverse the decision, certification, or order of such
11 regional director or administrative law judge. In event that
12 the Authority does not undertake to grant review within
13 thirty days after a request for review is filed, the decision of
14 the regional director or administrative law judge shall be-
15 come the decision of the Authority.

16 “(g) All of the expenses of the Authority, including all
17 necessary traveling and subsistence expenses outside the
18 District of Columbia incurred by members, employees, or
19 agents of the Authority under its orders, shall be allowed
20 and paid on the presentation of itemized vouchers therefor
21 approved by the Authority or by any individual it designated
22 for that purpose.

23 “(h) The Authority is expressly empowered and di-
24 rected to prevent any person from engaging in conduct in
25 violation of this chapter. In order to carry out its functions

1 under this chapter, the Authority is authorized to hold hear-
2 ings, subpoena witnesses, administer oaths, and take the
3 testimony or deposition of any person under oath, and in
4 connection therewith, to issue subpoenas requiring the pro-
5 duction and examination of any books or papers, including
6 those of the Federal Government, relating to any matter
7 pending before it and to take such other action as may be
8 necessary.

9 **"SUBCHAPTER II.—RIGHTS AND DUTIES OF**
10 **AGENCIES AND LABOR ORGANIZATIONS**

11 **"§ 7111. Exclusive recognition of labor organizations**

12 " (a) Exclusive recognition shall be granted to a labor
13 organization which has been selected by a majority of em-
14 ployees in an appropriate unit who participate in the elec-
15 tion in conformity with the requirements of this chapter.

16 " (b) Exclusive recognition shall not be accorded to
17 a labor organization if—

18 " (1) the Authority determines the labor orga-
19 nization is subject to corrupt influences or influences
20 opposed to democratic principles;

21 " (2) its petition is filed pursuant to subsection (c)
22 but is not supported by credible evidence demonstrating
23 that at least 30 per centum of the employees in the col-
24 lective bargaining unit described therein wish to be

1 represented for the purpose of collective bargaining
2 by the organization seeking recognition;

3 “(3) there is currently in effect, a lawful written
4 collective-bargaining agreement between such employer
5 and an employee organization other than the petitioner
6 covering any employees included in the unit described in
7 the petition, unless such agreement has been in effect
8 for more than 3 years, or unless the request for recogni-
9 tion is filed at least 60 days prior to the expiration date
10 of such agreement, or such greater number of days prior
11 to said expiration date as the Authority may determine
12 is reasonable because of the budget making procedure of
13 the agency;

14 “(4) within the previous 12 months an employee
15 organization other than the petitioner, or other than the
16 employee organization challenged if the petition is filed
17 pursuant to subsection (c) (1), has been lawfully rec-
18 ognized or certified as the exclusive representative of
19 any employees included in the unit described in petition;
20 or

21 “(5) the Authority has, within the previous twelve
22 months, conducted a secret ballot election involving any
23 of the employees and a majority of the valid ballots cast
24 opposed representation by any labor organization.

1 “(c) Whenever a petition has been filed with the
2 Authority—

3 “(1) by any person alleging that 30 per centum of
4 the employees in the appropriate unit (A) wish to be
5 represented for collective bargaining by an exclusive
6 representative, or (B) allege that the exclusive repre-
7 sentative is no longer the representative of the majority
8 of the employees in the unit; or

9 “(2) by any person seeking clarification of, or an
10 amendment to, an existing certification;

11 the Authority shall investigate such petition, and if it has
12 reasonable cause to believe that a question of representation
13 exists, it shall provide for an appropriate hearing on the rec-
14 ord upon due notice. Except as provided under subsection
15 (f) of this section, if the Authority finds upon the record of
16 such hearing that such a question of representation exists, it
17 shall conduct an election by secret ballot and shall certify the
18 results thereof. An election shall not be conducted in any
19 bargaining unit or in any subdivision thereof within which,
20 in the preceding 12-month period, a valid election has been
21 held.

22 “(d) A labor organization which—

23 “(1) has been designated by at least 10 per cen-
24 tum of the employees in the unit;

1 “(2) has submitted a valid copy of a current or re-
2 cently expired agreement for the unit; or

3 “(3) has submitted other evidence that it is the
4 exclusive representative of the employees involved;
5 may intervene with respect to a petition filed under sub-
6 section (c) of this section and shall be placed on the ballot
7 of any election ordered to be held under such subsection (c).

8 “(e) The Authority shall determine who is eligible to
9 vote in the election and shall establish rules governing the
10 election which shall include provisions allowing each em-
11 ployee eligible to vote the opportunity to choose the labor
12 organization he wishes to represent him from those on the
13 ballot or no union. In any election where no choice on the
14 ballot receives a majority, a runoff election shall be con-
15 ducted between the two choices receiving the largest number
16 of votes. A labor organization which receives the majority of
17 the votes cast in an election shall be certified by the Author-
18 ity as the exclusive representative.

19 “(f) The Authority may certify a labor organization
20 as an exclusive representative—

21 “(1) if it determines that the conditions for a free
22 and untrammled election under this section cannot
23 be established because an agency has engaged in or is

1 engaging in an action described in section 7115 of this
2 title; or

3 “(2) upon the petition of such labor organization,
4 if, after investigation, the Authority is satisfied that—

5 “(A) the labor organization represents a ma-
6 jority of employees in an appropriate unit;

7 “(B) such majority status was achieved with-
8 out the benefit of any action described in section
9 7115 of this title; and

10 “(C) no other person has filed a petition for
11 recognition under subsection (c) of this section or
12 a request for intervention under subsection (d) of
13 this section, and no other question of representation
14 exists in the appropriate unit.

15 “(g) The Authority shall decide in each case whether,
16 in order to insure employees the fullest freedom in exercising
17 the rights guaranteed under this chapter, the unit to be es-
18 tablished will be on an agency, plant, installation, func-
19 tional, or other basis which will insure a clear and identifiable
20 community of interest among the employees concerned.

21 “(h) A unit shall not be established solely on the basis
22 of the extent to which employees in the proposed unit have
23 organized, nor shall a unit be established if it includes—

24 “(1) Any management official or supervisor, ex-

1 cept as provided under section 7137 (a) of this title;
2 except that—

3 (A) with respect to firefighters, a unit that
4 includes both supervisors and nonsupervisors may
5 be considered; and

6 “(B) with respect to educational employees,
7 a unit that includes both supervisors and nonsuper-
8 visors may be considered appropriate if the ma-
9 jority of employees in each category indicate by
10 vote or other credible evidence that they desire to
11 be included in such units;

12 “(2) a confidential employee;

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

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

17 “(5) both professional and nonprofessional em-
18 ployees, unless a majority of the professional employees
19 vote for inclusion in the unit;

20 “(6) as determined by the Authority upon appli-
21 cation by the head of the agency—

22 “(A) any employee engaged in intelligence,
23 investigative, or security functions of the agency
24 which directly affects national security; or

22

1 “(B) any employee primarily engaged in in-
2 vestigation or audit functions relating to the work
3 of an agency’s officers or employees whose duties
4 directly affect the internal security of that agency
5 where such investigation or audit is undertaken to
6 insure that such duties are discharged honestly and
7 with integrity.

8 “(i) Two or more units for which the labor organiza-
9 tion holds exclusive recognition within the agency may be
10 consolidated into a single larger unit if the Authority deter-
11 mines the larger unit to be appropriate. The Authority
12 shall certify the labor organization as the exclusive repre-
13 sentative in the new unit when the unit is found appropriate.

14 “(j) A labor organization seeking exclusive recogni-
15 tion shall submit to the Authority and the agency a roster
16 of its officers and representatives, a copy of its constitution
17 and bylaws, and a statement of its objectives.

18 “(k) Nothing in this section shall be construed to
19 prohibit the waiving of hearings by stipulation for the pur-
20 pose of a consent election in conformity with regulations
21 and rules or decisions of the Authority.

22 “§ 7112. National consultation rights

23 “(a) A labor organization that has been granted exclu-
24 sive recognition below the agency level as the representative
25 of a substantial number of employees of the agency shall be

1 granted national consultation rights in accordance with cri-
2 teria prescribed by the Authority. The provisions of this
3 section shall not apply to any agency in which exclusive
4 recognition on an agency basis is in effect. National consulta-
5 tion rights shall terminate when the labor organization no
6 longer meets the criteria of the Authority. Any issue as to a
7 labor organization's eligibility for national consultation rights,
8 or the continuation of such rights, shall be subject to review
9 by the Authority.

10 “(b) A labor organization having national consultation
11 rights shall be informed of proposed changes in conditions of
12 employment and shall be permitted reasonable time to pre-
13 sent its views and to initiate proposals. Such proposals shall
14 receive consideration by the agency before final action is
15 taken, and the agency shall provide the organization a
16 written statement of the reasons for its actions.

17 **“§ 7113. Representation rights and duties**

18 “(a) When a labor organization has been accorded ex-
19 clusive recognition, it is the exclusive representative of
20 employees in the unit and is entitled to act for and nego-
21 tiate agreements covering all employees in the unit. It is
22 responsible for representing the interests of all employees
23 in the unit without discrimination and without regard to
24 labor organization membership. The labor organization shall
25 be given the opportunity to be represented at formal dis-

1 cussions between management and employees or employee
2 representatives concerning grievances, personnel policies and
3 practices, or other matters affecting general working condi-
4 tions of employees in the unit. The agency and the labor
5 organization, through appropriate representatives, shall meet
6 and negotiate in good faith for the purpose of arriving at an
7 agreement.

8 “(b) The duty of the agency and the labor organiza-
9 tion to negotiate in good faith includes—

10 “(1) to approach the negotiations with a sincere
11 resolve to reach an agreement;

12 “(2) to be represented at the negotiations by duly
13 authorized representatives prepared to discuss and nego-
14 tiate on all matters affecting conditions of employment;

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

18 (4) to furnish, in the case of information to be
19 furnished by an agency to the other party upon request,
20 data normally maintained in the regular course of busi-
21 ness, reasonably available and necessary for full and
22 proper discussion, understanding, and negotiation of
23 subjects within the scope of collective bargaining; and

24 “(5) if an agreement is reached, to execute upon
25 request a written document embodying the agreed terms,

1 and to take such steps as are necessary to implement the
2 agreement.

3 “(c) In all aspects of the collective-bargaining relation-
4 ship and the rights of any person established under or pur-
5 suant to this chapter, including the negotiation and admin-
6 istration of agreements, a person shall be governed by—

7 “(1) applicable laws; and

8 “(2) the terms of a controlling agreement at a
9 higher agency level.

10 “(d) (1) If a policy or regulation, or an amendment
11 thereto, affecting conditions of employment is to be issued
12 by the Civil Service Commission or any other agency and
13 relates to employees of more than one agency, then a copy
14 of the proposal shall be transmitted to the Board for con-
15 sideration under subsection (e) of this section.

16 “(2) If a policy or regulation, or an amendment thereto,
17 affecting conditions of employment, is to be issued by the
18 head of an agency or a management official and relates to
19 employees of the agency for which a labor organization holds
20 exclusive recognition at the agency level, then the proposal
21 shall be subject to negotiation with such labor organization.

22 “(3) If a policy or regulation, or an amendment there-
23 to, affecting conditions of employment is to be issued by the
24 head of an agency or by the head of a primary national
25 subdivision of an agency and relates to employees of such

1 agency or subdivision, as the case may be, and exclusive
2 recognition is not held by any labor organization for all
3 employees of such agency or subdivision, then the proposal
4 shall be issued in accordance with procedures and criteria
5 established by the Authority. An agency policy or regulation
6 affecting conditions of employment, other than those de-
7 scribed in this paragraph, may not bar negotiations.

8 “(e) (1) There is established a Federal Personnel
9 Policy Board. The Board shall consider policies and regu-
10 lations, and amendments thereto, described in subsection
11 (d) (1) of this section. The Board shall not have jurisdic-
12 tion over any matter which may be considered by any
13 other entity which is established by, or pursuant to, law and
14 which is required by, or pursuant to, law to allow partici-
15 pation by labor organizations in its considerations on such
16 matter.

17 “(2) The members of the Board shall be designated
18 by the Chairman of the Authority and shall consist of—

19 “(A) a Chairman;

20 “(B) 7 members from among management officials
21 of the agencies covered under this chapter after obtain-
22 ing the concurrence of the head of the agencies con-
23 cerned; and

24 “(C) 7 members from labor organizations holding

1 exclusive recognition under this chapter after obtaining
2 the concurrence of the labor organization concerned.

3 “(3) In designating management officials from among
4 agencies under paragraph (2) (B) of this subsection, the
5 Chairman of the Authority shall designate, as nearly as
6 practicable, a number of management officials from a par-
7 ticular agency in the same proportion to the number 7 as
8 the number of employees under exclusive recognition in that
9 agency bears to the total number of employees under exclu-
10 sive recognition under this chapter. However, there shall
11 not be more than 3 management officials from any one
12 agency.

13 “(4) In designating members from among labor
14 organizations under paragraph (2) (C) of this subsection,
15 the Chairman of the Authority shall designate, as nearly as
16 practicable, a number of members from a particular labor
17 organization in the same proportion to the number 7 as
18 the number of employees represented by such labor orga-
19 nization under exclusive recognition is to the total number
20 of employees under exclusive recognition. However, there
21 shall not be more than three members from any one labor
22 organization nor more than five from any one council,
23 federation, alliance, association, or affiliation of labor
24 organizations.

1 “(5) Every second year the Chairman of the Authority
2 shall review the number of employees under exclusive recog-
3 nition to determine adequate or proportional representation
4 under the guidelines of paragraphs (3) and (4) of this
5 subsection.

6 “(6) The Board shall meet at the call of the Chairman
7 for consideration of any proposal transmitted under subsec-
8 tion (d) (1) of this section not earlier than 15 days, nor
9 later than 30 days, after the date on which the proposal is
10 transmitted. The Board shall study the proposals presented to
11 it and shall submit its conclusions and recommendations to
12 the issuing agency which shall consider such conclusions and
13 recommendations before issuing the policy or recommenda-
14 tion, or amendment thereto, involved in such proposal. The
15 actions of the Board shall be formulated by majority vote and
16 the Chairman may vote only to break a tie.

17 “(7) If any 5 members of the Board wish to propose a
18 modification or an addition to an existing or proposed policy
19 or regulation described under subsection (d) (1) of this sec-
20 tion which relates to employees of more than one agency,
21 the members’ proposal shall be submitted to the Chairman
22 of the Board. The Chairman shall transmit a copy of the pro-
23 posal to each member of the Board and schedule a meeting
24 for consideration of the proposal in accordance with the pro-
25 cedures prescribed under paragraph (6) of this subsection.

1 “(8) Members of the Board described under paragraph
2 (2) (A) and (B) of this subsection serve without addi-
3 tional pay. Members who represent labor organizations are
4 not entitled to pay from the Government for services ren-
5 dered to the Board.

6 **“§ 7114. Allotments to representatives**

7 “(a) Where, pursuant to an agreement negotiated in
8 accordance with the provisions of this chapter, an agency has
9 received from an employee in a unit of written assignment
10 which authorizes the agency to deduct from the wages of
11 such employee amounts for the payment of regular and peri-
12 odic dues of a labor organization having exclusive recogni-
13 tion for such unit, such assignment shall be honored. The al-
14 lotments shall be made at no cost to the labor organization
15 or to the employee. Except as required under subsection (b)
16 of this section, any such assignment shall not be irrevocable
17 for a period of more than 1 year.

18 “(b) An allotment for the deduction of labor organiza-
19 tion dues terminates when—

20 “(1) the agreement between the agency and the
21 labor organization ceases to be applicable to the em-
22 ployee; or

23 “(2) the employee has been suspended or expelled
24 from the labor organization.

25 “(c) If an exclusive representative has been recognized

1 in an appropriate collective-bargaining unit, each employee
2 in such unit, who is not a member of the recognized orga-
3 nization shall be required, as a condition of continued em-
4 ployment, to pay to such organization for the period that it
5 is the exclusive representative an amount equal to the dues,
6 fees, and assessments that a member is charged. Such pay-
7 ments shall be made in accordance with rules and regula-
8 tions prescribed for such purposes by the Authority.

9 **“§ 7115. Unfair labor practices**

10 “(a) It shall be an unfair labor practice for an agency—

11 “(1) to interfere with, restrain, or coerce employees
12 in the exercise of rights assured by this chapter;

13 “(2) to encourage or discourage membership in any
14 labor organization by discrimination in regard to hiring,
15 tenure, promotion, or other conditions of employment;
16 except that nothing in this chapter, or in any statute of
17 the United States, shall preclude an agency from making
18 an agreement with a labor organization requiring as a
19 condition of continued employment the payment of a rep-
20 resentation fee equal to the amount of periodic dues uni-
21 formly required, on or after the thirtieth day following
22 the beginning of such employment or on the effective
23 date of such agreement, whichever is later;

24 “(3) to sponsor, control, or otherwise assist any
25 labor organization, except that the agency may furnish

1 customary and routine services and facilities when the
2 services and facilities are furnished, if requested, on an
3 impartial basis to organizations having equivalent status;

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

8 “(5) to refuse to consult, confer, or negotiate in
9 good faith with a labor organization as required by this
10 chapter;

11 “(6) to fail or refuse to cooperate in impasse proce-
12 dures and impasse decisions as required by this chapter;

13 or

14 “(7) to fail or refuse to comply with any provi-
15 sion of this chapter.

16 “(b) It shall be an unfair labor practice for a labor or-
17 ganization—

18 “(1) to interfere with, restrain, or coerce an em-
19 ployee in the exercise of the rights assured by this
20 chapter;

21 “(2) to cause or attempt to cause an agency to
22 discriminate against an employee in the exercise of his
23 rights under this chapter;

24 “(3) to coerce or attempt to coerce, discipline, or
25 fine a member of the labor organization as punishment

1 or reprisal for the purpose of hindering or impeding his
2 work performance or the discharge of his duties as an
3 employee of an agency;

4 “(4) to discriminate against an employee with re-
5 gard to the terms or conditions of membership because of
6 race, color, creed, national origin, sex, age, or preferen-
7 tial or nonpreferential civil service status;

8 “(5) to refuse to consult, confer, or negotiate in
9 good faith with an agency as required by this chapter;

10 “(6) to fail or refuse to cooperate in impasse pro-
11 cedures and impasse decisions as required by this
12 chapter;

13 “(7) to call or engage in any illegal strike, work
14 stoppage, or slowdown, or to condone any such activity
15 by failing to take affirmative action to prevent or stop it;
16 or

17 “(8) to fail or refuse to comply with any provision
18 of this chapter.

19 “(c) It shall be an unfair labor practice for a labor
20 organization which is accorded exclusive recognition to deny
21 membership to an employee in the appropriate unit except
22 for failure to meet reasonable occupational standards uni-
23 formly required for admission, or for failure to tender initia-
24 tion fees and dues uniformly required as a condition of ac-
25 quiring and retaining membership. This subsection does not

1 preclude a labor organization from enforcing discipline in
2 accordance with procedures under its constitution or bylaws
3 which conform to the requirements of this chapter.

4 “(d) Issues which properly can be raised under—

5 “(1) an appeals procedure prescribed by or pursu-
6 ant to law; or

7 “(2) the grievance procedure under section 7120
8 of this title;

9 may, in the discretion of the aggrieved party, be raised
10 either (A) under the appropriate appeal or grievance pro-
11 cedure, or (B) if applicable, under the procedure for resolv-
12 ing complaints of unfair labor practices under section 7116
13 of this title. Any appeal or grievance decision shall not be
14 construed as an unfair labor practice decision under this
15 chapter nor as precedent for any such decision.

16 **“§ 7116. Prevention of unfair labor practices**

17 “(a) Notwithstanding any agreement or law, or any
18 procedure thereunder, or the availability of any other means
19 of adjustment or prevention, the Authority may prevent, in
20 accordance with this section, an agency or labor organization
21 from engaging in an unfair labor practice within the mean-
22 ing of section 7115 of this title.

23 “(b) (1) If an agency or labor organization is charged
24 with having engaged in or engaging in an unfair labor prac-
25 tice, the General Counsel, in accordance with section 7104

1 (g) of this title, shall investigate the charge and may issue
2 and cause to be served upon such agency or labor organiza-
3 tion a complaint. The complaint shall contain a notice—

4 “(A) of the charges;

5 “(B) that a hearing will be held before the Author-
6 ity or a member thereof, or before an employee of the
7 Authority designated for that purpose;

8 “(C) of the place fixed for the hearing; and

9 “(D) of the time for the hearing which shall be not
10 earlier than 5 days after the serving of the complaint.

11 “(2) The person so complained of shall have the right
12 to file an answer to the original or amended complaint and
13 to appear in person or otherwise and give testimony at the
14 time and place fixed in the complaint. In the discretion of
15 the member, agent, or agency conducting the hearing, any
16 other person may be allowed to intervene in the said pro-
17 ceeding and to present testimony. Any such proceeding shall
18 so far as practicable, be conducted in accordance with the
19 provisions of subchapter II of chapter 5 of this title; except
20 that the parties shall not be bound by rules of evidence,
21 whether statutory, common law, or adopted by rules of
22 court.

23 “(3) No complaint shall be issued based upon an un-
24 fair labor practice which occurred more than 6 months before
25 the filing of the charge with the Authority. If the person

1 aggrieved was prevented from filing such charge within
2 6 months—

3 “(A) by the failure of the agency or labor orga-
4 nization against whom such charge is made to perform
5 a duty owed to the aggrieved; or

6 “(B) due to other concealment;
7 which prevented discovery of the unfair labor practice
8 within 6 months of its occurrence, the 6-month period dur-
9 ing which a charge may be filed shall be computed from
10 the day of discovery of the occurrence.

11 “(4) The Authority (or a member or employee of the
12 Authority) shall conduct a hearing, on the record, on the
13 complaint not earlier than 5 days after the complaint is
14 served, and may compel under section 7133 of this title the
15 attendance of witnesses and the production of documents.
16 Thereafter, in its discretion, the Authority upon notice may
17 receive further evidence or hear argument. If, upon the pre-
18 ponderance of the evidence received, the Authority is of the
19 opinion that an agency or labor organization named in the
20 complaint has engaged in or is engaging in an unfair labor
21 practice, then the Authority shall state its findings of fact
22 and shall issue and cause to be served on such agency or
23 labor organization an order requiring the agency or labor
24 organization to cease and desist from such unfair labor prac-
25 tice, and to take such affirmative action, including reinstatement

1 ment of employees and backpay, as will effectuate the poli-
2 cies of this chapter. Where an order directs reinstatement
3 of an employee, backpay may be required of the agency or
4 labor organization, as the case may be, responsible for the
5 discrimination or improper action suffered by the employee.
6 Such order, upon the determination of the Authority that
7 there has been an arbitrary, capricious, or otherwise knowing
8 violation of this act, by any supervisor or other agency of-
9 ficial, may direct the agency to discipline the supervisor or
10 official by demotion, suspension, removal, or such other re-
11 medial action as the Authority deems appropriate. Such
12 order may further require such agency or labor organization
13 to make reports from time to time showing the extent to
14 which it has complied with the order.

15 “(5) If, upon the preponderance of the evidence re-
16 ceived, the Authority is of the opinion that the agency or
17 labor organization named in the complaint has not engaged
18 or is not engaging in an unfair labor practice, then the Au-
19 thority shall state its findings of fact and shall issue an order
20 dismissing the complaint.

21 “(c) If the evidence is presented before a member or
22 an employee of the Authority, such member or employee, as
23 the case may be, shall issue and cause to be served on the
24 parties to the proceeding a proposed report, together with

1 a recommended order, which shall be filed with the Au-
2 thority, and if no exceptions are filed within 20 days after
3 the service thereof upon such parties, or within such fur-
4 ther period as the Authority may authorize, such recom-
5 mended order shall become the order of the Authority, ef-
6 fective as therein prescribed.

7 “(d) If exceptions are filed to the proposed report re-
8 ferred to in subsection (c) of this section, the Authority
9 shall determine whether such exceptions raise substantial
10 issues of fact or law, and shall grant review if it believes
11 such substantial issues have been raised. If the Authority
12 determines that the exceptions do not raise substantial issues
13 of fact or law, it may refuse to grant review, and the recom-
14 mended order shall become the order of the Authority,
15 effective as therein described.

16 “(e) Notwithstanding the foregoing provisions of this
17 section, when an unfair labor practice complaint alleges
18 that irreparable harm will be done to the complainant if
19 immediate corrective action is not taken and a prima facie
20 case is established, the Authority may prohibit the action or
21 actions complained of until the full merits of the case are
22 heard. The Authority shall assign priority consideration to
23 the complete adjudication of cases coming within the purview
24 of this subsection.

1 **“§ 7117. Negotiation impasses; Federal Service Impasses**

2 **Panel**

3 “(a) Upon request, the Federal Mediation and Con-
4 ciliation Service shall provide services and assistance to
5 agencies and labor organizations in the resolution of nego-
6 tiation impasses.

7 “(b) When voluntary arrangements including the serv-
8 ices of the Federal Mediation and Conciliation Service or
9 other third party mediation service fail to resolve a negotia-
10 tion impasse, either party may request the Federal Service
11 Impasses Panel established under subsection (c) of this
12 section to consider the matter, or the parties may agree to
13 adopt a procedure for binding arbitration of a negotiation
14 impasse.

15 “(c) There is established within the Authority a Federal
16 Service Impasses Panel. The Panel shall be composed of a
17 Chairman and at least 6 other members, who shall be
18 appointed by the Authority solely on the basis of fitness to
19 perform the duties and functions of the office from among
20 individuals who are familiar with Government operations
21 and knowledgeable in labor-management relations.

22 “(d) Two members of the Panel shall be appointed for
23 a term of 1 year, 2 for a term of 3 years, and the Chairman
24 and the remaining members for a term of 5 years. Their
25 successors shall be appointed for terms of 5 years, except

1 that an individual chosen to fill a vacancy shall be appointed
2 for the unexpired term of the member whom he shall re-
3 place. A member of the Panel may be removed by the
4 Authority for neglect of duty or malfeasance in office but for
5 no other cause.

6 “(e) The Panel may appoint an Executive Director
7 and such other employees as it may from time to time find
8 necessary for the proper performance of its duties. Each
9 member of the Panel who is not an employee (as defined
10 under section 2105 of this title) is entitled to pay at a rate
11 equal to the daily equivalent of the maximum annual rate
12 of basic pay currently paid, from time to time, under the
13 General Schedule for each day he is engaged in the perform-
14 ance of official business on the work of the Panel, includ-
15 ing traveltime, and is entitled to travel expenses and a per
16 diem allowance under section 5703 of this title.

17 “(f) The Panel or its designee shall promptly investi-
18 gate any impasse presented to it under subsection (b) of
19 this section. The Panel shall consider the matter and shall
20 either recommend procedures to the parties for the resolu-
21 tion of the impasse or assist the parties in arriving at a settle-
22 ment through whatever methods and procedures, including
23 factfinding and recommendations, it may deem appropriate
24 to accomplish the purposes of this section. If the parties do
25 not arrive at a settlement, the Panel may hold hearings,

1 compel under section 7133 of this title the attendance of wit-
2 nesses and the production of documents, and take whatever
3 action is necessary and not inconsistent with this chapter to
4 resolve the impasse. Notice of any final action of the Panel
5 shall be promptly served upon the parties, and such action
6 shall be binding upon them during the term of the agreement.

7 **“§ 7118. Standards of conduct for labor organizations**

8 “A labor organization representing or seeking to repre-
9 sent employees pursuant to this chapter shall adopt gov-
10 erning requirements containing explicit and detailed provi-
11 sions to which it subscribes, providing for—

12 “(1) the maintenance of democratic procedures
13 and practices, including provisions for periodic elections
14 to be conducted subject to recognized safeguards and
15 provisions defining and securing the right of individual
16 members to participation in the affairs of the labor orga-
17 nization, to fair and equal treatment under the gov-
18 erning rules of the organization, and to fair process in
19 disciplinary proceedings;

20 “(2) the prohibition of business or financial inter-
21 ests on the part of labor organization officers and agents
22 which conflict with their duty to the organization and
23 its members; and

24 “(3) the maintenance of fiscal integrity in the con-
25 duct of the affairs of the labor organization, including pro-

1 vision for accounting and financial controls and regular
2 financial reports or summaries to be made available to
3 members.

4 "SUBCHAPTER III.—GRIEVANCES, APPEALS,
5 AND REVIEW

6 "§ 7119. Appeals from adverse decisions

7 "(a) An employee (as defined in section 7501 of
8 this title) against whom an adverse action is taken under
9 section 7502 of this title is entitled to appeal the adverse
10 action to the Civil Service Commission.

11 "(b) The employee may submit the appeal in writing
12 within a reasonable time after receipt of notice of the
13 adverse decision, and is entitled to appear personally or
14 through a representative under regulations prescribed by
15 the Civil Service Commission. The Commission, after in-
16 vestigation and consideration of the evidence submitted,
17 shall submit its findings and recommendations to the
18 administrative authority and shall send copies of the find-
19 ings and recommendations to the appellant or his repre-
20 sentative. The administrative authority shall take the cor-
21 rective action that the Commission finally recommends.

22 "§ 7120. Grievance procedures

23 "(a) An agreement entered into by an agency and a
24 labor organization having exclusive recognition shall provide
25 procedures for the settlement of grievances, including ques-

1 tions of arbitrability. An employee to whom the agreement
2 applies may elect to have his grievance processed under
3 either—

4 “(1) a procedure negotiated in accordance with this
5 chapter, or

6 “(2) any applicable appeals procedures established
7 by or pursuant to law (including procedures specified
8 in section 7115 (d) of this title) .

9 A negotiated grievance procedure shall be fair, simple,
10 provide for expeditious processing, and shall include, but
11 not be limited to, procedures that—

12 “(A) assure a labor organization the right, in its
13 own behalf or on behalf of any employee in the unit, to
14 present and process grievances;

15 “(B) assure an employee the right to present a
16 grievance on his own behalf, and assure the labor orga-
17 nization the right to be present when the grievance is
18 adjusted if it is not the representative of the employee;

19 “(C) provide that any grievance not satisfactorily
20 settled in the grievance process shall be subject to bind-
21 ing arbitration which may be invoked by either the labor
22 organization or the agency.

23 “(b) Where a party to such agreement is aggrieved by
24 the failure, neglect, or refusal of the other party to proceed

1 to arbitration pursuant to the procedure provided therefor
2 in such agreement, such aggrieved party may file a com-
3 plaint in the appropriate district court of the United States
4 or in the appropriate court of the State, territory, or posses-
5 sion of the United States for summary action without jury
6 seeking an order directing that the arbitration proceed pur-
7 suant to the procedures provided therefor in such agree-
8 ment.

9 **“§ 7121. Exceptions to arbitral awards**

10 “Either party may file an exception with the Authority
11 to an arbitrator’s award under this chapter. If upon review
12 the Authority finds that the award is deficient because—

13 “(1) it is contrary to law or regulations;

14 “(2) it was procured by corruption, fraud, or other
15 misconduct;

16 “(3) of partiality of the arbitrator; or

17 “(4) the arbitrator exceeded his powers;

18 the Authority may take such action and make such recom-
19 mendations on the award as it considers necessary, con-
20 sistent with applicable law or regulations and the pro-
21 visions of this chapter. If no exception is filed, the decision
22 of an arbitrator shall be final and binding. An agency shall
23 take the actions required by a final decision of an arbitrator
24 to make an employee whole in the circumstances, includ-

1 ing the payment of back pay. A final decision under this
2 section is subject to the provisions of section 7122 and of
3 this title.

4 **“§ 7122. Judicial review**

5 “(a) Any person aggrieved by a final order of the
6 Authority under section 7116 of this title (involving an
7 unfair labor practice), under section 7121 of this title (in-
8 volving an award by an arbitrator), or under section 7111
9 (g) (involving an appropriate unit determination), may,
10 within 60 days after the date on which the order was is-
11 sued, institute an action for judicial review of the Author-
12 ity’s order in the United States court of appeals in the circuit
13 in which such person resides or transacts business or in the
14 United States court of appeals for the District of Columbia.
15 The institution of an action for judicial review shall not op-
16 erate as a stay of the Authority’s order, unless the court
17 specifically orders such stay. Review of the Authority’s
18 order shall be on the record in accordance with section 706
19 of this title, and the Authority’s findings of fact, if supported
20 by substantial evidence, shall be conclusive. The court shall
21 affirm the Authority’s order if it determines that it is in
22 accordance with law. The court shall have the jurisdiction to
23 grant to the Authority such temporary relief or restraining
24 order that it deems just and proper, and in like manner to
25 make and enter a decree enforcing, modifying, and enforcing

1 as so modified, or setting aside, in whole or in part, the order
2 of the Authority.

3 “(b) The Authority or the charging party shall have
4 power to petition any court of appeals of the United States
5 in the circuit, wherein the unlawful act in question occurred
6 or wherein the person named in the complaint resides or
7 transacts business, for the enforcement of such order and for
8 appropriate temporary relief or restraining order, and shall
9 file in the court the record in the proceedings, as provided
10 in section 2112 of title 28, United States Code. Upon the
11 filing of such petition, the court shall cause notice thereof
12 to be served upon such person, and thereupon shall have
13 jurisdiction of the proceeding and of the question determined
14 therein, and shall have power to grant such temporary relief
15 or restraining order as it deems just and proper, and to make
16 and enter a decree enforcing, modifying and enforcing as so
17 modified, or setting aside in whole or in part the order of
18 the Authority. No objection that has not been urged before
19 the Authority, or its member, agent, or agency, shall be
20 considered by the court, unless the failure or neglect to urge
21 such objection shall be excused because of extraordinary
22 circumstances. The findings of the Authority with respect to
23 questions of fact, if supported by substantial evidence on the
24 record considered as a whole, shall be conclusive. If any per-
25 son shall apply to the court for leave to adduce additional

1 evidence and shall show to the satisfaction of the court that
2 such additional evidence is material and that there were
3 reasonable grounds for the failure to adduce such evidence in
4 the hearing before the Authority, or its member, agent, or
5 agency, the court may order such additional evidence to be
6 taken before the Authority, or its member, agent, or agency,
7 and to be made a part of the record. The Authority may
8 modify its findings as to the facts, or make new findings by
9 reason of additional evidence so taken and filed, and it shall
10 file such modified or new findings, which findings with re-
11 spect to questions of fact, if supported by substantial evi-
12 dence on the record considered as a whole, shall be conclu-
13 sive, and shall file its recommendations, if any, for the
14 modification or setting aside of its original order. Upon the
15 filing of the record with it, the jurisdiction of the court shall
16 be exclusive and its judgment and decree shall be final,
17 except that the same shall be subject to review by the
18 Supreme Court of the United States upon writ of certiorari
19 or certification as provided in section 1254 of title 28,
20 United States Code.

21 “(c) The Authority may, upon issuance of a complaint,
22 as provided in section 7116 (b) of this title, charging that
23 any person has engaged in or is engaging in an unfair labor
24 practice, petition any United States district court, within any
25 district wherein the unfair labor practice in question is alleged

1 to have occurred or wherein such person resides or transacts
2 business, for appropriate temporary relief or restraining
3 order. Upon the filing of any such petition the court shall
4 cause notice thereof to be served upon such person, and
5 thereupon shall have jurisdiction to grant such temporary
6 relief (including a temporary restraining order) as it deems
7 just and proper.

8 "SUBCHAPTER IV.—ADMINISTRATIVE AND
9 OTHER PROVISIONS

10 "§ 7131. Reporting requirements for standards of conduct

11 "The provisions of subchapter III of chapter 11 of
12 title 29 shall be applicable to labor organizations that have
13 or are seeking to obtain recognition under this chapter, and
14 to such organizations' officers, agents, shop stewards, other
15 representatives and members to the extent to which such
16 provisions would be applicable if the agency were an
17 employer under section 402 of title 29. In addition to the
18 authority conferred on him under section 438 of title 29, the
19 Secretary of Labor shall have authority, by regulations issued
20 with the written concurrence of the Authority, to prescribe
21 simplified reports for any such labor organization. The Sec-
22 retary of Labor may revoke such provision for simplified
23 reports of any such labor organization if he determines, after
24 such investigation as he deems proper and after due notice
25 and opportunity for a hearing, that the purposes of this

1 chapter and of chapter 11 of title 29 would be served
2 thereby.

3 **“§ 7132. Official time**

4 “(a) Employees representing an exclusively recognized
5 or certified labor organization in the negotiation of an agree-
6 ment under this chapter, including attendance at impasse
7 settlement proceedings, are authorized official time for such
8 purposes during the time the employees otherwise would be
9 in a duty status. However, the number of such employees
10 for whom official time is authorized under this subsection
11 shall not exceed the number of persons representing the
12 agency.

13 “(b) Matters relating to the internal business of a labor
14 organization (including, but not limited to, the solicitation
15 of membership, elections of labor organization officials, and
16 collection of dues) shall be performed during the nonduty
17 hours of the employees concerned.

18 “(c) Except as provided under subsection (a) of this
19 section, the Authority shall determine whether employees
20 participating for, or on behalf of, a labor organization in
21 any phase of proceedings before the Authority, shall be au-
22 thorized official time for such purposes during regular work-
23 ing hours.

24 **“§ 7133. Subpenas**

25 “(a) For the purpose of all hearings and investigations

1 which the Authority or any member thereof, or the Panel,
2 or any member thereof, determines are necessary and proper
3 for the exercise of its powers under this chapter, the Au-
4 thority or the panel duly authorized agent or any member
5 thereof, or agency thereof shall at all reasonable times have
6 access to, for the purpose of examination and the right to
7 copy, any evidence of any person being investigated or
8 proceeded against that relates to any matter under investiga-
9 tion or in question. The Authority, any member thereof, or
10 its designee, or the Panel, or any member thereof (herein-
11 after referred to in this section as the 'issuer'), may upon
12 application of any party forthwith issue to such party sub-
13 penas requiring the attendance and testimony of witnesses
14 or the production of any evidence in such proceeding or
15 investigation requested in such application. Within 5 days
16 after the service of a subpoena on any individual or orga-
17 nization requiring the production of any evidence in the
18 possession or under the control of such individual or orga-
19 nization, such individual or organization may petition the
20 issuer to revoke, and the issuer shall revoke, such subpoena
21 if in its opinion the evidence the production of which is
22 required does not relate to any matter under consideration,
23 or if in its opinion such subpoena does not describe with suffi-
24 cient particularity the evidence the production of which is
25 required. The issuer, or any agent designated by the issuer

1 for such purposes, may administer oaths and affirmations,
2 examine witnesses, and receive evidence.

3 “(b) In case of contumacy or refusal to obey a sub-
4 pena issued to any individual or organization, any district
5 court of the United States or the United States courts of any
6 territory or possession, within the jurisdiction of which the
7 inquiry is carried on or within the jurisdiction of which such
8 individual or organization guilty of contumacy or refusal to
9 obey is found or resides or transacts business, upon applica-
10 tion by the issuer shall have jurisdiction to issue to such in-
11 dividual or organization an order requiring such person to
12 appear before the issuer to produce evidence if so ordered,
13 or to give testimony touching the matter under considera-
14 tion. Any failure to obey such order of the court may be
15 punished by such court as a contempt thereof.

16 “(c) Witnesses summoned before the issuer shall be
17 paid the same fees and mileage that are paid witnesses in
18 the courts of the United States, and witnesses whose deposi-
19 tions are taken and the persons taking the same shall sever-
20 ally be entitled to the same fees as are paid for like services
21 in the courts of the United States.

22 “(d) No person shall be excused from attending and
23 testifying or from producing books, records, correspondence,
24 documents, or other evidence in obedience to the subpoena of

1 the Board, on the ground that the testimony or evidence re-
2 quired of him may tend to incriminate him or subject him
3 to a penalty or forfeiture; but no individual shall be prose-
4 cuted or subjected to any penalty or forfeiture for or on ac-
5 count of any transaction, matter, or thing concerning which
6 he is compelled, after having claimed his privilege against
7 self-incrimination, to testify or produce evidence, except that
8 such individual so testifying shall not be exempt from prose-
9 cution and punishment for perjury committed in so testifying.

10 “(e) Any person who shall willfully resist, prevent,
11 impede, or interfere with any member of the Authority or
12 Panel or a member, agent, or agency thereof in the perform-
13 ance of duties pursuant to this chapter shall be punished
14 by a fine of not more than \$5,000 or by imprisonment for
15 not more than one year, or both.

16 **“§ 7134. Compilation and publication of data**

17 “(a) The Authority shall maintain a file of its proceed-
18 ings, copies of all available agreements and arbitration deci-
19 sions, and shall publish the texts of its decisions and the
20 actions taken by the Panel under section 7117 of this title.

21 “(b) All files maintained under subsection (a) of this
22 section shall be open to inspection and reproduction subject
23 to the provisions of section 552 of this title.

1 **“§ 7135. Funding**

2 “There are hereby authorized to be appropriated such
3 sums as are necessary to carry out the functions and purposes
4 of this chapter.

5 **“§ 7136. Issuance of regulations**

6 “The Authority, the Federal Mediation and Conciliation
7 Service, and the Panel shall each prescribe rules and regula-
8 tions to carry out the provisions of this chapter applicable
9 to each of them, respectively. Unless otherwise specifically
10 provided in this chapter, the provisions of subchapter II of
11 chapter 5 of this title shall be applicable to the issuance,
12 revision, or repeal of any such rule or regulation.

13 **“§ 7137. Continuation of existing laws, recognitions, agree-
14 ments, and procedures**

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

16 “(1) the renewal or continuation of an exclusive
17 recognition, certification of a representative, or a law-
18 ful agreement between an agency and a representative
19 of its employees entered into before the effective date of
20 this chapter; or

21 “(2) the renewal, continuation, or initial according
22 of recognition for units of management officials or super-
23 visors represented by labor organizations which histori-
24 cally or traditionally represent management officials or
25 supervisors in private industry and which hold exclu-

1 sive recognition for units of such officials or supervisors
2 in any agency on the effective date of this chapter.

3 “(b) Policies, regulations, and procedures established
4 under Executive Orders 10987, 11491, 11616, 11636, and
5 11838, or under the provision of any other Executive Order
6 in effect on the effective date of this chapter, shall remain in
7 full force and effect until revised or revoked by the President,
8 or unless superseded by specific provisions of this chapter
9 or by regulations issued pursuant to this chapter.

10 “(c) All laws or parts of laws of the United States in-
11 consistent with the provisions of this chapter are modified or
12 repealed as necessary to remove such inconsistency, and this
13 chapter shall take precedence over all ordinances, rules, regu-
14 lations, or other enactments. Except as otherwise expressly
15 provided herein, nothing contained in this chapter shall be
16 construed to deny or otherwise abridge any rights, privileges,
17 or benefits guaranteed by law to employees.”

18 SEC. 3. (a) So much of section 5596 (b) of title 5,
19 United States Code, as precedes paragraph (2) thereof is
20 amended to read as follows:

21 “(b) An employee of an agency who, on the basis of
22 a timely appeal or an administrative determination (includ-
23 ing an unfair labor practice or a grievance decision), is found
24 by appropriate authority under applicable law, regulation, or
25 agreement, to have been affected by an unjustified or unwar-

1 ranted personnel action that has resulted in the withdrawal
2 or reduction of all or a part of the pay, allowances, or dif-
3 ferentials of the employee—

4 “(1) is entitled, on correction of the personnel ac-
5 tion, to receive for the period for which the personnel
6 action was in effect—

7 “(A) an amount equal to all or any part of the
8 pay, allowances, or differentials, as applicable, that
9 the employee normally would have earned or re-
10 ceived during that period if the personnel action had
11 not occurred, less any amounts earned by him
12 through other employment during that period;

13 “(B) interest on the amount payable under
14 subparagraph (A) of this paragraph; and

15 “(C) reasonable attorneys’ fees and reasonable
16 costs and expenses of litigation related to the person-
17 nel action; and”.

18 (b) Section 5596 (b) of title 5, United States Code,
19 is amended by adding at the end thereof the following new
20 sentence:

21 “For the purpose of this subsection, ‘unfair labor practice’,
22 ‘grievance’, and ‘agreement’ have the same meanings as
23 when used in chapter 71 of this title, and ‘personnel action’
24 includes the omission or failure to take an action or confer
25 a benefit.”.

1 SEC. 4. (a) Chapter 75 of title 5, United States Code,
2 is amended by redesignating subchapters III and IV as
3 subchapters II and III, respectively, and by striking out
4 subchapters I and II and inserting in lieu thereof the fol-
5 lowing:

6 “SUBCHAPTER I.—CAUSE AND PROCEDURE

7 “§ 7501. Definitions

8 “For the purpose of this subchapter—

9 “(1) ‘employee’ means—

10 “(A) an individual in the competitive service
11 who is serving under a permanent, indefinite, or
12 other nontemporary appointment and who has com-
13 pleted a probationary or trial period; or

14 “(B) a preference eligible in the excepted
15 service who has completed one year of current con-
16 tinuous employment in the same line of work in—

17 “(i) an Executive agency;

18 “(ii) the government of the District of
19 Columbia;

20 “(iii) the United States Postal Service; or

21 “(iv) the Postal Rate Commission;

22 but does not include an individual whose appointment
23 is required to be confirmed by, or made with advice and
24 consent of, the Senate; and

25 “(2) ‘adverse action’ means a removal, suspension

1 for more than 30 days, furlough without pay, or reduc-
2 tion in rank or pay.

3 **“§ 7502. Cause**

4 “An agency may take adverse action against an em-
5 ployee, or debar him for future employment, only for such
6 cause as will promote the efficiency of the service.

7 **“§ 7503. Procedure**

8 “(a) An employee against whom adverse action is
9 proposed is entitled to—

10 “(1) at least 30 days’ advance written notice of
11 the action sought, except when such individual has
12 been indicted for a crime for which a sentence of im-
13 prisonment is imposed or there is reasonable cause to
14 believe such individual is guilty of a crime directly
15 related to his employment, stating the reasons therefor
16 in writing specifically and in detail;

17 “(2) receive, at the time of the notice required
18 under paragraph (1), all statements, affidavits, investi-
19 gative reports, and all other evidence relevant to the
20 proposed action;

21 “(3) a hearing before a hearing examiner (who
22 shall be an attorney licensed to practice in at least one
23 State or territory of the United States) at which such
24 individual may be represented by counsel, present
25 evidence, and cross-examine witnesses;

1 “(4) a copy of the verbatim transcript of the hear-
2 ing; and

3 “(5) a written decision by the hearing examiner
4 stating the findings of fact and conclusions of law upon
5 which the decision is based.

6 “(b) For purposes of subsection (a) —

7 “(1) The hearing examiner shall, upon application
8 of any party to a hearing under subsection (a) (3),
9 issue subpoenas requiring the attendance and testimony
10 of witnesses or the production of any evidence in such
11 proceeding or investigation requested in such applica-
12 tion. Within five days after the service of a subpoena on a
13 person requiring the production of any evidence in the
14 possession or under the control of such person, such
15 person may petition the hearing examiner to revoke such
16 subpoena. The hearing examiner shall revoke such sub-
17 poena if in his or her opinion the evidence of which pro-
18 duction is required does not relate to any matter under
19 investigation, or any matter in question in such proceed-
20 ings, or if in his or her opinion such subpoena does not
21 describe with sufficient particularity the evidence of
22 which production is required. The hearing examiner may
23 administer oaths and affirmations, examine witnesses,
24 and receive evidence. Such attendance of witnesses and
25 the production of such evidence may be required from

1 any place in the United States or any territory or posses-
2 sion thereof, at any designated place of hearing.

3 “(2) In case of contumacy or refusal to obey a sub-
4 pena issued to any person, any district court of the
5 United States or the United States courts of any territory
6 or possession, or the District Court for the District of
7 Columbia, within the jurisdiction of which the person
8 guilty of contumacy or refusal to obey is found or resides
9 or transacts business, shall upon application by the party
10 seeking compliance have jurisdiction to issue such per-
11 son an order requiring such person to appear before the
12 hearing examiner, or, if so ordered, to produce evidence
13 or to give testimony touching the matter under investi-
14 gation or in question. Any failure to obey such order of
15 the court may be punished by such court as a contempt
16 thereof.

17 “(c) The decision of the hearing examiner shall be
18 final as to findings of fact, except that an individual suffer-
19 ing an adverse decision may bring an action in the district
20 court of the United States for the district in which the in-
21 dividual resides, the district in which such adverse decision
22 was made, or in the District Court for the District of Colum-
23 bia, for judicial review of the conclusions of law of such
24 decision.

25 “(d) The parties to the negotiated collective-bargain-

1 ing agreement may agree to implement or substitute in
 2 whole or in part the above procedure as part of a collec-
 3 tive-bargaining agreement.

4 “(e) This section does not apply to the suspension or
 5 removal of an employee under section 7532 of this title.”.

6 (b) The analysis of chapter 75 of title 5, United States
 7 Code, is amended to read as follows:

8 **“Chapter 75.—ADVERSE ACTIONS**

“SUBCHAPTER I.—CAUSE AND PROCEDURE

“Sec.

“7501. Definitions.

“7502. Cause.

“7503. Procedure.

“SUBCHAPTER II.—HEARING EXAMINERS

“Sec.

“7521. Removal.

“SUBCHAPTER III.—NATIONAL SECURITY

“Sec.

“7531. Definitions.

“7532. Suspension and removal.

“7533. Effect on other statutes.”.

9 SEC. 5. (a) Chapter 77 of title 5, United States Code,
 10 is hereby repealed.

11 (b) The analysis for part III of such title is amended
 12 by striking out the matter pertaining to chapter 77.

13 SEC. 6. (a) Subchapter II of chapter 71 of title 5,
 14 United States Code, is amended—

15 (1) by redesignating sections 7151, 7152, 7153,
 16 and 7154 as sections 7201, 7202, 7203, and 7204,
 17 respectively;

1 (2) by striking out the subchapter heading and in-
 2 serting in lieu thereof the following:

3 **“Chapter 72.—ANTIDISCRIMINATION; RIGHT TO**
 4 **PETITION CONGRESS**

“SUBCHAPTER I.—ANTIDISCRIMINATION IN EMPLOYMENT

“Sec.

“7201. Policy.

“7202. Marital status.

“7203. Physical handicap.

“7204. Other prohibitions.

“SUBCHAPTER II.—EMPLOYEES’ RIGHT TO PETITION
CONGRESS

“Sec.

“7211. Employees’ right to petition Congress.”;

5 and

6 (3) by adding at the end thereof the following new
 7 subchapter:

8 **“SUBCHAPTER II.—EMPLOYEES’ RIGHT TO**
 9 **PETITION CONGRESS**

10 **“§ 7211. Employees’ right to petition Congress**

11 **“The right of employees, individually or collectively, to**
 12 **petition Congress or a Member of Congress, or to furnish**
 13 **information to either House of Congress, or to a committee**
 14 **or member thereof, may not be interfered with or denied.”.**

15 (b) The analysis for part III of title 5, United States
 16 Code, is amended by striking out—

“Subpart F.—EMPLOYEE RELATIONS

“71. Policies ----- 7101”

17 and inserting in lieu thereof—

“Subpart F.—LABOR MANAGEMENT RELATIONS, ETC.

“71. Labor Management Relations ----- 7101

“72. Antidiscrimination; Right to Petition Congress ----- 7201”.

1 (c) (1) Section 2105 (c) (1) of title 5, United States
2 Code, is amended by striking out "and 7154" and inserting
3 in lieu thereof "and 7204".

4 (2) Section 3302 (2) of title 5, United States Code, is
5 amended by striking out "7152, 7153" and inserting in lieu
6 thereof "7202, 7203".

7 (3) Sections 4540 (c), 7212 (a), and 9540 (c) of title
8 10, United States Code, are each amended by striking out
9 "7154 of title 5" and inserting in lieu thereof "7204 of
10 title 5".

11 (4) Section 410 (b) (1) of title 39, United States Code,
12 is amended by striking out "chapters 71 (employee poli-
13 cies)" and inserting in lieu thereof the following: "chapters
14 72 (antidiscrimination; right to petition Congress)".

15 (5) Section 1002 (g) of title 39, United States Code,
16 is amended by striking out "section 7102 of title 5" and
17 inserting in lieu thereof "section 7211 of title 5".

18 SEC. 7. (a) Section 5315 of title 5, United States
19 Code, is amended by adding at the end thereof the following
20 clause:

21 "(105) Chairman, Federal Labor Relations Authority."

22 (b) Section 5316 of such title is amended by adding at
23 the end thereof the following clause:

24 "(137) Members, Federal Labor Relations Authority
25 (2), and its General Counsel."

1 SEC. 8. If any provision of this Act (or the amendments
2 made thereby), or the application of such provision to any
3 person or circumstance, shall be held invalid, the remainder
4 of this Act (and the amendments made thereby) or the
5 application of such provision to persons or circumstances
6 other than those as to which it is held invalid, shall not be
7 affected thereby.

8 SEC. 9. (a) Except as provided in subsection (b) of this
9 section, the amendments made by this Act shall take effect on
10 the first day of the first calendar month beginning more than
11 120 days after (1) the date of the enactment of this Act; or
12 (2) on October 1, 1977, whichever date is later.

13 (b) Sections 7104, 7105 (other than subsections (f)
14 and (g) thereof), and 7136 of title 5, United States Code, as
15 enacted by section 2 of this Act, shall take effect (1) on the
16 date of the enactment of this Act; or (2) on October 1, 1977,
17 whichever date is later.

95TH CONGRESS
1ST SESSION

H. R. 1589

IN THE HOUSE OF REPRESENTATIVES

JANUARY 10, 1977

Mr. FORD of Michigan (for himself, Mr. SOLARZ, Mrs. SCHROEDER, and Mr. EILBERG) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To establish a Federal Employee Labor Relations Board to regulate Federal labor-management relations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SHORT TITLE**

4 That this Act may be cited as the "Federal Employees Labor
5 Relations Act of 1977".

6 **DECLARATION OF PURPOSE AND POLICY**

7 **SEC. 2.** (a) Experience in both private and public em-
8 ployment indicates that the statutory protection of the right
9 of employees to organize and bargain collectively safeguards
10 the public interest and contributes to the effective conduct of

2

1 public business. Such protection facilitates and encourages
2 the amicable settlement of disputes between employees and
3 their employers involving terms and conditions of employ-
4 ment and other matters of mutual concern. Therefore, labor
5 organizations and collective bargaining in the Federal serv-
6 ice are in the public interest. It is the purpose of this Act,
7 to prescribe certain rights and obligations of the employees
8 of the Federal Government and to establish procedures which
9 are designed to meet the special requirements and needs of
10 the Federal Government.

11 (b) It is the policy of this Act that employees of the
12 Federal Government shall have, and shall be protected in
13 the exercise of the right, freely and without fear of penalty
14 or reprisal to form, join, and assist any labor organization,
15 including the right to participate in the management of
16 any such organization and act for the organization in
17 the capacity of an organization representative, including
18 presentation of its views to officials of the executive
19 branch of the Government, the Congress, or other appro-
20 priate authority; and to bargain collectively over the terms
21 and conditions of employment and other matters of mutual
22 concern relating thereto through representatives of their own
23 choosing and to engage in other activities, individually or
24 in concert, for the purpose of establishing, maintaining, and
25 improving terms and conditions of employment and other

1 matters of mutual concern relating thereto. The head of each
2 Government department, agency, activity, organization, or
3 function (hereinafter in this Act referred to as "agency")
4 shall take such action as may be required to carry out the
5 purpose of this Act and assure that no improper interference,
6 restraint, coercion, or discrimination is practiced to discourage
7 membership in any labor organization.

8 DEFINITIONS

9 SEC. 3. As used in this Act—

10 (a) The term "person" includes one or more individuals,
11 labor organizations, or agencies of the United States Govern-
12 ment.

13 (b) The term "employee" means any individual em-
14 ployed (1) as a civilian in the military departments as de-
15 fined in section 102 of title 5, United States Code, (2) in
16 executive agencies as defined in section 105 of title 5, United
17 States Code (including employees who are paid from non-
18 appropriated funds), (3) in those units of the District of
19 Columbia having positions in the competitive service, (4) in
20 those units of the legislative and judicial branches of the
21 Federal Government having positions in the competitive
22 service, (5) in the Library of Congress, (6) in the Govern-
23 ment Printing Office, and (7) by the Governors of the Fed-
24 eral Reserve System, but excluding the United States Postal
25 Service. The term shall not be limited to the employees of a

1 particular agency, and shall include any person whose work
2 has ceased as a consequence of, or in connection with, any
3 unlawful act as defined in section 10 of this Act.

4 (c) The term "agency" means any department, agency,
5 bureau, activity, or organization of the United States Gov-
6 ernment which employs employees as defined in subsection
7 (b) of this section, or any person acting as an agent thereof.

8 (d) The term "labor organization" means any national
9 or international union, federation, council, or department, or
10 any affiliate thereof, composed in whole or in part of em-
11 ployees of the United States Government, in which em-
12 ployees participate and pay dues, and which exists for the
13 primary purpose of dealing with agencies concerning griev-
14 ances, labor disputes, wages, rates of pay, hours of employ-
15 ment, or conditions of work, but shall not include (1) any
16 organization whose basic purpose is purely social, fraternal,
17 professional, or limited to special interest objectives which
18 are only incidentally related to terms and conditions of
19 employment, (2) any organization which by ritualistic prac-
20 tice, constitution, or bylaws prescription, by tacit agreement
21 among its members or otherwise, denies membership because
22 of race, color, religion, national origin, sex, age, or prefer-
23 ential or nonpreferential civil service status, or (3) any
24 organization sponsored or assisted by a department, agency,
25 activity, organization, or facility of the Federal Government.

5

1 (e) The term "exclusive representative" includes any
2 employee organization which has been—

3 (1) selected or designated pursuant to the provi-
4 sions of section 6 of this Act as the representative of the
5 employees in an appropriate collective bargaining unit;
6 or

7 (2) recognized by an agency prior to the effective
8 date of this Act as the exclusive representative of the
9 employees in an appropriate collective bargaining unit.

10 (f) The term "supervisor" includes any employee hav-
11 ing authority in the interest of an employer to hire, direct,
12 assign, promote, reward, transfer, layoff, recall, suspend,
13 discipline, or discharge other employees, or to adjust their
14 grievances, or to effectively recommend such action if in
15 connection with the foregoing the exercise of such authority
16 is not merely routine or clerical in nature but calls for the
17 consistent exercise of independent judgment: *Provided*, That
18 with respect to firefighters, the term "supervisor" shall in-
19 clude only those employees who perform a preponderance of
20 the above-specified acts of authority.

21 (g) The term "professional" includes any employee
22 whose work—

23 (1) is predominantly intellectual and varied in
24 character;

1 (2) requires the consistent exercise of independent
2 judgment;

3 (3) requires knowledge of an advanced nature in a
4 field of learning customarily acquired by specialized
5 study in an institution of higher education or its equiv-
6 alent; and

7 (4) is of such character that the output or result
8 accomplished cannot be standardized in relation to a
9 given period of time.

10 (h) The term "public safety officer" includes any em-
11 ployee engaged in—

12 (1) the enforcement of the criminal laws, includ-
13 ing highway patrol;

14 (2) a correctional program, facility, or institution
15 where the activity is potentially dangerous because of
16 contact with criminal suspects, defendants, prisoners,
17 probationers, or parolees; or

18 (3) a court having criminal or juvenile delinquent
19 jurisdiction where the activity is potentially dangerous
20 because of contact with criminal suspects, defendants,
21 prisoners, probationers, or parolees.

22 (i) The term "firefighter" includes any employee en-
23 gaged in the performance of work directly connected with
24 the control and extinguishment of fires or the maintenance
25 and use of firefighting apparatus and equipment.

1 (j) The term "educational employee" includes any em-
2 ployee of a school system, college, or university who—

3 (1) has regular contact with students;

4 (2) participates in the development, implementa-
5 tion, or evaluation of an educational program; or

6 (3) is otherwise involved in the teaching-learning
7 process.

8 (k) The term "Board" means the Federal Employees
9 Labor Relations Board established by section 4 of this Act.

10 (l) The term "Service" means the Federal Mediation
11 and Conciliation Service established by chapter 29 of title
12 172, United States Code.

13 (m) The term "collective bargaining" or "bargaining"
14 means the performance of the mutual obligation of the rep-
15 resentatives of the agency and the exclusive representative
16 to meet at reasonable times, in light of the budget marking
17 process and other relevant factors, and to confer, consult, and
18 bargain in a good-faith effort to reach agreement with respect
19 to the terms and conditions of employment and other matters
20 of mutual concern relating thereto, and to execute, if re-
21 quested by either party, a written document incorporating
22 any agreements reached, but such obligation does not compel
23 either party, to agree to a proposal or to make a concession.
24 The duty to negotiate shall extend to matters which are or
25 may be the subject of a statute, or regulation and if legisla-

1 tive action is necessary to implement any agreement reached,
2 shall include the obligation of the agency to submit such
3 agreement to the appropriate governmental body for action.
4 The agency may not make or apply rules or regulations which
5 restrict the scope of collective bargaining permitted by this
6 Act or which are in conflict with any agreement negotiated
7 under this Act.

8 (n) The term "labor dispute" means any controversy
9 concerning terms, tenure, and conditions of employment or
10 other matters of mutual concern relating thereto, or concern-
11 ing the representation of employees for the purpose of col-
12 lective bargaining, regardless of whether the disputants stand
13 in the proximate relation of agency and employee.

14 (o) In determining whether any person is acting as an
15 "agent" of another person so as to make such other person
16 responsible for his acts, the question of whether the specific
17 acts performed were actually authorized or subsequently
18 ratified shall not be controlling.

19 (p) The term "conditions of employment" includes, but
20 is not limited to, such matters as working conditions and en-
21 vironment, pay practices, fringe benefits, work hours and
22 schedules, overtime, work procedures, automation, safety,
23 transfers, job classifications, details, promotion procedures,
24 seniority, assignments and reassignments, reduction in force,
25 job security, contracting out, use of military personnel, dis-

1 ciplinary actions and appeals, training, methods of adjust-
2 ing grievances, granting of leave, union security, travel and
3 per diem, and such other matters as may be specified by
4 agreement negotiated pursuant to this Act.

5 (q) The term "grievance" means any complaint by an
6 employee or by a labor organization concerning any aspect
7 of the employment relationship with an agency as well as
8 any complaint concerning the effect, interpretation, or claim
9 of breach of a collective-bargaining agreement, and any
10 claimed violation, misinterpretation, or misapplication of
11 any law, rule, or regulation governing conditions of employ-
12 ment.

13 (r) The term "management official" means any em-
14 ployee in a position which presents a conflict of interest, or
15 potential conflict of interest, between an agency and em-
16 ployees or who formulates, determines, or effectuates an
17 agency's policies and who has discretion in the performance
18 of his job: *Provided*, That such discretion involves the power
19 to modify the employer's established policies.

20 FEDERAL EMPLOYEES LABOR RELATIONS BOARD

21 SEC. 4. (a) There is hereby created the "Federal Em-
22 ployees Labor Relations Board", which shall consist of five
23 members who shall be appointed by the President by and
24 with the advice and consent of the Senate. One of the origi-

1 nal members shall be appointed for a term of one year, one
2 for a term of two years, one for a term of three years, one
3 for a term of four years, and one for a term of five years.
4 Their successors shall be appointed for terms of five years
5 each, except that any person chosen to fill a vacancy shall
6 be appointed only for the unexpired term of the member
7 whom he succeeds. Board members shall be eligible for
8 reappointment. The President shall designate one member
9 to serve as Chairman of the Board. Any member of the
10 Board may be removed by the President, upon notice and
11 hearing, for neglect of duty or malfeasance in office, but for
12 no other cause.

13 (b) A vacancy in the Board shall not impair the right
14 of the remaining members to exercise all the powers of the
15 Board, and three members of the Board shall, at all times,
16 constitute a quorum. The Board shall have an official seal
17 which shall be judicially noticed.

18 (c) Members of the Board shall not engage in any other
19 business, vocation, or employment. The Chairman of the
20 Board shall receive an additional \$1,500 a year. The Board
21 shall appoint an Executive Director and may appoint regional
22 directors, attorneys, mediators, factfinders, and such other
23 persons as it may from time to time find necessary for the
24 proper performance of its functions and as may from time
25 to time be appropriated for by the Congress. Attorneys ap-

1 pointed under this section may, at the direction of the Board,
2 appear for and represent the Board in any case in court. At-
3 torneys employed by the Board may not be employed for
4 the purpose of reviewing transcripts of hearings or prepar-
5 ing drafts of opinions except that any attorney employed
6 for assignment as a legal assistant to any Board member
7 may for such Board member review such transcripts and pre-
8 pare such drafts. No trial examiner's report shall be reviewed,
9 either before or after its publication, by any person other
10 than a member of the Board or his legal assistant, and no
11 trial examiner shall advise or consult with the Board with
12 respect to exceptions taken to his findings, ruling, or recom-
13 mendations.

14 (d) There shall be a General Counsel of the Board who
15 shall be appointed by the President by and with the advice
16 and consent of the Senate for a term of five years. The Gen-
17 eral Counsel shall be authorized to investigate alleged viola-
18 tions of the Act, to file and prosecute complaints filed under
19 the Act, to intervene before the Board in unlawful act pro-
20 ceedings brought under section 11 of the Act, and to exercise
21 such other powers as the Board may prescribe. If a vacancy
22 occurs in the Office of General Counsel, the President shall
23 promptly designate an Acting General Counsel and shall sub-
24 mit a nomination for a replacement to Congress within forty
25 days after the vacancy has occurred, unless Congress shall

1 have adjourned before the expiration of said forty-day period,
2 in which event the President shall submit a nomination not
3 later than ten days after Congress reconvenes.

4 (e) All of the expenses of the Board, including all neces-
5 sary traveling and subsistence expenses outside the District
6 of Columbia incurred by the members, employees, or agents
7 of the Board under its orders, shall be allowed and paid on
8 the presentation of itemized vouchers therefor approved
9 by the Board or by any individual it designates for that
10 purpose.

11 (f) The principal office of the Board shall be in the Dis-
12 trict of Columbia, but it may meet and exercise any or all of
13 its powers at any other place, and may establish and operate
14 State and regional offices. The Board may, by one or more
15 of its members or by such agents as it may designate, pros-
16 ecute any inquiry necessary to its functions in any part of
17 the United States. A member who participates in such an
18 inquiry shall not be disqualified from subsequently partici-
19 pating in a decision of the Board in the same case.

20 (g) The Board is authorized to issue, amend, and
21 rescind, in the manner prescribed by subchapter II of chapter
22 5 of title 5, United States Code, such rules and regulations
23 as may be necessary to carry out the provisions of this Act
24 and is expressly empowered and directed to prevent any
25 person from engaging in conduct in violation of this Act. In

1 order to carry out its functions under this Act, the Board
2 is authorized to hold hearings, subpoena witnesses, administer
3 oaths, and take the testimony or deposition of any person
4 under oath, and in connection therewith, to issue subpoenas
5 requiring the production and examination of any books or
6 papers, including those of the Federal Government, relating
7 to any matter pending before it and to take such other action
8 as may be necessary.

9 (h) (1) Section 5314 of title 5, United States Code, is
10 amended by adding at the end thereof the following new
11 paragraph:

12 “(54) Chairman, Federal Employees Labor Rela-
13 tions Board.”.

14 (2) Section 5415 of title 5, United States Code, is
15 amended by adding at the end thereof the following new
16 paragraph:

17 “(92) Members, Federal Employees Labor Rela-
18 tions Board.”.

19 RIGHTS OF EMPLOYEES AND EMPLOYEE ORGANIZATIONS

20 SEC. 5. (a) Employees shall have the right to form,
21 join, or assist labor organizations, to participate in collective
22 bargaining with employers through representatives of their
23 own choosing and to engage in other activities, individually
24 or in concert, for the purpose of establishing, maintaining, or

1 improving terms and conditions of employment and other
2 matters of mutual concern relating thereto.

3 (b) Labor organizations shall have—

4 (1) access at reasonable times to areas in which em-
5 ployees work, the right to use the employer's bulletin
6 boards, mailboxes, and other communication media, sub-
7 ject to reasonable regulation, and the right to use the
8 employer's facilities at reasonable times for the purpose
9 of meetings concerned with the exercise of the rights
10 guaranteed by this Act: *Provided*, That if an exclusive
11 representative has been recognized, an employer shall
12 deny such access and usage to any labor organization
13 other than such representative until such time as a lawful
14 and timely challenge to the majority status of the rep-
15 resentative is raised pursuant to the provisions of section
16 6 of this Act; and

17 (2) the right to have deducted from the salary of
18 employees, upon receipt of an appropriate authorization
19 form which shall not be irrevocable for a period of more
20 than one year, an amount equal to the fees and dues
21 required for membership: *Provided*, That if an exclusive
22 representative has been recognized, an employer shall
23 deny such deduction to any labor organization other than
24 such representative; and

25 (3) the right to be represented at discussions be-

1 tween the agency and employees or employee represent-
2 atives concerning grievances, potential grievances, per-
3 sonnel policies and practices, or other matters affecting
4 working conditions of employees in the unit: *Provided*,
5 That if an exclusive representative has been recognized,
6 an employer shall grant access solely to representatives
7 of such exclusive representative.

8 (c) If an exclusive representative has been recognized
9 for the employees in an appropriate collective bargaining
10 unit, each employee in such unit who is not a member of the
11 recognized organization shall be required, as a condition of
12 continued employment, to pay to such organization for the
13 period that it is the exclusive representative, an amount equal
14 to the dues, fees, and assessments that a member is charged.
15 Such payments shall be made in accordance with rules and
16 regulations prescribed for such purpose by the Commission.

17 REPRESENTATIVES AND COLLECTIVE-BARGAINING UNITS

18 SEC. 6. (a) The labor organization designated or se-
19 lected for the purpose of collective bargaining by the majority
20 of the employees in an appropriate collective-bargaining unit
21 shall be the exclusive representative of all the employees in
22 such unit for such purpose, and an agency shall not bargain
23 in regard to matters covered by this Act with any employee,
24 group of employees, or other labor organization: *Provided*,
25 That nothing contained in this subsection shall prevent em-

1 ployees, individually or as a group, from presenting com-
2 plaints informally to an agency, and from having such com-
3 plaints adjusted without the intervention of the exclusive
4 representative for the collective-bargaining unit of which they
5 are a part, as long as such representative is given an oppor-
6 tunity to be present at said adjustment and to make its views
7 known and as long as the adjustment is not inconsistent with
8 the terms of an agreement between the agency and the
9 exclusive representative which is then in effect: *And pro-*
10 *vided further,* That such employee or employees shall not
11 be represented by an officer or agent of any labor organiza-
12 tion other than the exclusive representative.

13 (b) Any labor organization may file a request for rec-
14 ognition as the exclusive representative under subsection
15 (a) of this section with an agency and the Board. Such
16 request shall allege that a majority of the employees in an
17 appropriate collective-bargaining unit wish to be represented
18 for the purpose of collective bargaining by such organiza-
19 tion, shall describe the grouping of jobs or positions which
20 constitute the unit claimed to be appropriate, shall be sup-
21 ported by credible evidence demonstrating that a majority
22 of the employees in the appropriate unit desire the organiza-
23 tion requesting recognition as their exclusive representative,
24 and shall indicate the name, address, and telephone number
25 of any other interested labor organization, if known to the

1 requesting organization. The employer shall, at the direction
2 of the Board, post a copy of such request on a bulletin board
3 at each facility in which members of the unit claimed to
4 be appropriate are employed. The request shall remain posted
5 for a period of twenty-one days from the date on which the
6 Board directs that it be posted. The Board shall maintain
7 a public docket of all requests filed under this section. Such
8 docket shall contain a copy of the request but shall not include
9 any accompanying evidence of support. The request shall
10 remain on the public docket until the case is closed.

11 Such request for recognition shall be granted by the
12 agency unless—

13 (1) the agency has a good-faith doubt as to
14 the accuracy or validity of the evidence demonstrating
15 majority support in an appropriate unit or as to the
16 appropriateness of the claimed unit; or

17 (2) there is currently in effect a lawful written col-
18 lective-bargaining agreement between the agency and
19 another labor organization covering any employees in-
20 cluded in the unit described in the request for recogni-
21 tion; or

22 (3) within the previous twelve months another
23 labor organization has been lawfully recognized or certi-
24 fied as described in the request for recognition; or

1 (4) the Board has, within the previous twelve
2 months, conducted a secret ballot election involving any
3 employees included in the unit described in the request
4 for recognition in which a majority of the valid ballots
5 cast chose not to be represented by any labor organiza-
6 tion: *Provided*, That an agency shall not grant a request
7 for recognition filed pursuant to this subsection but shall
8 refer the matter to the Board pursuant to subsection (c)
9 (2) below if another labor organization files with the
10 employer a competing request for recognition within
11 twenty-one days after the posting of notice of the original
12 request, which competing request is supported by credi-
13 ble evidence demonstrating that at least 10 per centum of
14 the employees in the appropriate collective-bargaining
15 unit desire such organization as their exclusive repre-
16 sentative.

17 A labor organization that is granted recognition pursuant to
18 this subsection shall file a written notice to that effect with
19 the Board within ten days after being granted such recogni-
20 tion. Such notice shall be kept in the public docket main-
21 tained by the Board for a period of twenty-one days during
22 which period a petition may be filed with the Board by an-
23 other labor organization, in accordance with rules and regula-
24 tions prescribed by the Board for such filing, challenging, and
25 recognition. If the recognition is not challenged during the

1 twenty-one-day period, or if it is challenged but the chal-
2 lenge is not sustained, the recognition shall become final and
3 the case shall be closed. The labor organization shall there-
4 after be eligible for certification by the Board pursuant to
5 subsection (3) (e) of this section.

6 (c) A petition may be filed with the Board in accord-
7 ance with rules and regulations prescribed by it for such filing,
8 asking it to investigate and decide the question of whether
9 employees have selected or designated an exclusive repre-
10 sentative under subsection (a) of this section by—

11 (1) a labor organization alleging that a substantial
12 number of the employees in an appropriate collective-
13 bargaining unit wish to be represented for the purpose
14 of collective bargaining by such organization, which peti-
15 tion shall describe the grouping of jobs or positions which
16 constitute the unit claimed to be appropriate, shall be sup-
17 ported by credible evidence demonstrating the claimed
18 employee support, and shall indicate the name, address,
19 and telephone number of any other interested employee
20 organization, if known to the requesting organization.
21 The agency shall, at the direction of the Board, post a
22 copy of such request on a bulletin board at each facility in
23 which members of the unit claimed to be appropriate are
24 employed. The request shall remain posted for a period
25 of twenty-one days from the date on which the Board

1 directs that it be posted. The Board shall maintain a
2 public docket of all requests filed under this section. Such
3 docket shall contain a copy of the request but shall not
4 include any accompanying evidence of support. The re-
5 quest shall remain on the public docket until the case
6 is closed;

7 (2) an agency alleging that it has received a request
8 for exclusive recognition from one or more labor organi-
9 zations; or

10 (3) by one or more employees in an appropriate
11 collective-bargaining unit asserting that the employees
12 in an appropriate unit no longer desire a particular labor
13 organization as their exclusive representative: *Provided,*
14 That such petition is supported by signed statements to
15 that effect from at least 30 per centum of the employees
16 in the appropriate collective-bargaining unit.

17 (d) Upon receipt of such a petition, the Board or its
18 agents shall conduct such inquiries and investigations or hold
19 such hearings as it shall deem necessary in order to decide
20 the question raised by the petition. The Board's determina-
21 tion may be based upon the evidence adduced in such inquir-
22 ies, investigations, or hearings as it or its agents shall make
23 or hold, or upon the results of a secret ballot election as it
24 shall direct and conduct if deemed necessary: *Provided, That*
25 no labor organization shall appear on a ballot unless it sub-

1 mits credible evidence demonstrating that at least 10 per
2 centum of the employees in the appropriate collective-bar-
3 gaining unit desire it as their exclusive representative: *Pro-*
4 *vided further*, That whenever one or more additional labor
5 organizations has filed timely request to intervene in the pro-
6 ceedings, which request is supported by credible evidence
7 demonstrating that at least 10 per centum of the employees
8 in the appropriate collective-bargaining unit desire it as their
9 exclusive representative, the Board shall direct an election
10 by secret ballot and shall certify the results thereof: *And*
11 *provided further*, That the Board shall dismiss without de-
12 termining the questions raised therein, any petition filed
13 pursuant to subsection (c) of this section if—

14 (i) the petition is filed pursuant to subsection (c)
15 (i) and is not supported by credible evidence demon-
16 strating that at least 30 per centum of the employees in
17 the collective-bargaining unit described therein wish to
18 be represented for the purpose of collective bargaining
19 by the organization seeking recognition; or

20 (ii) there is currently in effect a lawful written col-
21 lective-bargaining agreement between such employer
22 and an employee organization other than the petitioner
23 covering any employees included in the unit described
24 in the petition, unless such agreement has been in effect
25 for more than three years, or unless the request for rec-

1 ognition is filed less than sixty days prior to the expira-
2 tion date of such agreement or such greater number of
3 days prior to said expiration date as the Board may
4 determine is reasonable because of the budgetmaking
5 procedure of the agency; or

6 (iii) within the previous twelve months an em-
7 ployee organization other than the petitioner, or other
8 than the employee organization challenged if the petition
9 is filed pursuant to subsection (c) (3), has been lawfully
10 recognized or certified as the exclusive representative of
11 any employees included in the unit described in the
12 petition; or

13 (iv) the Board has, within the previous twelve
14 months, conducted a secret ballot election involving any
15 employees of the valid ballot cast chose not to be repre-
16 sented by any labor organization.

17 (e) The Board shall certify a labor organization as the
18 exclusive representative of the employee in an appropriate
19 collective-bargaining unit if—

20 (1) the organization receives a majority of the
21 valid ballots cast in an election conducted pursuant to
22 subsection (d) of this section; or

23 (2) the Board determines, as provided in subsection
24 (d) of this section, without an election that the orga-
25 nization represents an uncoerced majority of the em-

1 employees in such unit and that such majority status was
2 achieved without the benefit of unlawful agency assist-
3 ance as defined in section 10 (a) of this Act or that the
4 organization would represent such an uncoerced majority
5 if the agency had not engaged in unlawful acts as defined
6 in section 10 (a) of this Act; or

7 (3) upon the request of a labor organization that
8 has been recognized by an agency pursuant to subsec-
9 tion (b) of this section, the Board is satisfied that the
10 organization represents an uncoerced majority of em-
11 ployees in such unit and that such majority status was
12 achieved without the benefit of this Act.

13 (f) In each case where the appropriateness of the
14 claimed unit is in issue, the Board shall decide whether in
15 order to insure employees the fullest freedom in exercising
16 the rights guaranteed under this Act, the unit to be estab-
17 lished will be on an agency, plant, or installation, functional,
18 or other basis which will insure a clear and identifiable com-
19 munity, of interest among all the employees concerned, and
20 will promote effective dealings and efficiency of agency op-
21 erations: *Provided, That*—

22 (1) except in regard to firefighters and educational
23 employees and public safety officers, a unit shall not be
24 considered appropriate if it includes both supervisors and
25 nonsupervisors; in regard to firefighters a unit that in-

24

1 eludes both supervisors and nonsupervisors may be con-
2 sidered appropriate; and in regard to educational em-
3 ployees and public safety officers, a unit that includes
4 both supervisors and nonsupervisors may be considered
5 appropriate if a majority of the employees in each cate-
6 gory indicate by vote or other credible evidence that
7 they desire to be included in such unit; and

8 (2) a unit including managerial employees shall
9 not be considered appropriate;

10 (3) a unit including both professional and non-
11 professionals shall not be appropriate unless a majority
12 of the employees in each category indicate by vote or
13 other credible evidence that they desire to be included in
14 such unit; and

15 (4) a unit including an employee engaged in Fed-
16 eral personnel work in other than a purely clerical
17 capacity.

18 (g) Nothing in this section shall be construed to pro-
19 hibit the waiving of hearings by stipulation for the purpose
20 of a consent election in conformity with regulations and rules
21 or decisions of the Board.

22 (h) Notwithstanding any other provisions of this sec-
23 tion or this Act or any exclusive recognition which is less
24 than national in scope, exclusive recognition for an agency
25 shall be accorded on a national basis to a labor organiza-

1 tion which has been determined to be entitled to such
2 recognition in accordance with subsections (e) and (f) of
3 this section and such national exclusive recognition shall
4 supersede all recognitions within the unit of national exclu-
5 sive recognition.

6 (i) A determination by the Board that a labor organiza-
7 tion has been selected as the exclusive representative for the
8 employees in an appropriate unit shall not be subject to
9 judicial review or other collateral attack.

10 **IMPASSE IN COLLECTIVE BARGAINING OVER THE TERMS**
11 **AND CONDITIONS OF EMPLOYMENT AND OTHER MAT-**
12 **TERS OF MUTUAL CONCERN RELATING THERETO**

13 **SEC. 7. (a)** Either an agency or an exclusive representa-
14 tive may declare that an impasse has been reached between
15 them in collective bargaining over the terms and conditions
16 of employment and other matters of mutual concern relating
17 thereto, and may request the Service to appoint a mediator
18 for the purpose of assisting them in reconciling their differ-
19 ences and resolving the controversy on terms which are
20 mutually acceptable. If the Service determines that an im-
21 passe exists, it shall, in no event later than five days after the
22 receipt of a request, appoint a mediator in accordance with
23 rules and regulations for such appointment prescribed by
24 the Service. The Service may, on its own volition, declare
25 impasse has been reached in collective bargaining over the

1 terms and conditions of employment and other matters of
2 mutual concern relating thereto and appoint a mediator. The
3 mediator shall meet with the parties or their representatives,
4 or both, forthwith, either jointly or separately, and shall take
5 such other steps as he may deem appropriate in order to
6 persuade the parties to resolve their differences and effect a
7 mutually acceptable agreement: *Provided*, That the mediator
8 shall not, without the consent of both parties, make findings
9 of fact. The services of the mediator, including, if any, per
10 diem expenses, shall be provided by the Service without cost
11 to the parties. Nothing in this subsection shall be construed
12 to prevent the parties from mutually agreeing upon their
13 own mediation procedure and in the event of such agree-
14 ment, the Service shall not appoint its own mediator unless
15 failure to do so would be inconsistent with the effectuation
16 of the purpose and policy of this Act.

17 (b) If the mediator is unable to effect settlement of
18 the controversy within fifteen days after his appointment,
19 either party may, by written notification to the other, re-
20 quest that their differences be submitted to factfinding with
21 recommendations. Such recommendations shall be advisory
22 only, unless within five days after giving or receiving the
23 aforesaid written request, the exclusive representative notifies
24 the agency, in writing, that it desires the recommendations
25 of the factfinder to be binding. Within ten days after receipt

1 of the aforesaid written request for factfinding, the parties
2 shall select a person to serve as factfinder and obtain a com-
3 mitment from said person to serve. If they are unable to
4 agree upon a factfinder or to obtain such a commitment
5 within said time, either party may request the Service to
6 designate a factfinder. The Service shall, within five days
7 after receipt of such request, designate a factfinder in ac-
8 cordance with rules and regulations for such designation
9 prescribed by the Service. The factfinder so designated shall
10 not, without the consent of both parties, be the same person
11 who was appointed mediator pursuant to subsection (a) of
12 this section.

13 The factfinder shall, within ten days after his appoint-
14 ment, meet with the parties or their representatives, or both,
15 forthwith, either jointly or separately, and may make in-
16 quires and investigations, hold hearings, and take such other
17 steps as he may deem appropriate. For the purpose of such
18 hearings, investigations, and inquiries, the factfinder shall
19 have the power to issue subpoenas requiring the attendance
20 and testimony of witnesses and the production of evidence.
21 The several departments, commissions, divisions, authorities,
22 boards, bureaus, agencies, and officers of the United States
23 shall furnish the factfinder, upon his request, with all records,
24 papers, and information in their possession relating to any
25 matter under investigation by or in issue before the factfinder.

1 If the dispute is not settled within thirty days after his
2 appointment, the factfinder shall make findings of fact and
3 recommend terms of settlement, which recommendations shall
4 be advisory only, unless the exclusive representative has pre-
5 viously notified the agency that such recommendations are to
6 be binding in which case they shall be binding.

7 (c) If the recommendations of the factfinder are
8 binding—

9 (1) the exclusive representative shall be prohibited
10 from engaging and employees shall be prohibited from
11 participating in a strike for the purpose of resolving a
12 dispute which has been submitted to the factfinder and in
13 regard to which he has recommended terms of settle-
14 ment and nothing contained in this Act or in any other
15 law of the United States shall prevent a court from
16 granting a restraining order or temporary or permanent
17 injunction in a case involving a strike for such purpose ;
18 and

19 (2) the parties shall comply with the recommenda-
20 tions of the factfinder: *Provided*, That if the employer
21 does not have the legal authority to comply with such
22 recommendations or any part thereof, it shall take such
23 actions as may be necessary to enable it to comply, in-
24 cluding the submission of requests to appropriate legis-
25 lative bodies.

1 (d) If the recommendations of the factfinder are ad-
2 visory only, they shall, together with the findings of fact,
3 be submitted in writing to the parties and the Service
4 privately before they are made public. Either the Service,
5 the factfinder, the agency, or the exclusive representative
6 may make such findings and recommendations public if
7 the dispute is not settled within ten days after their receipt
8 from the factfinder.

9 (e) The costs for the services of the factfinder, includ-
10 ing, if any, per diem expenses and actual and necessary
11 travel and subsistence expenses, and any other mutually
12 incurred costs, shall be borne equally by the agency and
13 the exclusive representative. Any individually incurred
14 costs shall be borne by the party incurring them.

15 DISPUTES OVER THE INTERPRETATION OR APPLICATION

16 OF AGREEMENTS

17 SEC. 8. (a) An agency and an exclusive representative
18 who enter into an agreement covering terms and conditions
19 of employment and other matters of mutual concern relat-
20 ing thereto shall include in such agreement procedures for
21 binding arbitration of grievances, including questions of
22 arbitrability. Such negotiated grievance procedures shall be
23 the exclusive procedures available to bargaining unit em-
24 ployees for the settlement of grievances. Such procedures
25 shall include, but shall not be restricted to, procedures that:

1 (1) assure a labor organization the right in its own
2 behalf or on behalf of any employee in the unit the
3 right to present and process grievances ;

4 (2) include fixed and reasonable time limits for a
5 decision at each grievance step ; and

6 (3) include the right to call, question, and cross-
7 examine witnesses.

8 (b) Where a party to such agreement is aggrieved by
9 the failure, neglect, or refusal of the other party to proceed
10 to arbitration pursuant to the procedure provided therefor
11 in such agreement, such aggrieved party may file a com-
12 plaint in the appropriate district court of the United States
13 or the appropriate court of the affected State, territory, or
14 possession of the United States for a summary action without
15 jury seeking an order directing that the arbitration proceed
16 pursuant to the procedures provided therefor in such
17 agreement.

18 (c) Unless the award of the arbitrator is deficient
19 because—

20 (1) it was procured by corruption, fraud, or other
21 misconduct ;

22 (2) of partiality of the arbitrator ; or

23 (3) the arbitrator exceeded his powers or so im-
24 perfectly executed them that a final and definite award
25 upon the subject matter was not made, such award shall

1 be final and binding upon the parties and may be en-
2 forced by the appropriate district court of the United
3 States or the appropriate court of the affected State, terri-
4 tory, or possession of the United States.

5 STRIKES

6 SEC. 9. (a) Except as otherwise expressly provided in
7 subsections (b) and (c) of this section and in subsection (c)
8 of section 7, nothing in this Act or in any other law or en-
9 actment of the United States, or of any State, territory, or
10 possession of the United States, or any political subdivision
11 thereof, shall be construed to interfere with, impede, or
12 diminish the right of an exclusive representative to engage
13 or of an employee to participate in a strike arising out of or in
14 connection with a labor dispute.

15 (b) A restraining order or temporary or permanent in-
16 junction may be granted in a case involving a strike by an
17 exclusive representative arising out of or in connection with
18 a labor dispute, only on the basis of findings of fact made by
19 the appropriate district court of the United States after due
20 notice and hearing prior to the issuance of such restraining
21 order or injunction that—

22 (1) the commencement or continuance of such
23 strike poses a clear and present danger to the public
24 health or safety which in light of all relevant circum-
25 stances it is in the best public interest to prevent:

1 *Provided, That any restraining order or injunction*
 2 *issued by a court for this reason shall indicate the*
 3 *specific act or acts which the representative has failed*
 4 *to perform and shall remain in effect only until said act*
 5 *or acts shall have been performed.*

6 (c) Nothing contained in this Act shall prevent a court
 7 from granting a restraining order or temporary or permanent
 8 injunction in a case involving a strike in violation of any
 9 lawful provision of an agreement covering terms and condi-
 10 tions of employment and other matters of mutual concern
 11 relating thereto.

12 UNLAWFUL ACTS

13 SEC. 10. (a) It shall be unlawful for an employer to—

14 (1) impose or threaten to impose reprisals on any
 15 employee, discriminate or threaten to discriminate
 16 against any employee or otherwise interfere with, re-
 17 strain, or coerce any employee because of his exercise of
 18 rights guaranteed by this Act;

19 (2) dominate, interfere with, or assist in the forma-
 20 tion or administration of any employee organization,
 21 except that the agency may furnish customary and rou-
 22 tine services and facilities; or

23 (3) encourage or discourage membership in any
 24 employee organization by discrimination in regard to
 25 hire, tenure of employment, or any term or condition of

1 employment: *Provided*, That nothing contained in this
2 subsection shall prevent an employer from requiring, as
3 a condition of continued employment, payment to an ex-
4 clusive representative pursuant to section 5 (c) and
5 section 5 (d) of this Act, respectively: *Provided further*,
6 That no employer shall justify any discrimination against
7 any employee for nonmembership in any employee or-
8 ganization if he has reasonable grounds for believing
9 such membership was:

10 (i) not available to the employee on the same
11 terms and conditions generally applicable to other
12 members; or

13 (ii) denied or terminated for reasons other than
14 the failure of the employee to tender the dues, fees,
15 and assessments uniformly required as a condition
16 of acquiring or retaining membership; or

17 (4) discipline or otherwise discriminate against an
18 employee because he has filed a complaint, affidavit,
19 petition, or given any information or testimony under
20 this Act;

21 (5) deny to any labor organization the rights guar-
22 anteed to it by this Act;

23 (6) refuse or fail to bargain in good faith with an
24 exclusive representative if requested to do so; or

25 (7) fail to comply with any provision of this Act.

- 1 (b) It shall be unlawful for a labor organization to—
- 2 (1) restrain or coerce any employee in the exercise
- 3 of the rights guaranteed to him by this Act: *Provided,*
- 4 That this subsection shall not impair the right of a labor
- 5 organization to prescribe its own rules with respect to
- 6 the acquisition or retention of membership therein;
- 7 (2) restrain or coerce an employer in the selection
- 8 of its representative for the purpose of collective bar-
- 9 gaining or the adjustment of grievances;
- 10 (3) discriminate against any employee with regard
- 11 to the terms or conditions of membership because of
- 12 race, color, religion, sex, age, or national origin.
- 13 (4) in the case of an exclusive representative to
- 14 refuse or fail to bargain in good faith with an agency
- 15 if requested to do so.

16 PREVENTION OF UNLAWFUL ACTS

17 SEC. 11. (a) The Board is empowered, as hereinafter

18 provided, to prevent any person from engaging in any un-

19 lawful act as defined in section 10 of this Act. This power

20 shall not be affected by any other means of adjustment or

21 prevention that has been or may be established by agree-

22 ment, law, or otherwise.

23 (b) Whenever it is charged that any person has en-

24 gaged in or is engaging in any such unlawful act, the Board

25 or any agent or agency designated by the Board for such

1 purpose, shall have the power to issue and cause to be served
2 upon such person a complaint stating the charges in that
3 respect, and containing a notice of hearing before the Board
4 or a member thereof, or before a designated agent or agency,
5 at a place therein fixed, not less than five days after the
6 serving of said complaint: *Provided*, That no complaint shall
7 issue based upon any unlawful act occurring more than six
8 months prior to the filing of the charge with the Board and
9 the service of a copy thereof upon the person against whom
10 such charge is made, unless the person aggrieved thereby was
11 prevented from filing such charge by reason of service in
12 the Armed Forces, in which event the six-month period
13 shall be computed from the date of his discharge. Any such
14 complaint may be amended by the member, agent, or agency
15 conducting the hearing or the Board in its discretion at any
16 time prior to the issuance of an order based thereon: *Pro-*
17 *vided*, That the person complained of is not unfairly prej-
18 udiced by such amendment. The person so complained of
19 shall have the right to file an answer to the original or
20 amended complaint and to appear in person or otherwise
21 and give testimony at the time and place fixed in the com-
22 plaint. In the discretion of the member, agent, or agency
23 conducting the hearing or the Board, any other person may
24 be allowed to intervene in the said proceeding and to present
25 testimony. Any such proceeding shall, so far as practicable,

1 be conducted in accordance with the provisions of subchapter
2 II of chapter 5 of title 5, United States Code: *Provided,*
3 That the parties shall not be bound by rules of evidence,
4 whether statutory, common law, or adopted by rules of court.

5 (c) The testimony taken by such member, agent, or
6 agency or the Board shall be reduced to writing and filed
7 with the Board. Thereafter, in its discretion, the Board, upon
8 notice, may take further testimony or hear argument. If upon
9 the preponderance of the testimony taken the Board shall
10 be of the opinion that any person named in the complaint
11 has engaged in or is engaging in any such unlawful act, then
12 the Board shall state its findings of fact and shall issue and
13 cause to be served upon such person an order requiring such
14 person to cease and desist from such unlawful act, and to
15 take such affirmative action as will effectuate the purpose and
16 policy of this Act, including the payment of damages and/or
17 the reinstatement of employees: *Provided,* That where an
18 order directs reinstatement of an employee, back pay may
19 be required of the agency and/or the labor organization, as
20 the case may be, responsible for the discrimination suffered
21 by him. Such order, upon the determination of the Board
22 that there has been an arbitrary, capricious, or otherwise
23 knowing violation of this Act, by any supervisor or other
24 agency official, may direct the agency to discipline the super-
25 visor or official by demotion, suspension, removal, or such

1 other remedial action as the authority deems appropriate.
2 Such order may further require such person to make reports
3 from time to time showing the extent to which it has com-
4 plied with the order. If upon the preponderance of the testi-
5 mony taken the Board shall not be of the opinion that the
6 person named in the complaint has engaged in or is engaging
7 in any such unlawful act, then the Board shall state its find-
8 ings of fact and shall issue an order dismissing the said com-
9 plaint. No order of the Board shall require the reinstatement
10 of any individual as an employee who has been suspended or
11 discharged, or the payment to him of any back pay, if such
12 individual was suspended or discharged for cause. In case
13 the evidence is presented before a member of the Board, or
14 before an agent or agency thereof, such member, or such
15 agent or agency, as the case may be, shall issue and cause
16 to be served upon the parties to the proceeding a proposed
17 report, together with a recommended order, which shall
18 be filed with the Board and if no exceptions are filed within
19 twenty days after service thereof upon such parties, or with-
20 in such further period as the Board may authorize, such
21 recommended order shall become the order of the Board
22 and become effective as therein prescribed.

23 (d) If exceptions are filed to the proposed report and
24 recommended order, the Board shall determine whether such
25 exceptions raise substantial issues of fact or law. If it deter-

1 mines that the exceptions do raise such issues, it shall grant
2 a review. If the Board determines that the exceptions do not
3 raise such issues, it shall refuse to grant a review and such
4 recommended order shall become the order of the Board and
5 become effective as therein provided.

6 (e) Until the record in a case shall have been filed in a
7 court, as hereinafter provided, the Board may at any time,
8 upon reasonable notice and in such manner as it shall deem
9 proper, modify, or set aside, in whole or in part, any finding
10 or order made or issued by it.

11 (f) The Board or the charging party shall have power
12 to petition any court of appeals of the United States in the
13 circuit, wherein the unlawful act in question occurred or
14 wherein the person named in the complaint resides or
15 transacts business, for the enforcement of such order and for
16 appropriate temporary relief or restraining order, and shall
17 file in the court the record in the proceedings, as provided
18 in section 2112 of title 28, United States Code. Upon the
19 filing of such petition, the court shall cause notice thereof
20 to be served upon such person, and thereupon shall have
21 jurisdiction of the proceeding and of the question determined
22 therein, and shall have power to grant such temporary relief
23 or restraining order as it deems just and proper, and to make
24 and enter a decree enforcing, modifying and enforcing as so
25 modified, or setting aside in whole or in part the order of

1 the Board. No objection that has not been urged before the
2 Board, or its member, agent, or agency, shall be considered
3 by the court, unless the failure or neglect to urge such
4 objection shall be excused because of extraordinary circum-
5 stances. The findings of the Board with respect to questions
6 of fact if supported by substantial evidence on the record
7 considered as a whole shall be conclusive. If any person shall
8 apply to the court for leave to adduce additional evidence
9 and shall show to the satisfaction of the court that such addi-
10 tional evidence is material and that there were reasonable
11 grounds for the failure to adduce such evidence in the hearing
12 before the Board, or its member, agent, or agency, the court
13 may order such additional evidence to be taken before the
14 Board, or its member, agent, or agency, and to be made a
15 part of the record. The Board may modify its findings as
16 to the facts, or make new findings by reason of additional
17 evidence so taken and filed, and it shall file such modified or
18 new findings, which findings with respect to questions of fact
19 if supported by substantial evidence on the record con-
20 sidered as a whole shall be conclusive, and shall file its rec-
21 ommendations, if any, for the modification or setting aside of
22 its original order. Upon the filing of the record with it, the
23 jurisdiction of the court shall be exclusive and its judgment
24 and decree shall be final, except that the same shall be subject
25 to review by the Supreme Court of the United States upon

1 writ of certiorari or certification as provided in section 1254
2 of title 28, United States Code.

3 (g) Any person aggrieved by a final order of the Board
4 granting or denying, in whole or in part, the relief sought
5 may obtain a review of such order in any circuit court of
6 appeals of the United States in the circuit wherein the unlaw-
7 ful act in question was alleged to have occurred or wherein
8 such person resides or transacts business, or in the United
9 States Court of Appeals for the District of Columbia, by filing
10 in such court within sixty days, a written petition praying
11 that the order of the Commission be modified or set aside. A
12 copy of such petition shall be forthwith transmitted by the
13 clerk of the court to the Board, and thereupon the aggrieved
14 person shall file in the court the record in the proceeding,
15 certified by the Board, as provided in section 2112 of title
16 28, United States Code. Upon the filing of such petition, the
17 court shall proceed in the same manner as in the case of an
18 application by the Board under subsection (e) of this section,
19 and shall have the same jurisdiction to grant to the Board
20 such temporary relief or restraining order as it deems just and
21 proper, and in like manner to make and enter a decree en-
22 forcing, modifying, and enforcing as so modified, or setting
23 aside, in whole or in part, the order of the Board. The find-
24 ings of the Board with respect to questions of fact, if sup-

1 ported by substantial evidence on the record considered as a
2 whole, shall in like manner be conclusive.

3 (h) In any proceeding for enforcement or review of a
4 Board order held pursuant to this section, evidence adduced
5 during a representation proceeding held pursuant to section
6 6 of the Act shall not be included in the record required to be
7 filed under section 11 (f) and (g) of the Act, nor shall the
8 court consider the record of such proceeding.

9 (i) The commencement of proceedings under subsec-
10 tion (e) or (f) of this section shall not, unless specifically
11 ordered by the court, operate as a stay of the Board's order.

12 (j) When granting appropriate temporary relief or re-
13 straining order, or making and entering a decree enforcing,
14 modifying, and enforcing as so modified, or setting aside in
15 whole or in part, an order of the Board, as provided in this
16 section, the jurisdiction of courts sitting in equity shall not
17 be limited by the provisions of section 20 of the Act entitled
18 "An Act to supplement existing laws against unlawful re-
19 straints and monopolies and for other purposes" approved
20 October 15, 1914, as amended (29 U.S.C. 52), or the pro-
21 visions of the Act entitled "An Act to amend the Judicial
22 Code and to define and limit the jurisdiction of courts sitting
23 inequity, and for other purposes," approved March 23, 1932
24 (29 U.S.C. 101-115).

25 (k) Petitions filed under this Act shall be heard expedi-

1 tiously, and if possible within ten days after they have been
2 docketed.

3 (1) The Board shall have power, upon issuance of a
4 complaint as provided in subsection (b) of this section charg-
5 ing that any person has engaged in or is engaging in an un-
6 lawful act as defined in section 10 of this Act, to petition any
7 district court of the United States (including the District
8 Court of the United States for the District of Columbia),
9 within any district wherein the unlawful act in question is
10 alleged to have occurred or wherein such person resides or
11 transacts business, for appropriate temporary relief or re-
12 straining order. Upon the filing of any such petition the court
13 shall cause notice thereof to be served upon such person, and
14 thereupon shall have jurisdiction to grant to the Board such
15 temporary relief or restraining order as it deems just and
16 proper.

17 (m) (1) For the purpose of all hearings and investiga-
18 tions which the Board determines are necessary and proper
19 for the exercise of its powers under this Act, the Board or its
20 duly authorized agent or agency shall at all reasonable times
21 have access to, for the purpose of examination, and the right
22 to copy any evidence of any person being investigated or pro-
23 ceeded against that relates to any matter under investigation
24 or in question. The Board, or any member thereof, shall upon
25 application of any party to such proceeding, forthwith issue

1 to such party subpoenas requiring the attendance and testi-
2 mony of witnesses or the production of any evidence in such
3 proceeding or investigation requested in such application.
4 Within five days after the service of a subpoena upon any per-
5 son requiring the production of any evidence in his possession
6 or under his control, such person may petition the Board to
7 revoke, and the Board shall revoke, such subpoena if in its
8 opinion the evidence whose production is required does not
9 relate to any matter under investigation, or any matter in
10 question in such proceeding, or if in its opinion such subpoena
11 does not describe with sufficient particularity the evidence
12 whose production is required. Any member of the Board, or
13 any agent or agency designated by the Board for such pur-
14 poses, may administer oaths and affirmations, examine wit-
15 nesses, and receive evidence. Such attendance of witnesses
16 and the production of such evidence may be required from
17 any place in any State, territory, or possession of the United
18 States, at any designated place of hearing.

19 (2) In case of contumacy or refusal to obey a subpoena
20 issued to any person, any district court of the United States
21 or the United States courts of any territory or possession,
22 within the jurisdiction of which the inquiry is carried on
23 or within the jurisdiction of which said person guilty of
24 contumacy or refusal to obey is found or resides or transacts
25 business, or the District Court of the United States for

1 the District of Columbia, upon application by the Board
2 shall have jurisdiction to issue to such person an order re-
3 quiring such person to appear before the Board, its member,
4 agent, or agency, there to produce evidence if so ordered, or
5 there to give testimony touching the matter under investiga-
6 tion or in question; and any failure to obey such order of
7 the court may be punished by said court as a contempt
8 thereof.

9 (3) No person shall be excused from attending and
10 testifying or from producing books, records, correspondence,
11 documents, or other evidence in obedience to the subpoena
12 of the Board, on the ground that the testimony or evidence
13 required of him may tend to incriminate him or subject him
14 to a penalty or forfeiture; but no individual shall be prose-
15 cuted or subjected to any penalty or forfeiture for or on ac-
16 count of any transaction, matter, or thing concerning which
17 he is compelled, after having claimed his privilege against
18 self-incrimination, to testify or produce evidence, except
19 that such individual so testifying shall not be exempt from
20 prosecution and punishment for perjury committed in so
21 testifying.

22 (4) Complaints, orders, and other process and papers
23 of the Board, its member, agent, or agency, may be served
24 either personally, by registered mail, by telegraph, or by
25 leaving a copy thereof at the principal office or place of busi-

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1 ness of the person required to be served. The verified return
2 by the individual so serving the same setting forth the man-
3 ner of such service shall be proof of the same, and the return
4 post office receipt or telegraph receipt therefor when regis-
5 tered and mailed or telegraphed as aforesaid shall be proof
6 of service of the same.

7 (5) Employees called upon by either party to partici-
8 pate in any phase of proceedings under this Act, including,
9 but not limited to elections, investigations, hearings, nego-
10 tiations, and grievance and impasse procedures shall be free
11 to do so without suffering any loss of pay or benefits and
12 all such employees shall be free from restraint, coercion, inter-
13 ference, intimidation, or reprisal as a consequence of their
14 participation.

15 (6) All process of any court to which application may
16 be made under this Act may be served in the judicial district
17 wherein the defendant or other person required to be served
18 resides or may be found.

19 (7) Any person who shall willfully resist, prevent, im-
20 pede, or interfere with any member of the Commission or a
21 member, agent, or agency thereof in the performance of
22 duties pursuant to this Act shall be punished by a fine of
23 not more than \$5,000 or by imprisonment for not more than
24 one year, or both.

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1 MISCELLANEOUS

2 SEC. 12. (a) Except as otherwise expressly provided
3 herein, nothing in this Act shall be construed to annul,
4 modify, or preclude the renewal or continuation of any law-
5 ful agreement entered into prior to the effective date of this
6 Act between an agency and a labor organization covering
7 terms and conditions of employment and other matters of
8 mutual concern relating thereto.

9 (b) All laws or parts of laws of the United States in-
10 consistent with the provisions of this Act are modified or
11 repealed as necessary to remove such inconsistency, and this
12 Act shall take precedence over all ordinances, rules, regula-
13 tions, or other enactments. Except as otherwise expressly
14 provided herein, nothing contained in this Act shall be con-
15 strued to deny or otherwise abridge any rights, privileges,
16 or benefits granted by law to employees.

17 (c) If any provision of this Act shall be held invalid,
18 other provisions of this Act shall not be affected thereby.

19 EFFECTIVE DATE

20 SEC. 13. The Act shall take effect one hundred and
21 twenty days following its enactment.

Union Calendar No. 469

95TH CONGRESS
2D SESSION**H. R. 3793**

[Report No. 95-920]

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 22, 1977

Mrs. SPELLMAN introduced the following bill; which was referred to the Committee on Post Office and Civil Service

MARCH 3, 1978

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend title 5, United States Code, to provide Federal employees under investigation for misconduct the right to representation during questioning regarding such misconduct.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That (a) chapter 71 of title 5, United States Code, is
- 4 amended by adding at the end thereof the following new
- 5 subchapter:

1 "SUBCHAPTER III—EMPLOYEE RIGHTS *RIGHT*
2 *TO REPRESENTATION*

3 "§ 7171. **Right to representation during questioning**

4 " (a) Any employee of an Executive agency under in-
5 vestigation for misconduct which could lead to suspension,
6 removal, or reduction in rank or pay of such employee
7 shall not be required to answer questions relating to the
8 misconduct under investigation unless—

9 " (1) the employee is advised in writing of—

10 " (A) the fact that such employee is under
11 investigation for misconduct,

12 " (B) the specific nature of such alleged mis-
13 conduct, and

14 " (C) the rights such employee has under para-
15 graph (2) of this subsection, and

16 " (2) the employee has been provided reasonable
17 time, not to exceed 5 working days, to obtain a repre-
18 sentative of his choice, and is allowed to have such
19 representative present during such questioning, if he so
20 elects.

21 " (b) For the purpose of subsection (a) (2), an em-
22 ployee of the Central Intelligence Agency, National Security
23 Agency, or the Federal Bureau of Investigation who is under
24 investigation for misconduct may have a representative of

1 his choice present during such questioning, except that such
2 representative shall be—

3 “(1) an employee of the agency in which the
4 employee who is under investigation for misconduct is
5 employed, and

6 “(2) approved by the agency for access to the in-
7 formation involved in the investigation.

8 “(c) Any statement made by or evidence obtained
9 during questioning of an employee of an Executive agency
10 may not be used as evidence in the course of any action
11 for suspension, removal, or reduction in rank or pay sub-
12 sequently taken against the employee, unless the require-
13 ments of paragraphs (1) and (2) of subsection (a) of
14 this section were complied with during such questioning.

15 **“§ 7172. Right to appeal**

16 “(a) Except as provided under subsection (b) of this
17 section, an employee of an ~~executive~~ *Executive* agency
18 against whom any action is taken for suspension, removal,
19 or reduction in rank or pay in violation of section 7171 of
20 this title, and who is not otherwise entitled to appeal such
21 action to the Civil Service Commission, is entitled to appeal
22 such action to the Commission if the employee submits the
23 appeal in writing within a reasonable time after receipt of
24 notice of such action. Under regulations prescribed by the

1 Commission, the employee is entitled to appear personally
2 or through a representative of his choice. The Commission,
3 after investigation and consideration of the evidence sub-
4 mitted, shall submit its findings and recommendations to
5 the administrative authority and shall send copies of the
6 findings and recommendations to the appellant or his rep-
7 resentative. The administrative authority shall take the cor-
8 rective action that the Commission finally recommends.

9 “(b) Under such regulations as the President may pre-
10 scribe, an employee of the Central Intelligence Agency,
11 National Security Agency, or the Federal Bureau of In-
12 vestigation against whom any action is taken for suspen-
13 sion, removal, or reduction in rank or pay in violation of
14 section ~~7177~~ 7171 of this title is entitled to appeal such
15 action solely to the President, or to an appropriate designee
16 of the President, whose findings and recommendations shall
17 be final and conclusive.

18 **“§ 7173. Regulations**

19 “The Civil Service Commission shall prescribe regula-
20 tions necessary to carry out the purposes of this subchapter,
21 except section 7172 (b) of this title.”.

22 (b) The analysis of chapter 71 of title 5, United
23 States Code, is amended by adding the following at the end
24 thereof:

5

1 "SUBCHAPTER III—EMPLOYEE ~~RIGHTS~~ *RIGHT*
2 *TO REPRESENTATION*

"Sec.

"7171. Right to representation during questioning.

"7172. Right to appeal.

"7173. Regulations."

3 SEC. 2. The amendments made by the first section of this
4 Act shall take effect on the ninetieth day beginning after the
5 date of enactment of this Act.

95TH CONGRESS
1ST SESSION

H. R. 9094

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 1977

Mr. CLAY (for himself and Mr. FORD of Michigan) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To provide for improved labor-management relations in the Federal Service, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Service Labor-
4 Management Act of 1977".

5 SEC. 2. So much of subpart F of part III of title 5,
6 United States Code, as precedes subchapter II of chapter 71
7 thereof is amended to read as follows:

2

1 **“Subpart F—Labor-Management and Employee**
 2 **Relations**

3 **“Chapter 71—LABOR-MANAGEMENT RELATIONS**

“SUBCHAPTER I—GENERAL PROVISIONS

“Sec.

- “7101. Findings and purpose.**
- “7102. Employees’ rights.**
- “7103. Definitions.**
- “7104. Federal Labor Relations Authority.**
- “7105. Power and duties of the Authority.**

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

“Sec.

- “7111. Exclusive recognition of labor organizations.**
- “7112. National consultation rights.**
- “7113. Representation rights and duties.**
- “7114. Establishment of Pay, Benefits and Classification of Federal Em-
ployees.**
- “7115. Federal Employees Pay and Benefits Committee, and Arbitration
Board on Federal Employees Pay and Benefits.**
- “7116. Allotments to representatives.**
- “7117. Unfair labor practices.**
- “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. Appeals from adverse decisions.**
- “7122. Grievance procedures.**
- “7123. Exceptions to arbitral awards.**
- “7124. Judicial review.**

**“SUBCHAPTER IV—ADMINISTRATIVE AND OTHER
PROVISIONS**

“Sec.

- “7131. Reporting requirements for standards of conduct.**
- “7132. Official time.**
- “7133. Subpoenas.**
- “7134. Compilation and publication of data.**
- “7135. Funding.**
- “7136. Issuance of regulations.**
- “7137. Continuation of existing laws, recognitions, agreements, and pro-
cedures.**

3

1 “SUBCHAPTER I—GENERAL PROVISIONS

2 “§ 7101. Findings and purpose

3 “(a) The Congress finds that experience in both pri-
4 vate and public employment indicates that the statutory
5 protection of the right of employees to organize, bargain
6 collectively, and participate through labor organizations of
7 their own choosing in decisions which affect them safeguards
8 the public interest and contributes to the effective conduct
9 of public business. Such protection facilitates and encourages
10 the amicable settlement of disputes between employees and
11 their employers involving terms and conditions of employ-
12 ment and other matters of mutual concern. Therefore, labor
13 organizations and collective bargaining in the Federal Serv-
14 ice are in the public interest.

15 “(b) It is the purpose of this chapter to prescribe
16 certain rights and obligations of the employees of the Fed-
17 eral Government and to establish procedures which are
18 designed to meet the special requirements and needs of the
19 Federal Government.

20 “§ 7102. Employees' rights

21 “(a) Each employee shall have the right to form, join,
22 or assist any labor organization, or to refrain from such ac-

4

1 tivity, freely and without fear of penalty or reprisal, and
2 each such employee shall be protected in his exercising of
3 such right. Except as otherwise provided under this chapter,
4 such right includes the right to act for the organization in
5 the capacity of a representative and the right, in such
6 capacity, to present the views of the organization to agency
7 heads and other officials of the executive branch of the
8 Government, the Congress, or other appropriate authorities;
9 and to bargain collectively over the terms and conditions of
10 employment and other matters of mutual concern relating
11 to employment through representatives of their own choosing
12 and to engage in other lawful activities for the purpose of
13 establishing, maintaining, and improving terms and condi-
14 tions of employment and other matters of mutual concern
15 relating to employment.

16 (b) Any employee who is a member of and adheres to
17 established and traditional tenets or teachings of a bona fide
18 religion, body, or sect which has historically held conscien-
19 tious objections to joining or financially supporting labor
20 organizations shall not be required to financially support any
21 labor organization as a condition of employment; except that
22 such employee may be required, in lieu of dues, to pay sums
23 equal to such dues and initiation fees to a nonreligious chari-
24 table fund exempt from taxation under section 501 (c) (3) of
25 the Internal Revenue Code of 1954, chosen by such em-

5

1 ployee from a list of at least three such funds, designated in
2 a contract between such an agency and a labor organization,
3 or if the contract fails to designate such funds, then to any
4 such fund chosen by the employee.

5 **“§ 7103. Definitions; application**

6 “(a) For the purpose of this chapter—

7 “(1) ‘person’ means an individual, labor organiza-
8 tion, or agency covered by this chapter;

9 “(2) ‘employee’ means an individual—

10 “(A) employed in an agency;

11 “(B) employed in a nonappropriated fund in-
12 strumentality described in section 2105 (c) of this
13 title;

14 “(C) employed in the Veterans’ Canteen Serv-
15 ice, Veterans’ Administration, described in section
16 5102 (c) (14) of this title; or

17 “(D) who was an employee (as defined under
18 subparagraph (A), (B), or (C) of this para-
19 graph) and was separated from service as a con-
20 sequence of, or in connection with, an unfair labor
21 practice under section 7117 of this title;

22 but does not include—

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

6

1 “(ii) a member of the uniformed military
2 services;

3 “(iii) for the purposes of exclusive recognition
4 or national consultation rights (except as author-
5 ized under the provisions for this chapter), a super-
6 visor or a management official; or

7 “(iv) an individual employed by the Govern-
8 ment of the District of Columbia, the Tennessee
9 Valley Authority, or the United States Postal
10 Service;

11 “(3) ‘agency’ means any Executive agency, as
12 defined in section 105 of this title, the Library of Con-
13 gress, the Government Printing Office, and the Postal
14 Rate Commission;

15 “(4) ‘labor organization’ means an organiza-
16 tion composed in whole or in part of employees of an
17 agency, in which employees participate and pay dues,
18 and which has as its primary purpose the dealing with
19 an agency concerning grievances and the formulation
20 and implementation of matters affecting conditions of
21 employment, except that such term does not include—

22 “(A) an organization whose basic purpose is
23 purely social, fraternal, or limited to special interest
24 objectives which are only incidentally related to
25 matters affecting conditions of employment;

1 “(B) an organization which, by ritualistic
2 practice, constitution, bylaws, tacit agreement
3 among its members, or otherwise, denies member-
4 ship because of race, color, creed, national origin,
5 sex, age, or preferential or nonpreferential civil
6 service status; or

7 “(C) an organization sponsored by an agency
8 or by any part of an agency;

9 “(5) ‘affiliate’ means, when used with respect to
10 a labor organization, any national or international union,
11 federation, council, or department, or other organization
12 in which such labor organization is represented or with
13 which such labor organization is affiliated;

14 “(6) ‘Authority’ means the Federal Labor Rela-
15 tions Authority established by section 7104 (a) of this
16 title;

17 “(7) ‘Panel’ means the Federal Service Impasses
18 Panel established by section 7119 (c) of this title;

19 “(8) ‘Board’ means the Arbitration Board on
20 Federal Employees Pay established by section 7115 (c)
21 of this title;

22 “(9) ‘Committee’ means the Federal Employees
23 Pay and Benefits Committee established by sec-
24 tion 7115 (a) of this title;

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

4 “(11) ‘grievance’ means any complaint by any
5 person—

6 “(A) concerning any matter relating to the
7 employment of such person with an agency;

8 “(B) concerning the effect or interpretation,
9 or a claim of breach, of an agreement; or

10 “(C) concerning any claimed violation, mis-
11 interpretation, or misapplication of law, rule, or
12 regulations, affecting conditions of employment;

13 “(12) ‘supervisor’ means any employee having au-
14 thority in the interest of an agency to hire, direct,
15 assign, promote, reward, transfer, lay off, recall, suspend,
16 discipline, or discharge other employees, or to adjust
17 their grievances, or to effectively recommend such action
18 if in connection with the foregoing the exercise of such
19 authority is not merely routine or clerical in nature but
20 calls for the consistent exercise of independent judg-
21 ment, except that with respect to firefighters and nurses,
22 the term ‘supervisor’ shall include only those employees
23 who devote a preponderance of his time to one or more
24 of the above specified acts of authority;

1 “(13) ‘management official’ means an individual
2 who formulates, determines, or influences, or effectuates
3 policies of an agency;

4 “(14) ‘collective bargaining’ or ‘bargaining’ means
5 the performance of the mutual obligation of the repre-
6 sentatives of the agency and the exclusive representa-
7 tive to meet at reasonable times and to confer, consult,
8 and bargain in a good-faith effort to reach agreement
9 with respect to the terms and conditions of employment
10 and other matters of mutual concern relating thereto,
11 and to execute, if requested by either party, a written
12 document incorporating any agreements reached, but
13 such obligation does not compel either party, to agree
14 to a proposal or to make a concession. The duty to bar-
15 gain shall extend to matters which are or may be the
16 subject of any rule or regulation. The agency may not
17 make or apply rules or regulations which restrict the
18 scope of collective bargaining permitted by this chapter
19 or which are in conflict with any agreement negotiated
20 under this chapter;

21 “(15) ‘confidential employee’ means an employee
22 who acts in a confidential capacity to a person who for-
23 mulates or effectuates management policies in the field
24 of labor relations;

1 “(16) ‘conditions of employment’ means personnel
2 policies, practices, and matters affecting working condi-
3 tions, including—

4 “(A) pay practices;

5 “(B) work hours and schedules;

6 “(C) overtime practices;

7 “(D) safety;

8 “(E) promotion procedures and assignment,
9 transfer, detail, leave, and reduction-in-force prac-
10 tices;

11 “(F) seniority;

12 “(G) procedures for taking disciplinary actions;

13 “(H) grievance and appeal procedures;

14 “(I) contracting out;

15 “(J) use of military personnel;

16 “(K) training; and

17 “(L) travel and per diem;

18 but does not include policies, practices, and matters
19 relating to—

20 “(i) discrimination in employment because
21 of race, color, religion, sex, age, or national origin;

22 “(ii) political activities prohibited under sub-
23 chapter III of chapter 73 of this title; or

24 “(iii) provisions of Federal law, which affect

1 working conditions, which apply to both public and
2 private employers, and which are not negotiable
3 under collective bargaining agreements with private
4 employers;

5 “(17) ‘professional employee’ means—

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

8 “(i) requiring knowledge of an advanced
9 type in a field of science or learning customarily
10 acquired by a prolonged course of specialized
11 intellectual instruction and study in an institu-
12 tion of higher learning or a hospital (as distin-
13 guished from knowledge acquired by a general
14 academic education, or from an apprenticeship,
15 or from training in the performance of routine
16 mental, manual, mechanical, or physical activi-
17 ties) ;

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

20 “(iii) which is predominantly intellectual
21 and varied in character (as distinguished from
22 routine mental, manual, mechanical, or phys-
23 ical work) ; and

24 “(iv) which is of such character that the

1 output produced or the result accomplished by
2 such work cannot be standardized in relation
3 to a given period of time; or

4 “(B) an employee who has completed the
5 courses of specialized intellectual instruction and
6 study described in subparagraph (A) of this para-
7 graph and is performing related work under the
8 direction or guidance of a professional person to
9 qualify himself to become a professional employee;

10 “(18) ‘exclusive representative’ means any labor
11 organization which has been—

12 “(A) selected or designated pursuant to the
13 provisions of section 7111 of this title as the repre-
14 sentative of the employee in an appropriate collec-
15 tive bargaining unit; or

16 “(B) recognized by an agency before the effec-
17 tive date of this chapter as the exclusive representa-
18 tive of the employee in an appropriate collective
19 bargaining unit—

20 “(i) on the basis of an election, or

21 “(ii) on any basis other than an election;

22 “(19) ‘firefighter’ includes any employee engaged
23 in the performance of work directly connected with the
24 control and extinguishment of fires or the maintenance
25 and use of firefighting apparatus and equipment;

1 “(20) ‘educational employee’ includes any em-
2 ployee of a school system, college, or university, who—

3 “(A) has regular contact with students;

4 “(B) participates in the development, imple-
5 mentation, or evaluation of an educational program;

6 or

7 “(C) is otherwise involved in the teaching-
8 learning process;

9 “(21) ‘alternate labor organization’ means a labor
10 organization which was in existence before July 1,
11 1971, which has historically represented both Federal
12 and Postal employees on a nationwide basis, and which,
13 on the date of the enactment of this chapter, represents
14 on an exclusive basis not more than 1,500 employees;
15 and

16 “(22) ‘dues’ means dues, fees, and assessments.

17 “(b) This chapter does not authorize participation in
18 the management of a labor organization or acting as a rep-
19 resentative of such an organization by a management official
20 or a supervisor, except as specifically provided in this chap-
21 ter, or by an employee if the participation or activity
22 would result in a conflict or apparent conflict of interest or
23 would otherwise be incompatible with law or with the official
24 duties of the employee.

1 **“§ 7104. Federal Labor Relations Authority**

2 **“(a) There is established the Federal Labor Relations**
3 **Authority.**

4 **“(b) The Authority shall be composed of a Chairman**
5 **and two other members. Not more than two of the members**
6 **shall be members of the same political party. A member shall**
7 **not engage in any other business or employment.**

8 **“(c) Members of the Authority shall be appointed by**
9 **the President, by and with the advice and consent of the Sen-**
10 **ate. Authority members shall be eligible for reappointment.**
11 **The President shall designate one member to serve as Chair-**
12 **man of the Authority.**

13 **“(d) One of the original members of the Authority**
14 **shall be appointed for a term of 1 year, one for a term of 3**
15 **years, and the Chairman for a term of 5 years. Thereafter,**
16 **each member shall be appointed for a term of 5 years. Not-**
17 **withstanding the preceding provisions of this subsection, the**
18 **term of any member shall not expire before the earlier of (1)**
19 **the date on which his successor takes office, or (2) the**
20 **last day of the Congress beginning after the date his term**
21 **of office would (but for this sentence) expire. An individual**
22 **chosen to fill a vacancy shall be appointed for the unexpired**
23 **term of the member he replaces. Any member of the**
24 **Authority may be removed by the President only for neglect**
25 **of duty or malfeasance in office.**

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

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

8 “(g) There shall be a General Counsel of the Authority
9 who shall be appointed by the President by and with the
10 advice and consent of the Senate for a term of 5 years. The
11 General Counsel shall be authorized to investigate alleged
12 violations of this chapter, to file and prosecute complaints
13 filed under this chapter, to intervene before the Authority
14 in proceedings brought under section 7117 of this title. He
15 shall have direct authority over, and responsibility for, all
16 field employees of the General Counsel in the regional offices
17 of the Authority. The General Counsel shall exercise such
18 other powers as the Authority may prescribe. If a vacancy
19 occurs in the Office of General Counsel, the President shall
20 promptly designate an Acting General Counsel and shall
21 submit a nomination for a replacement to Congress within 40
22 days after the vacancy has occurred, unless Congress shall
23 have adjourned before the expiration of such 40-day period,
24 in which case the President shall submit a nomination not
25 later than 10 days after Congress reconvenes.

1 **“§ 7105. Powers and duties of the Authority**

2 “(a) The Authority shall provide leadership in estab-
3 lishing labor-management relations policy and guidance un-
4 der this chapter, and, except as otherwise provided, shall be
5 responsible for carrying out the purposes of this chapter.

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

8 “(c) The principal office of the Authority shall be in
9 the District of Columbia but it may meet and exercise any
10 or all of its powers at any time or place. Subject to subsection
11 (g) of this section, the Authority may, by one or more of its
12 members or by such agents as it may designate, make any
13 inquiry necessary to carry out its duties wherever persons
14 subject to this chapter are located. A member who par-
15 ticipates in such inquiry shall not be disqualified from later
16 participating in a decision of the Authority in the same case.

17 “(d) The Authority shall appoint an Executive Direc-
18 tor, such attorneys, regional directors, administrative law
19 judges, and other employees as it may from time to time find
20 necessary for the proper performance of its duties.

21 “(e) (1) The Authority may delegate to its regional
22 directors its powers under section 7111 of this title to deter-
23 mine the unit appropriate for the purpose of collective bar-
24 gaining, to investigate and provide for hearings, to determine

1 whether a question of representation exists and to direct an
2 election, conduct a secret ballot election, and certify the
3 results thereof, except that upon the filing of a request there-
4 for with the Authority by any interested person, the Au-
5 thority may review any action of the regional director, dele-
6 gated to him under this paragraph, but such review shall not,
7 unless specifically ordered by the Authority, operate as a
8 stay of any action taken by the regional director.

9 “(2) The Authority may delegate to an administrative
10 law judge its powers under section 7116 of this title to deter-
11 mine whether any person has engaged in an unfair labor
12 practice. The Authority may review any action of an ad-
13 ministrative law judge delegated to him under his para-
14 graph, but such review shall not, unless specifically ordered
15 by the Authority, operate as a stay of any action taken by
16 the administrative law judge.

17 “(f) If the Authority exercises the power granted by
18 subsection (e) of this section to delegate its powers to any
19 regional director or administrative law judge, it may, upon
20 application by any interested person, review, and upon such
21 review, modify, affirm, or reverse, the decision, certification,
22 or order of a regional director or administrative law judge if
23 it believes substantial questions of law or fact have been

1 raised. In the event that the Authority does not undertake
2 to grant review within 60 days after a request for review
3 is filed, the decision of such regional director or administra-
4 tive law judge shall become the decision of the Authority.

5 “(g) All of the expenses of the Authority, including all
6 necessary traveling and subsistence expenses outside the
7 District of Columbia incurred by members, employees, or
8 agents of the Authority under its orders, shall be allowed and
9 paid on the presentation of itemized vouchers therefor
10 approved by the Authority or by any individual it designates
11 for that purpose.

12 “(h) In order to carry out its functions under this chap-
13 ter, the Authority may hold hearings, subpoena witnesses,
14 administer oaths, and take the testimony or deposition of any
15 person under oath, and in connection therewith, may issue
16 subpoenas requiring the production and examination of any
17 books or papers, including those of the Federal Government
18 to the extent otherwise available under law, relating to any
19 matter pending before it and to take such other action as
20 may be necessary to carry out the purpose of this chapter.

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

23 “§ 7111. Exclusive recognition of labor organizations

24 “(a) Exclusive recognition shall be granted to a labor
25 organization which has been selected by a majority of em-

1 ployees in an appropriate unit who participate in the elec-
2 tion in conformity with the requirements of this chapter.

3 “(b) Exclusive recognition shall not be accorded to a
4 labor organization if—

5 “(1) the Authority determines the labor organiza-
6 tion is subject to corrupt influences or influences opposed
7 to democratic principles;

8 “(2) a petition is filed pursuant to subsection (c)
9 which is not supported by credible evidence demon-
10 strating that at least 30 percent of the employees in
11 the collective bargaining unit described therein wish to
12 be represented for the purpose of collective bargaining
13 by the organization seeking recognition;

14 “(3) there is currently in effect a lawful written
15 collective bargaining agreement between such employer
16 and a labor organization other than the petitioner
17 covering any employees included in the unit described in
18 the petition, unless such agreement has been in effect for
19 more than 3 years, or unless the request for recognition
20 is filed during the 4-month period which begins on the
21 180th day before the expiration date of such agreement;

22 “(4) during the previous 12 calendar months, a
23 labor organization other than the petitioner, or other
24 than the labor organization challenged if the petition is
25 filed pursuant to subsection (c) (1), has been lawfully

1 certified as the exclusive representative of any employees
2 included in the unit described in petition; or

3 “(5) the Authority has, within the previous 12
4 calendar months, conducted a secret ballot election
5 involving any of the employees and a majority of the
6 valid ballots cast chose not to be represented by any
7 labor organization.

8 “(c) (1) If a petition has been filed with the Au-
9 thority—

10 “(A) by any person alleging that 30 percent of the
11 employees in the appropriate unit (i) wish to be repre-
12 sented for collective bargaining by an exclusive repre-
13 sentative, or (ii) allege that the exclusive representative
14 is no longer the representative of the majority of the
15 employees in the unit; or

16 “(B) by any person seeking clarification of, or an
17 amendment to, an existing certification;

18 the Authority shall investigate such petition, and if it has
19 reasonable cause to believe that a question of representation
20 exists, it shall provide for an appropriate hearing on the
21 record upon due notice. Except as provided under subsec-
22 tion (f) of this section, if the Authority finds upon the
23 record of such hearing that such a question of representation
24 exists, it shall conduct an election by secret ballot and shall
25 certify the results thereof. An election shall not be con-

1 ducted in any unit or in any subdivision thereof within which,
2 in the preceding 12 calendar months, a valid election has
3 been held.

4 “(2) If, at the end of 45 days following the date
5 the petition is filed, there are unresolved issues concern-
6 ing the unit appropriate for the purposes of collective
7 bargaining, the eligibility of challenged voters, or other
8 matters, the Authority shall direct an election by secret
9 ballot in the unit then sought by the petitioner and an-
10 nounce the results thereof. The Authority then shall ex-
11 pedite the resolution of the disputed issues relating to the
12 election conducted in accordance with the preceding sen-
13 tence. If the Authority determines that the unit sought
14 by the petitioner is appropriate, and that the challenged
15 ballots will not affect the outcome of such election, the
16 Authority shall certify the results of such election. If the
17 Authority determines that the unit sought by the petitioner
18 is not appropriate, or that the challenged ballots will affect
19 the outcome of the election, it shall direct a new election by
20 secret ballot and shall certify the results thereof.

21 “(d) A labor organization which—

22 “(1) has been designated by at least 10 percent
23 of the employees in the unit;

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

1 “(3) has submitted other evidence that it is the
2 exclusive representative of the employees involved;
3 may intervene with respect to a petition filed under sub-
4 section (c) of this section and shall be placed on the ballot
5 of any election ordered to be held under such subsection (c).

6 “(e) The Authority shall determine who is eligible to
7 vote in the election and shall establish rules governing the
8 election which shall include provisions allowing each em-
9 ployee eligible to vote the opportunity to choose—

10 “(1) the labor organization he wishes to represent
11 him from those on the ballot, or

12 “(2) not to have representation by a labor organi-
13 zation.

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

20 “(f) The Authority may certify a labor organization
21 as an exclusive representative—

22 “(1) if it determines that the conditions for a free
23 and untrammelled election under this section cannot be
24 established because an agency has engaged in or is en-

23

1 gaging in an action described in section 7117 of this
2 title; or

3 “(2) upon the petition of such labor organization,
4 if, after investigation, the Authority is satisfied that—

5 “(A) the labor organization represents a ma-
6 jority of employees in an appropriate unit;

7 “(B) such majority status was achieved with-
8 out the benefit of an action described in section
9 7117 of this title; and

10 “(C) no other person has filed a petition for
11 recognition under subsection (c) of this section or
12 a request for intervention under subsection (d) of
13 this section, or no other question of representation
14 exists in the appropriate unit.

15 “(g) The Authority shall decide in each case whether,
16 in order to insure employees the fullest freedom in exercising
17 the rights guaranteed under this chapter, the unit to be es-
18 tablished will be on an agency, plant, installation, functional,
19 or other basis which will insure a clear and identifiable com-
20 munity of interest among the employees concerned and will
21 promote effective dealings and efficiency of agency opera-
22 tions.

23 “(h) A unit shall not be established solely on the basis

1 of the extent to which employees in the proposed unit have
2 organized, nor shall a unit be established if it includes—

3 “(1) any management official or supervisor, except
4 as provided under section 7137 (a) of this title or except
5 that—with respect to firefighters and nurses, a unit that
6 includes both supervisors and nonsupervisors may be
7 considered appropriate; and

8 “(2) a confidential employee;

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

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

13 “(5) both professional and nonprofessional employ-
14 ees, unless a majority of the professional employees vote
15 for inclusion in the unit;

16 “(6) any employee engaged in intelligence, inves-
17 tigative, or security functions of any agency which di-
18 rectly affect national security; or

19 “(7) any employee primarily engaged in investiga-
20 tion or audit functions relating to the work of an agency’s
21 officers or employees whose duties directly affect the in-
22 ternal security of that agency but only if such functions
23 are undertaken to insure that such duties are discharged
24 honestly and with integrity.

1 “(i) Two or more units for which a labor organization
2 holds exclusive representation within an agency by reason
3 of elections by more than half of the total number of em-
4 ployees within such units shall be consolidated into a
5 single larger unit if the Authority deems the larger unit
6 to be appropriate. The Authority shall certify the labor
7 organization as the exclusive representative in such new
8 unit.

9 “(j) In the case of the reorganization of one or more
10 units for which, before the reorganization, labor organization
11 was certified as the exclusive representative of any such unit,
12 such labor organization shall continue to be the exclusive
13 representative for such unit until new elections are held or a
14 period of 45 days has elapsed, whichever first occurs.

15 “(k) Any labor organization described in paragraph
16 (ii) of section 7103 (a) (17) (B) of this title may petition
17 for an election for the determination of such organization as
18 the exclusive representative of any unit.

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

23 “(m) Nothing in this section shall be construed to pro-
24 hibit the waiving of hearings by stipulation for the purpose

1 of a consent election in conformity with regulations and rules
2 or decisions of the Authority.

3 **“§ 7112. National consultation rights**

4 “(a) A labor organization which has been granted ex-
5 clusive recognition below the agency level as the representa-
6 tive of a substantial number of employees of the agency shall
7 be granted national consultation rights in accordance with
8 criteria prescribed by the Authority. The provisions of this
9 section shall not apply to any agency in which exclusive
10 recognition on an agency basis is in effect. National consul-
11 tation rights shall terminate when the labor organization no
12 longer meets the criteria of the Authority. Any issue as to a
13 labor organization’s eligibility for, or continuation of, national
14 consultation rights shall be subject to review by the
15 Authority.

16 “(b) A labor organization having national consultation
17 rights shall be informed of proposed changes in conditions of
18 employment and shall be permitted reasonable time to
19 present its views and to initiate proposals. Such proposals
20 shall receive consideration by the agency before final action
21 is taken, and the agency shall provide a written statement of
22 the reasons for its actions.

23 **“§ 7113. Representation rights and duties**

24 “(a) When a labor organization has been accorded
25 exclusive recognition, it is the exclusive representative of

1 employees in the unit and is entitled to act for and negotiate
2 agreements covering all employees in the unit. It is respon-
3 sible for representing the interests of all employees in the
4 unit without discrimination and without regard to labor
5 organization membership. The labor organization shall be
6 given the opportunity to be represented at discussions be-
7 tween management and employees or representatives con-
8 cerning grievances, personnel policies and practices, discus-
9 sions between an employee and a representative of an agency
10 where the employee reasonably believes he may be the sub-
11 ject of disciplinary or adverse action, or other matters affect-
12 ing general working conditions of employees in the unit. The
13 agency and labor organizations, through appropriate repre-
14 sentatives, shall meet and negotiate in good faith for the
15 purpose of arriving at an agreement. The right of an exclu-
16 sive representative shall not be construed to deprive an
17 employee from appointing a representative other than an
18 exclusive representative of the employee's own choosing in
19 any appeal action other than one negotiated pursuant to
20 this chapter.

21 “(b) The duty of an agency (or a part thereof) and a
22 recognized labor organization to negotiate in good faith shall
23 include the obligation—

24 “(1) to approach the negotiations with a sincere
25 resolve to reach an agreement;

1 “(2) to be represented at the negotiations by duly
2 authorized representatives prepared to discuss and nego-
3 tiate on all matters affecting conditions of employment;

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

7 “(4) to furnish in the case of information to be
8 furnished by an agency, to the other party, upon request,
9 data normally maintained in the regular course of busi-
10 ness, reasonably available and necessary for full and
11 proper discussion, understanding, and negotiation of sub-
12 jects within the scope of collective bargaining; and

13 “(5) if an agreement is reached, to execute upon
14 request a written document embodying the agreed terms,
15 and to take such steps as are necessary to implement the
16 agreement.

17 “(c) An employee, within a unit with respect to which
18 a labor organization is an exclusive representative described
19 in section 7103 (a) (18) (B) (ii) of this title, may appoint
20 an alternate labor organization as his representative in appeal
21 actions other than appeal actions negotiated pursuant to this
22 chapter. Any such appointment may not be revoked for the
23 one-year period beginning on the date of such appointment
24 or during any appeal action under this subsection. During
25 any proceeding in connection with any such appeal action,

1 the labor organization which is the exclusive representative
2 of such unit may have representatives present.

3 “(d) In all aspects of the collective-bargaining relation-
4 ships and the rights of any person established under or pur-
5 suant to this chapter, including the negotiation and adminis-
6 tration of agreements, a person shall be governed by—

7 “(1) applicable laws; and

8 “(2) the terms of a controlling agreement at a
9 higher agency level.

10 **“§ 7114. Establishment of pay, benefits, and classification**
11 **of Federal employees**

12 “(a) It is the policy of Congress that the fixing of Fed-
13 eral employees pay and benefits under statutory pay and
14 benefits systems be based on the principles that—

15 “(1) there be equal pay and benefits among Fed-
16 eral employees for those performing substantially equal
17 work;

18 “(2) pay and benefits distinctions be maintained in
19 keeping with work and performance distinctions;

20 “(3) total pay and benefits be comparable with pri-
21 vate enterprise pay and benefits rates for the same levels
22 of work; and

23 “(4) pay and benefits levels for the statutory pay
24 and benefits systems be interrelated.

25 “(b) The pay and benefits of each statutory pay and

1 benefits system shall be fixed and adjusted in accordance
2 with the principles under subsection (a) of this section and
3 implementation pursuant to the provisions of this section.

4 “(c) For the purpose of this subchapter, ‘statutory pay
5 and benefits system’ means a pay and benefits system
6 under—

7 “(1) subchapter III of chapter 53, relating to the
8 General Schedule; and

9 “(2) chapter 73 of title 38, relating to the Depart-
10 ment of Medicine and Surgery, Veterans’ Administra-
11 tion.

12 “(d) In order to carry out the policy stated in section
13 7114 (a) of this title, the President shall—

14 “(1) direct the Chairman of the Civil Service Com-
15 mission, Secretary of Labor, and Director, Office of Man-
16 agement and Budget to serve as his agent and to pre-
17 pare in conjunction with the Federal Employees Pay
18 and Benefits Committee an annual report which shall
19 include joint recommendations for appropriate adjust-
20 ments in rates of pay and benefits. The joint recom-
21 mendations shall be based upon—

22 “(A) the factors contained in section 7114 (a)
23 of this title;

24 “(B) a comparison of the rate of total pay and

1 benefits of the statutory pay and benefits system
2 with the rates of pay and benefits for the same
3 levels of work in private enterprise as determined
4 on the basis of appropriate annual surveys that shall
5 be conducted by the Bureau of Labor Statistics and
6 completed by May 1 of the applicable year; and

7 “(C) the recommendations of the Federal Em-
8 ployees Pay and Benefits Committee;

9 “(2) adjust, effective as of the beginning of the
10 first applicable pay period commencing on or after
11 October 1 of the applicable year, the rates of pay and
12 benefits of each statutory pay and benefits system in
13 accordance with the joint recommendations of the agent
14 and the Federal Employees Pay and Benefits Commit-
15 tee or the recommendation of the Arbitration Board
16 on Federal Employees Pay and Benefits, or both. The
17 rates of pay and benefits that take effect under this sec-
18 tion shall modify, supersede, or render inapplicable, as
19 the case may be, to the extent inconsistent therewith all
20 provisions of law enacted before the effective date of
21 such adjustments; and

22 “(3) transmit to Congress a report of the pay
23 adjustment, together with a copy of the joint recom-
24 mendations submitted by the Agent and the Federal

1 Employees Pay and Benefits Committee and the
2 recommendations of the Arbitration Board on Federal
3 Employees Pay and Benefits.

4 “(e) In carrying out the functions set forth in subsection
5 (a) (2) of this section, the President’s agent and the Fed-
6 eral Employee Pay and Benefits Committee shall—

7 “(1) meet at reasonable times in an attempt to
8 develop joint recommendations on rates of total pay and
9 benefits that should be made to achieve comparability
10 between those rates of pay and benefits and the rates of
11 pay and benefits for the same levels of work in private
12 enterprise;

13 “(2) develop joint recommendations concerning—

14 “(A) the scope and coverage of the annual
15 survey conducted by the Bureau of Labor Statistics
16 under section 7114 (a) (2) (A) of this title, includ-
17 ing the occupations, establishment sizes, industries,
18 and geographical areas to be surveyed;

19 “(B) the validity of the technique used in com-
20 paring pay and benefits made between Federal
21 employees and employees in private enterprise;

22 “(C) the amount employees should be paid
23 above the statutory pay and benefits levels when it
24 is determined that the employees in one or more

1 areas or locations are above the statutory pay and
2 benefits levels in other locations or areas; and

3 “(D) the process to be used in comparing the
4 rates of pay and benefits of the statutory pay and
5 benefits system with the rates of pay and benefits
6 for the same levels of work in private enterprise;

7 “(3) submit all joint recommendations to the Presi-
8 dent by June 15 of the applicable year;

9 “(4) submit all matters on which a joint recommen-
10 dation is not obtained to the Federal Mediation and
11 Conciliation Service who shall provide assistance in ob-
12 taining joint recommendations to be submitted to the
13 President by June 30 of the applicable year; and

14 “(5) submit all matters on which a joint recommen-
15 dation is not obtained by July 1 of the applicable year
16 to the Arbitration Board on Federal Employees Pay
17 and Benefits.

18 “(f) (1) If the President agrees with the joint recom-
19 mendation of the Federal Employees Pay and Benefits Com-
20 mittee and the agent or the recommendations of the Ar-
21 bitration Board on Federal Employees Pay and Benefits, or
22 both, the President shall prepare and transmit to Congress
23 before September 1 a report indicating his acceptance to-
24 gether with the reasons therefor.

1 “(2) A report transmitted by the President under Para-
2 graph (1) of this subsection becomes effective on the first
3 day of the first applicable pay period commencing on or after
4 October 1 of the applicable year unless before the end of the
5 first period of 30 calendar days of continuous session of Con-
6 gress after the date on which the report is submitted, both
7 Houses adopt a resolution rejecting the report, at which time
8 the rates of pay and benefits shall remain fixed for a period
9 of 1 year.

10 “(g) (1) If the President disagrees with the joint rec-
11 ommendation of the Federal Employees Pay and Benefits
12 Committee and the agent or the recommendations of the Ar-
13 bitration Board on Federal Employees Pay and Benefits and
14 declares a national emergency, or declares that economic con-
15 ditions are such that the recommendations should not be
16 accepted, the President shall prepare and transmit to Con-
17 gress before September 1 of that year a report which con-
18 tains the joint recommendations of the Federal Employees
19 Pay and Benefits Committee and the agent and the rec-
20 ommendations of the Arbitration Board on Federal Employ-
21 ees Pay and Benefits together with such alternative plan with
22 respect to a pay and benefits adjustment as he considers
23 appropriate, together with the reasons therefor.

24 “(2) A report transmitted by the President under para-

35

1 graph (1) of this subsection becomes effective on the first
2 applicable pay period commencing on or after October 1
3 of the applicable year unless before the end of the first pe-
4 riod of 30 calendar days of continuous session of Congress
5 after the date on which the report is submitted, both Houses
6 adopt a resolution accepting the alternative plan so recom-
7 mended and submitted, in which case the pay adjustments
8 for the statutory pay benefits systems shall be made effective
9 as provided by subsection (o) of this section. The continuity
10 of a session is broken only by an adjournment of the Congress
11 sine die, and the days on which either House is not in ses-
12 sion because of an adjournment of more than 3 days to a
13 day certain are excluded in the computation of the 30-day
14 period.

15 “(h) Subsections (i) through (l) of this section are
16 enacted by Congress—

17 “(1) as an exercise of the rulemaking power of
18 the Senate and the House of Representatives, respec-
19 tively, and as such they are deemed a part of the rules
20 of each House, respectively, but applicable only with
21 respect to the procedure to be followed in the House in
22 the case of resolutions described by this section; and
23 they supersede other rules only to the extent that they
24 are inconsistent therewith; and

1 “(2) with full recognition of the constitutional
2 right of either House to change the rules (so far as
3 relating to the procedure of that House) at any time,
4 in the same manner, and to the same extent as in the
5 case of any other rule of that House.

6 “(i) If the committee, to which has been referred a
7 resolution approving the alternative plan of the President,
8 has not reported the resolution at the end of 10 calendar
9 days after its introduction, it is in order to move either to
10 discharge the committee from further consideration of the
11 resolution or to discharge the committee from further con-
12 sideration of any other resolution with respect to the same
13 plan which has been referred to the committee.

14 “(j) If the motion to discharge is agreed to, or dis-
15 agreed to, the motion may not be renewed, nor may another
16 motion to discharge the committee be made with respect to
17 any other resolution with respect to the same alternative plan.

18 “(k) Motions to postpone, made with respect to the
19 discharge from committee, or the consideration of other busi-
20 ness, are decided without debate.

21 “(l) Appeals from the decisions of the chair relating to
22 the application of the rules of the Senate or the House of
23 Representatives, as the case may be, to the procedure relat-
24 ing to a resolution with respect to an alternative plan are
25 decided without debate.

1 “(m) The rates of compensation which become effective
2 under this section are the rates of compensation applicable to
3 each position concerned, under a statutory compensation
4 system.

5 “(n) If both Houses adopt a resolution approving an
6 alternative plan submitted under subsection (c) of this sec-
7 tion, the President shall take the action required by para-
8 graph (3) of subsection (a) of this section and adjust the
9 rates of pay and benefits of the statutory pay and benefits
10 systems effective as of the beginning of the first applicable
11 pay period commencing on or after the date on which the
12 resolution is adopted, or on or after October 1, whichever
13 is later.

14 “(o) The rates of pay and benefits that take effect
15 under this section shall modify, supersede, or render inap-
16 plicable, as the case may be, to the extent inconsistent
17 therewith—

18 “(1) all provisions of law enacted before the
19 effective date or dates of all or part (as the case may
20 be) of the increase; and

21 “(2) any prior recommendations or adjustments
22 which took effect under this section or prior provisions
23 of law.

24 “(p) The rates of pay and benefits that take effect

1 under this section shall be printed in the Federal Register
2 and the Code of Federal Regulations.

3 “(q) An increase in rates of pay and benefits that takes
4 effect under this section is not an equivalent increase in pay
5 and benefits within the meaning of section 5335 of this title.

6 “(r) Any rate of pay and benefits under this section
7 shall be initially adjusted, effective on the effective date of
8 the rate of pay and benefits, under conversion rules pre-
9 scribed by the President or by such agencies as the President
10 may designate.

11 “(s) This section does not impair any authority pursuant
12 to which rate of pay and benefits may be fixed by adminis-
13 trative action.

14 **“§ 7115. Federal Employees Pay and Benefits Committee,**
15 **and Arbitration Board on Federal Employees**
16 **Pay and Benefits**

17 “(a) There is established as an independent establish-
18 ment a Federal Employees Pay and Benefits Committee, to
19 be composed of 7 members who shall not be deemed to
20 be employees of the Government of the United States by
21 reason of service as member of the Committee, who shall be
22 representatives of labor organizations who represent substan-
23 tial numbers of employees under the statutory pay and bene-
24 fits systems (or an affiliate of any such organization) and
25 who shall be selected by the President. The President shall

1 select the 7 members solely on the basis of relative numbers
2 of employees represented by the various organizations under
3 the statutory pay and benefits systems but no more than 4
4 members of the Committee at any one time shall be from a
5 single labor organization (or an affiliate thereof).

6 “(b) (1) The Committee shall carry out its responsibil-
7 ities as defined in section 7114 of this title.

8 “(2) The Administrator of the General Services shall
9 provide administrative support services for the Committee
10 on a reimbursable basis.

11 “(3) The Committee may obtain services of experts
12 or consultants in accordance with section 3109 of this title,
13 but at rates for individuals not to exceed that of the highest
14 rate of basic pay then currently being paid under the General
15 Schedule of subchapter III of chapter 53.

16 “(4) The Committee may appoint and fix the pay of
17 such personnel as may be necessary to carry out its func-
18 tions.

19 “(c) There is established as an independent establish-
20 ment an Arbitration Board on Federal Employees Pay and
21 Benefits, to be composed of 7 members, not otherwise em-
22 ployed in the Government of the United States.

23 “(1) The members shall be appointed as follows:

24 “(A) the President shall appoint 3 members;

1 “(B) the Federal Employees Pay and Benefits
2 Committee shall appoint 3 members,

3 “(C) the 6 appointed members shall appoint a
4 seventh member who shall serve as Chairman of the
5 Board.

6 Each appointment shall be for a term of 6 years, except
7 that two of the original appointments made by the Presi-
8 dent and the Federal Employees Pay and Benefits Com-
9 mittee shall serve for a term of 3 years. A member appointed
10 to fill a vacancy occurring before the end of the term of
11 his predecessor shall serve for the remainder of that term.
12 When the term of a member ends, he may continue to serve
13 until his successor is appointed.

14 “(2) The Board shall—

15 “(A) review the unresolved matters referred to
16 it by the agent or the Committee or both;

17 “(B) take whatever action it deems necessary to
18 ascertain the factual basis upon which to make a
19 recommendation; and

20 “(C) report its findings and recommendations
21 to the President by August 1 of the applicable year.

22 “(3) The Board may secure from any agency informa-
23 tion, suggestions, estimates, statistics, and technical assist-
24 ance for the purpose of carrying out its functions. Each
25 such agency shall furnish information, suggestions, estimates,

1 statistics, and technical assistance directly to the Board on
2 request of the Board.

3 “(4) On request of the Board the head of any executive
4 agency or military department may detail, on a reimbursable
5 basis, any of its personnel to assist the Board in carrying
6 out its functions.

7 “(5) The Administrator of General Services shall pro-
8 vide administrative support services for the Board on a
9 reimbursable basis.

10 “(6) The Board may obtain services of experts or
11 consultants in accordance with section 3109 of this title
12 but at rates for individuals not to exceed that of the highest
13 rate of basic compensation then currently being paid under
14 the General Schedule of subchapter III of chapter 53.

15 “(7) Each member of the Board is entitled to com-
16 pensation at the daily equivalent of the annual rate of basic
17 compensation of level IV of the Executive Schedule for each
18 day he is engaged on work of the Board and is entitled to
19 travel expenses, including a per diem allowance, in accord-
20 ance with section 5703 (b) of this title.

21 “(8) The Board may appoint and fix the compen-
22 sation of such personnel as may be necessary to carry out
23 its functions.

24 **“§ 7116. Allotments to representatives**

25 “(a) If an agency has received from an employee in

1 a unit of exclusive recognition a written assignment which
2 authorizes the agency to deduct from the pay of such em-
3 ployee amounts for the payment of regular and periodic
4 dues of a labor organization having exclusive recognition
5 for such unit, such assignment shall be honored. The allo-
6 ments shall be made at no cost to the labor organization
7 or the employee. Except as required under subsection (b)
8 of this section, any such assignment may not be revoked
9 for a period of 1 year.

10 “(b) An allotment for the deduction of labor organiza-
11 tion dues terminates when—

12 “(1) the agreement between the agency and the
13 labor organization ceases to be applicable to the em-
14 ployee; or

15 “(2) the employee has been suspended or expelled
16 from the labor organization.

17 “(c) If an exclusive representative has been recognized
18 in an appropriate collective-bargaining unit, each employee
19 in such unit who is not a member of the recognized organiza-
20 tion shall be required as a condition of continued employment
21 to pay to such organization for the period that it is the exclu-
22 sive representative an amount equal to the dues, that a
23 member is charged. Such payment shall be made in accord-
24 ance with rules and regulations prescribed for such purposes
25 by the Authority.

1 “(d) Any alternate labor organization which has rep-
2 resented under section 7113 (c) of this title one or more
3 employees within a unit in which deductions from pay are
4 in effect under subsection (a) or (c) of this section shall be
5 entitled to receive a portion of the amounts so deducted as
6 reimbursement for costs associated with such representation.
7 The amount of such reimbursement shall be determined under
8 regulations to be prescribed by the Authority and shall be
9 based on the representation and other costs experienced
10 with respect to such unit during the preceding 5-year
11 period by the alternate labor organization and the labor
12 organization which is the exclusive representative of such
13 unit.

14 “(e) (1) Subject to paragraph (2), if a petition has
15 been filed with the Authority by any person alleging that
16 10 percent of the employees in an appropriate unit have
17 membership in a particular labor organization, the Authority
18 shall investigate such petition to determine its validity. Upon
19 certification by the Authority of its validity, the agency
20 shall be obligated to negotiate with the labor organization
21 solely concerning the establishment of a deduction of dues of
22 the organization from the pay of members of the organization
23 who make a voluntary allotment for such purpose.

24 “(2) Except in the case of an alternate labor
25 organization—

1 “(A) the provisions of paragraph (1) of this sub-
2 section shall not apply in the case of any unit for which
3 there is an exclusive representative; and

4 “(B) an agreement under paragraph (1) between
5 a labor organization and an agency shall be null and
6 void upon the certification of an exclusive representative
7 of the unit.

8 **“§ 7117. Unfair labor practices**

9 “(a) It shall be an unfair labor practice for an agency—

10 “(1) to interfere with, restrain, or coerce employees
11 in the exercise of the rights assured by this chapter;

12 “(2) to encourage or discourage membership in any
13 labor organization by discrimination in regard to hiring,
14 tenure, promotion, or other conditions of employment;
15 except that nothing in this chapter, or in any statute of
16 the United States, shall prevent an employer from re-
17 quiring, as a condition of continued employment, pay-
18 ment of a representation fee equal to the amount of
19 dues uniformly required, pursuant to section 7116(c)
20 of this title;

21 “(3) to sponsor, control, or otherwise assist any
22 labor organization, except that the agency may furnish,
23 if requested, customary and routine services and facilities
24 if such services and facilities are furnished on an im-
25 partial basis to organizations having equivalent status;

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

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

8 “(6) to fail or refuse to cooperate in impasse proce-
9 dures and impasse decisions as required by this chapter;

10 or

11 “(7) to fail or refuse to comply with any provision
12 of this chapter.

13 “(b) It shall be an unfair labor practice for a labor
14 organization—

15 “(1) to interfere with, restrain, or coerce an em-
16 ployee in the exercise of the rights assured by this
17 chapter;

18 “(2) to cause or attempt to cause an agency to
19 discriminate against an employee in the exercise of his
20 rights under this chapter;

21 “(3) to coerce or attempt to coerce, discipline, or
22 fine a member of the labor organization as punishment
23 or reprisal for the purpose of hindering or impeding his
24 work performance, productivity, or the discharge of his
25 duties as an employee of an agency;

1 “(4) to discriminate against an employee with re-
2 gard to the terms or conditions of membership because
3 of race, color, creed, national origin, sex, age, or prefer-
4 ential or nonpreferential civil service status;

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

7 “(6) to fail or refuse to cooperate in impasse pro-
8 cedures and impasse decisions as required by this
9 chapter;

10 “(7) to call or engage in an illegal strike, work
11 stoppage, or slowdown, or to condone any such activity
12 by failing to take affirmative action to prevent or stop
13 it; or

14 “(8) to fail or refuse to comply with any pro-
15 vision of this chapter.

16 “(c) It shall be an unfair labor practice for a labor
17 organization which is accorded exclusive recognition to deny
18 membership to an employee in the appropriate unit except
19 for failure to meet reasonable occupational standards uni-
20 formly required for admission, or for failure to tender initia-
21 tion fees and dues uniformly required as a condition of acquir-
22 ing and retaining membership. This subsection does not pre-
23 clude a labor organization from enforcing discipline in accord-
24 ance with procedures under its constitution or bylaws which
25 conform to the requirements of this chapter.

47

1 “(d) Issues which properly can be raised under—

2 “(1) an appeals procedure prescribed by or pur-
3 suant to law; or

4 “(2) the grievance procedure under section 7122 of
5 this title;

6 may, in the discretion of the aggrieved party, be raised either
7 under (A) the appropriate appeal or grievance procedure, or
8 (B) if applicable, under the procedure for resolving com-
9 plaints of unfair labor practices under section 7118 of this
10 title. Any appeal or grievance decision shall not be construed
11 as an unfair labor practice decision under this chapter nor as
12 precedent for any such decision.

13 **“§ 7118. Prevention of unfair labor practices**

14 “(a) Notwithstanding any agreement or law, or an
15 procedure thereunder, or the availability of any other means
16 of adjustment or prevention, the Authority may prevent, in
17 accordance with this section, an agency or labor organization
18 from engaging in an unfair labor practice within the mean-
19 ing of section 7117 of this title.

20 “(b) (1) If an agency or labor organization is charged
21 with having engaged in or engaging in an unfair labor prac-
22 tice, the General Counsel, in accordance with section 7105
23 (g) of this title, shall investigate the charge and may issue
24 and cause to be served upon such agency or labor organiza-
25 tion a complaint. In any case in which the General Counsel

1 does not issue a complaint because no issue of material fact
2 exists or the charge fails to state an unfair labor practice,
3 the General Counsel shall furnish the person making such
4 charge with a written statement of the reasons for not
5 issuing a complaint. The complaint shall contain a notice—

6 “(A) of the charges;

7 “(B) that a hearing will be held before the Author-
8 ity or a member thereof, or before an employee of the
9 Authority designated for that purpose;

10 “(C) of the place fixed for the hearing; and

11 “(D) of the time for the hearing which shall be
12 not earlier than 5 days after the serving of the complaint.

13 “(2) The person so complained of shall have the right
14 to file an answer to the original or amended complaint and to
15 appear in person or otherwise and give testimony at the time
16 and place fixed in the complaint. In the discretion of the
17 member, agent, or agency conducting the hearing of the
18 board or the authority, any other person may be allowed to
19 intervene in the said proceeding and to present testimony.
20 Any such proceeding shall, so far as practicable, be con-
21 ducted in accordance with the provisions of subchapter II
22 of chapter 5 of this title, except that the parties shall not
23 be bound by rules of evidence, whether statutory, common
24 law, or adopted by rules of court.

25 “(3) No complaint shall be issued based upon an un-

1 fair labor practice which occurred more than 6 months before
2 the filing of the charge with the Authority. If the person ag-
3 grieved was prevented from filing such charge within the 6
4 months—

5 “(A) by the failure of the agency or labor orga-
6 nization against whom such charge is made to perform a
7 duty owed to the aggrieved, or

8 “(B) due to other concealment, which prevented
9 discovery of the unfair labor practice within 6 months
10 of its occurrence, the 6-month period during which a
11 charge may be filed shall be computed from the day of
12 discovery of the occurrence.

13 “(4) The Authority (or a member or employee of the
14 Authority) shall conduct a hearing, on the record, on the
15 complaint not earlier than 5 days after the complaint is
16 served, and may compel under section 7133 of this title the
17 attendance of witnesses and the production of documents.
18 Thereafter, in its discretion, the Authority upon notice may
19 receive further evidence or hear argument. If, upon the pre-
20 ponderance of the evidence received, the Authority, the
21 Regional Director, or administrative law judge, as the case
22 may be, is of the opinion that an agency or labor organiza-
23 tion named in the complaint has engaged in or is engaging
24 in unfair labor practice, then the Authority, the Regional
25 Director, or administrative law judge shall state its findings

1 of fact and shall issue and cause to be served on such agency
2 or labor organization an order to cease and desist from such
3 unfair labor practice, and to take such affirmative action as
4 will effectuate the policies of this chapter. Such affirmative
5 action may include—

6 “(A) directing that provisions be retroactively in-
7 serted in a collective bargaining agreement;

8 “(B) an award of reasonable attorney’s fees;

9 “(C) reinstatement of employees with backpay
10 together with an award of interest thereon.

11 Where any order directs reinstatement of an employee, back-
12 pay may be required of the agency or labor organization, as
13 the case may be, responsible for the discrimination or im-
14 proper action suffered by him. Such order, upon the determi-
15 nation of the Authority that there has been an arbitrary,
16 capricious, or otherwise knowing violation of this chapter,
17 by any supervisor or other agency official, may direct the
18 agency to discipline the supervisor or official by demotion,
19 suspension, removal, or such other remedial action as the
20 Authority deems appropriate. Such order may further require
21 such agency or labor organization to make reports from time
22 to time showing the extent to which it has complied with
23 the order.

24 “(5) If upon the preponderance of the evidence re-
25 ceived, the Authority is not of the opinion the agency or

1 labor organization named in the complaint has engaged in or
2 is engaging in an unfair labor practice, then the Authority
3 shall state its findings of fact and shall issue an order dis-
4 missing the complaint.

5 “(c) Notwithstanding the foregoing provisions of this
6 section, when an unfair labor practice complaint alleges that
7 irreparable harm will be done to the complainant if immediate
8 corrective action is not taken and a prima facie case is estab-
9 lished, the Authority may issue an order prohibiting the
10 action or actions complained of until the full merits of the
11 case are heard. The Authority shall assign priority consider-
12 ation to the complete adjudication of cases coming within
13 the purview of this subsection.

14 **“§ 7119. Negotiation impasses; Federal Service Impasses**

15 **Panel**

16 “(a) Upon request, the Federal Mediation and Concilia-
17 tion Service shall provide services and assistance to agencies
18 and labor organizations in the resolution of negotiation
19 impasses.

20 “(b) When voluntary arrangements including the serv-
21 ices of the Federal Mediation and Conciliation Service or
22 other third party mediation service fail to resolve a negotia-
23 tion impasse either party may request the Federal Service
24 Impasses Panel established under subsection (c) of this
25 section to consider the matter, or the parties may agree to

1 adopt a procedure for binding arbitration of a negotiation
2 impasse.

3 “(c) There is established within the Authority a Fed-
4 eral Service Impasses Panel. The Panel shall be composed
5 of a Chairman and at least 6 other members, who shall be
6 appointed by the Authority solely on the basis of fitness to
7 perform the duties and functions of the office from among
8 individuals who are familiar with Government operations and
9 knowledgeable in labor-management relations

10 “(d) Two members of the Panel shall be appointed
11 for a term of 1 year, 2 for a term of 3 years, and the Chair-
12 man and the remaining members for a term of 5 years. Their
13 successors shall be appointed for terms of 5 years, except
14 that an individual chosen to fill a vacancy shall be appointed
15 for the unexpired term of the member whom he shall replace.
16 A member of the Panel may be removed by the Authority
17 for neglect of duty or malfeasance in office but for no other
18 cause.

19 “(e) The Panel may appoint an Executive Director
20 and such other employees as it may from time to time find
21 necessary for the proper performance of its duties. Each
22 member of the Panel who is not an employee (as defined
23 under section 2105 of this title) is entitled to pay at a rate
24 equal to the daily equivalent of the maximum annual rate of
25 basic pay then currently paid under the General Schedule

1 for each day he is engaged in the performance of official
2 business on the work of the Panel, including travel-time, and
3 is entitled to travel expenses and a per diem allowance under
4 section 5703 (b) of this title.

5 “(f) The Panel or its designee shall promptly investi-
6 gate any impasse presented to it under subsection (b) of
7 this section. The Panel shall consider the matter and shall
8 either recommend procedures to the parties for the resolution
9 of the impasse or assist the parties in arriving at a settlement
10 through whatever methods and procedures, including fact-
11 finding and recommendations, it may deem appropriate to
12 accomplish the purposes of this section. If the parties do not
13 arrive at a settlement, the Panel may hold hearings, compel
14 under section 7133 of this title the attendance of witnesses
15 and the production of documents, and take whatever action
16 is necessary and not inconsistent with this chapter to resolve
17 the impasse. Notice of any final action of the Panel shall be
18 promptly served upon the parties, and such action shall be
19 binding upon them during the term of the agreement.

20 **“§ 7120. Standards of conduct for labor organizations**

21 “A labor organization representing or seeking to repre-
22 sent employees pursuant to this chapter shall adopt govern-
23 ing requirements containing explicit and detailed provisions
24 to which it subscribes, providing for—

25 “(1) the maintenance of democratic procedures

1 and practices, including provisions for periodic elec-
2 tions to be conducted subject to recognized safeguards
3 and provisions defining and securing the right of indi-
4 vidual members to participation in the affairs of the
5 labor organization, to fair and equal treatment under the
6 governing rules of the organization, and to fair process
7 in disciplinary proceedings;

8 “(2) the prohibition of business or financial inter-
9 ests on the part of labor organization officers and agents
10 which conflict with their duty to the organization and its
11 members; and

12 “(3) the maintenance of fiscal integrity in the
13 conduct of the affairs of the labor organization, includ-
14 ing provision for accounting and financial controls and
15 regular financial reports or summaries to be made avail-
16 able to members.

17 “SUBCHAPTER III—GRIEVANCES, APPEALS,
18 AND REVIEW

19 “§ 7121. Appeals from adverse decisions

20 “(a) An employee (as defined in section 7501 of this
21 title) against whom an adverse action is taken under section
22 7502 of this title, is entitled to appeal the adverse action
23 to the Civil Service Commission.

24 “(b) The employee may submit the appeal in writing
25 within a reasonable time after receipt of notice of the ad-

55

1 verse decision, and is entitled to appear personally or
 2 through a representative under regulations prescribed by
 3 the Civil Service Commission. The Commission, after inves-
 4 tigation and consideration of the evidence submitted, shall
 5 submit its findings and recommendations to the administra-
 6 tive authority and shall send copies of the findings and rec-
 7 ommendations to the appellant or his representative. The
 8 administrative authority shall take the corrective action
 9 that the Commission finally recommends.

10 **“§ 7122. Grievance procedures**

11 “(a) An agreement entered into by an agency and a
 12 labor organization having exclusive recognition shall pro-
 13 vide procedures for the settlement of grievances, including
 14 questions of arbitrability. An employee to whom the agree-
 15 ment applies may elect to have his grievance processed under
 16 either—

17 “(1) a procedure negotiated in accordance with
 18 this chapter, or

19 “(2) any applicable appeals procedures established
 20 by or pursuant to law (including procedures specified
 21 in section 7117 (d) of this title).

22 A negotiated grievance procedure shall be fair, simple, pro-
 23 vide for expeditious processing, and shall include procedures
 24 that—

25 “(A) assure a labor organization the right, in its

1 own behalf or on behalf of any employee in the unit, to
2 present and process grievances;

3 “(B) assure an employee the right to present a
4 grievance on his own behalf, and assure the labor orga-
5 nization the right to be present when the grievance is
6 adjusted if it is not the representative of the employee;
7 and

8 “(C) provide that any grievance not satisfactorily
9 settled in the grievance process shall be subject to bind-
10 ing arbitration which may be invoked by either the
11 labor organization or the agency.

12 “(b) Where a party to such agreement is aggrieved by
13 the failure, neglect, or refusal of the other party to proceed
14 to arbitration pursuant to the procedure provided therefore
15 in such agreement, such aggrieved party may file a complaint
16 in the appropriate district court of the United States or in
17 the appropriate court of the affected State, territory, or pos-
18 session of the United States for a summary action without
19 jury seeking an order directing that the arbitration proceed
20 pursuant to the procedures provided therefore in such agree-
21 ment.

22 **“§ 7123. Exceptions to arbitral awards**

23 “Either party may file an exception with the Authority
24 to an arbitrator’s award under this chapter. If upon review
25 the Authority finds that the award is deficient because—

1 “ (1) it is contrary to law or regulations;

2 “ (2) it was procured by corruption, fraud, or other
3 misconduct;

4 “ (3) of partiality of the arbitrator; or

5 “ (4) the arbitrator exceeded his powers;

6 the Authority may take such action and make such recom-
7 mendations on the award as it considers necessary, consistent
8 with applicable law or regulations and the provisions of this
9 chapter. If no exception is filed, the decision of an arbitrator
10 shall be final and binding. An agency shall take the actions
11 required by a final decision of an arbitrator to make an em-
12 ployee whole in the circumstances, including the payment
13 of back pay. A final decision under this section is subject
14 to the provisions of section 7124 and of this title.

15 **“§ 7124. Judicial review**

16 “ (a) Any person aggrieved by a final order of the
17 Authority under section 7118 of this title (involving an
18 unfair labor practice) under section 7123 of this title (involv-
19 ing an award by an arbitrator) or under section 7111 (g)
20 of this title (involving an appropriate unit determination),
21 may, within 60 days after the date on which the order was
22 issued, institute an action for judicial review of the Author-
23 ity’s order in the United States court of appeals in the
24 circuit in which such person resides or transacts business
25 or in the United States Court of Appeals for the District

1 of Columbia. The institution of an action for judicial review
2 shall not operate as a stay of the Authority's order, unless
3 the court specifically orders such stay. Review of the Au-
4 thority's order shall be on the record in accordance with
5 section 706 of this title, and the Authority's findings of fact,
6 if supported by substantial evidence, shall be conclusive.
7 The court shall affirm the Authority's order if it determines
8 that it is in accordance with law. The court shall have the
9 same jurisdiction to grant to the Authority such temporary
10 relief or restraining order that it deems just and proper, and
11 in like manner to make and enter a decree enforcing, modi-
12 fying, and enforcing as so modified, or setting aside, in whole
13 or in part, the order of the Authority.

14 “(b) The Authority or the charging party shall have
15 power to petition any court of appeals of the United States
16 in the circuit, wherein the unlawful act in question occurred
17 or wherein the person named in the complaint resides or
18 transacts business, for the enforcement of such order and
19 for appropriate temporary relief or restraining order, and
20 shall file in the court the record in the proceedings, as pro-
21 vided in section 2112 of title 28. Upon the filing of such
22 petition, the court shall cause notice thereof to be served
23 upon such person, and thereupon shall have jurisdiction
24 of the proceeding and of the question determined therein,
25 and shall have power to grant such temporary relief or

1 restraining order as it deems just and proper, and to make
2 and enter a decree enforcing, modifying, and enforcing as so
3 modified, or setting aside in whole or in part the order of
4 the Authority. No objection that has not been urged before
5 the Authority, or its member, agent, or agency, shall be
6 considered by the court, unless the failure or neglect to urge
7 such objection shall be excused because of extraordinary
8 circumstances. The findings of the Authority with respect to
9 questions of fact if supported by substantial evidence on the
10 record considered as a whole shall be conclusive. If any per-
11 son shall apply to the court for leave to adduce additional
12 evidence and shall show to the satisfaction of the court that
13 such additional evidence is material and that there were rea-
14 sonable grounds for the failure to adduce such evidence in the
15 hearing before the Authority, or its member, agent, or
16 agency, the court may order such additional evidence to be
17 taken before the Authority, or its member, agent, or agency,
18 and to be made a part of the record. The Authority may
19 modify its findings as to the facts, or make new findings by
20 reason of additional evidence so taken and filed, and it shall
21 file such modified or new findings, which findings with re-
22 spect to questions of fact if supported by substantial evidence
23 on the record considered as a whole shall be conclusive, and
24 shall file its recommendations, if any, for the modification
25 or setting aside of its original order. Upon the filing of the

1 record with it, the jurisdiction of the court shall be exclusive
2 and its judgment and decree shall be final, except that the
3 same shall be subject to review by the Supreme Court of the
4 United States upon writ of certiorari or certification as
5 provided in section 1254 of title 28.

6 “(c) The Authority may, upon issuance of a complaint
7 as provided in section 7118 (b) of this title charging that
8 any person has engaged in or is engaging in an unfair labor
9 practice, petition any United States district court, within
10 any district wherein the unfair labor practice in question is
11 alleged to have occurred or wherein such person resides or
12 transacts business, for appropriate temporary relief or re-
13 straint order. Upon the filing of any such petition the court
14 shall cause notice thereof to be served upon such person,
15 and thereupon shall have jurisdiction to grant such tempo-
16 rary relief (including a temporary restraining order) as it
17 deems just and proper.

18 “SUBCHAPTER IV—ADMINISTRATIVE AND

19 OTHER PROVISIONS

20 “§ 7131. Reporting requirements for standards of conduct

21 “The provisions of subchapter III of chapter 11 of
22 title 29 shall be applicable to labor organizations that have
23 been or are seeking to be certified under this chapter, and
24 to such organizations’ officers, agents, shop stewards, other

1 representatives and members to the extent to which such
2 provisions would be applicable if the agency were an em-
3 ployer under section 402 of title 29. In addition to the au-
4 thority conferred on him under section 438 of title 29, the
5 Secretary of Labor shall have authority, by regulations issued
6 with the written concurrence of the Authority, to prescribe
7 simplified reports for any such labor organization. The Sec-
8 retary of Labor may revoke such provision for simplified
9 reports of any such labor organization if he determines, after
10 such investigation as he deems proper and after due notice
11 and opportunity for a hearing, that the purposes of this
12 chapter and of chapter 11 of title 29 would be served thereby.

13 **“§ 7132. Official time**

14 “(a) Employees representing an exclusively recognized
15 or certified labor organization at any grievance proceeding
16 under this chapter in the negotiation of an agreement under
17 this chapter, including attendance at impasse settlement pro-
18 ceedings, are authorized official time for such purposes during
19 the time the employees otherwise would be in a duty status.
20 However, the number of such employees for whom official
21 time is authorized under this subsection shall not exceed the
22 number of persons representing the agency.

23 “(b) Matters relating to the internal business of a labor
24 organization (including the solicitation of membership, elec-

1 tions of labor organization officials, and collection of dues)
2 shall be performed during the nonduty hours of the employees
3 concerned.

4 “(c) Except as provided for under subsection (a) of
5 this section, the Authority shall determine whether employees
6 participating for, or on behalf of, a labor organization in any
7 phase of proceedings before the Authority, shall be author-
8 ized official time for such proposes during regular working
9 hours.

10 “(d) Except as provided under other subsections of this
11 section, employees representing an exclusively recognized or
12 certified labor organization or employees in a recognized unit
13 in connection with any matter governed by this chapter shall
14 be granted official time in such amount as agency manage-
15 ment and the exclusive representative shall agree to be
16 reasonable, necessary, and in the public interest.

17 **“§ 7133. Subpenas**

18 “(a) For the purpose of all hearings and investigations
19 which the Authority or any member thereof, or its designer,
20 or the Panel, or any member thereof, determines are neces-
21 sary and proper for the exercise of its powers under the Act,
22 the Authority or its duly authorized agent, or agency, shall
23 at all reasonable times have access to, for the purpose of
24 examination, and the right to copy any evidence of any per-
25 son being investigated or proceeded against that relates to

1 any matter under investigation or question. The Authority,
2 any member thereof, or its designee, or the Panel, or any
3 member thereof (hereinafter referred to in this section as the
4 issuer') may upon application or any party forthwith issue
5 to such party subpoenas requiring the attendance and testi-
6 mony of witnesses or the production of any evidence in such
7 proceeding or investigation requested in such application.
8 Within 5 days after the service of a subpoena on any individual
9 or organization requiring the production of any evidence in
10 the possession or under the control of such individual or
11 organization, such individual or organization may petition the
12 issuer to revoke, and the issuer shall revoke, such subpoena
13 if in its opinion the evidence the production of which is
14 required does not relate to any matter under consideration, or
15 if in its opinion such subpoena does not describe with sufficient
16 particularity the evidence the production of which is re-
17 quired. The issuer, or any agent designated by the issuer for
18 such purposes may administer oaths and affirmations, examine
19 witnesses, and receive evidence.

20 “(b) In case of contumacy or refusal to obey a sub-
21 pena issued to any individual or organization, any dis-
22 trict court of the United States or the United States courts
23 of any territory or possession, within the jurisdiction of
24 which the inquiry is carried on or within the jurisdiction of
25 which such individual or organization guilty of contumacy

1 or refusal to obey is found or resides or transacts business,
2 upon application by the issuer shall have jurisdiction to issue
3 to such individual or organization an order requiring such
4 person to appear before the issuer to produce evidence if so
5 ordered, or to give testimony touching the matter under
6 consideration; and any failure to obey such order of the court
7 may be punished by such court as a contempt thereof.

8 “(c) Witnesses summoned before the issuer shall be
9 paid the same fees and mileage that are paid witnesses
10 in the courts of the United States, and witnesses whose
11 depositions are taken and the persons taking the same
12 shall severally be entitled to the same fees as are paid
13 for like services in the courts of the United States.

14 “(d) No person shall be excused from attending and
15 testifying or from producing books, records, correspond-
16 ence, documents, or other evidence in obedience to the
17 subpoena of the Authority or Panel on the ground that the
18 testimony or evidence required of him may tend to incrimi-
19 nate him or subject him to a penalty or forfeiture; but no
20 individual shall be prosecuted or subjected to any penalty or
21 forfeiture for or on account of any transaction, matter, or
22 thing concerning which he is compelled, after having claimed
23 his privilege against self-incrimination, to testify or pro-
24 duce evidence, except that such individual so testifying shall

1 not be exempt from prosecution and punishment for per-
2 jury committed in so testifying.

3 “(e) Any person who shall willfully resist, prevent,
4 impede, or interfere with any member of the Authority or
5 Panel or a member, agent, or agency thereof in the per-
6 formance of duties pursuant to this chapter shall be punished
7 by a fine of not more than \$5,000 or by imprisonment for
8 not more than one year, or both.

9 **“§ 7134. Compilation and publication of data**

10 “(a) The Authority shall maintain a file of its proceed-
11 ings, copies of all available agreements and arbitration deci-
12 sions, and shall publish the texts of its decisions and the
13 actions taken by the Panel under section 7119 of this title.

14 “(b) All files maintained under subsection (a) of this
15 section shall be open to inspection and reproduction subject
16 to the provisions of sections 552 and 552a of this title.

17 **“§ 7135. Issuance of regulations**

18 “The Authority, the Federal Mediation and Conciliation
19 Service, and the Panel shall each prescribe rules and regula-
20 tions to carry out the provisions of this chapter applicable to
21 each of them, respectively. Unless otherwise specifically pro-
22 vided in this chapter, the provisions of subchapter II of chap-
23 ter 5 of this title shall be applicable to the issuance, revision,
24 or repeal of any such rule or regulation.

1 **“§ 7136. Continuation of existing laws, recognitions, agree-**
2 **ments, and procedures**

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

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

9 “(2) the renewal, continuation, or initial according
10 of recognition for units of management officials or super-
11 visors represented by labor organizations which histori-
12 cally or traditionally represent the management officials
13 or supervisors in private industry and which hold exclu-
14 sive recognition for units of such officials or supervisors
15 in any agency on the effective date of this chapter.

16 “(b) Policies, regulations, and procedures established
17 under Executive Orders 11491, 11616, 11636, 11787, and
18 11838, or under the provision of any other Executive order
19 in effect on the effective date of this chapter, shall remain
20 in full force and effect until revised or revoked by the Presi-
21 dent, or unless superseded by specific provisions of this
22 chapter or by regulations issued pursuant to this chapter.”.

23 **SEC. 3. Section 5596 (b) of title 5, United States Code,**
24 **is amended to read as follows:**

25 “(b) An employee of an agency who, on the basis of

1 a timely appeal or an administrative determination (includ-
2 ing an unfair labor practice or a grievance decision) is found
3 by appropriate authority under applicable law, regulation, or
4 agreement, to have been affected by an unjustified or unwar-
5 ranted personnel action that has resulted in the withdrawal
6 or reduction of all or a part of the pay, allowances, or dif-
7 ferentials of the employee—

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

11 “(A) an amount equal to all or any part of the
12 pay, allowances, or differentials, an applicable, that
13 the employee normally would have earned or re-
14 ceived during that period if the personnel action had
15 not occurred, less any amounts earned by him
16 through other employment during that period;

17 “(B) interest on the amount payable under
18 subparagraph (A) of this paragraph; and

19 “(C) reasonable attorney’s fees and reasonable
20 costs and expenses of litigation related to the per-
21 sonnel action; and

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

24 “(A) annual leave restored under this para-
25 graph which is in excess of the maximum leave

1 accumulation permitted by law shall be credited to
 2 a separate leave account for the employee and shall
 3 be available for use by the employee within the time
 4 limits prescribed by regulations of the Civil Service
 5 Commission, and

6 “(B) annual leave credited under subpara-
 7 graph (A) of this paragraph but unused and still
 8 available to the employee under regulations pre-
 9 scribed by the Commission shall be included in the
 10 lump-sum payment under section 5551 or 5552 (1)
 11 of this title but may not be retained to the credit of
 12 the employee under section 5552 (2) of this title.

13 For the purpose of this subsection, ‘unfair labor practice’,
 14 ‘grievance’, and ‘agreement’ have the same meanings as
 15 when used in chapter 71 of this title and ‘personnel action’
 16 includes the omission or failure to take action or confer a
 17 benefit.”.

18 SEC. 4. (a) Chapter 75 of title 5, United States Code,
 19 is amended by redesignating subchapters III and IV as sub-
 20 chapters II and III, respectively, and by striking out sub-
 21 chapters I and II and inserting in lieu thereof the following:

22 “SUBCHAPTER I—CAUSE AND PROCEDURE

23 “§ 7501. Definitions

24 “For the purpose of this subchapter—

25 “(1) ‘employee’ means—

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1 “(A) an individual in the competitive service
2 who is serving under a permanent, indefinite, or
3 other nontemporary appointment and who has com-
4 pleted a probationary or trial period; or

5 “(B) a preference eligible in the excepted
6 service who has completed one year of current con-
7 tinuous employment in the same line of work in—

8 “(i) an Executive agency;

9 “(ii) the government of the District of
10 Columbia;

11 “(iii) the United States Postal Service; or

12 “(iv) the Postal Rate Commission;

13 but does not include an individual whose appoint-
14 ment is required to be confirmed by, or made with
15 the advice and consent of, the Senate; and

16 “(2) ‘adverse action’ means a removal, suspension
17 for more than 30 days, furlough without pay, or reduc-
18 tion in rank or pay.

19 **“§ 7502. Cause**

20 “An agency may take adverse action against an em-
21 ployee, or bar him from future employment, only for such
22 cause as will promote the efficiency of the service.

23 **“§ 7503. Procedure**

24 “(a) An employee against whom adverse action is pro-
25 posed, is entitled to—

1 “(1) at least 30 days’ advance written notice of
2 the action sought, except when there is reasonable cause
3 to believe such individual is guilty of a crime for which
4 a sentence of imprisonment can be imposed, stating any
5 and all reasons specifically and in detail, for the proposed
6 action;

7 “(2) receive, at the time of the notice required
8 under paragraph (1), all statements, affidavits, investi-
9 gative reports, and all other evidence relevant to the pro-
10 posed action;

11 “(3) a hearing before an administrative law judge
12 (who shall be an attorney licensed to practice in at least
13 one State or territory of the United States) at which
14 such individual may be represented by counsel, present
15 evidence, and cross-examine witnesses;

16 “(4) a copy of the verbatim transcript of the hear-
17 ing; and

18 “(5) a written decision by the hearing examiner
19 stating the findings of fact and conclusions of law upon
20 which the decision is based.

21 “(b) For purposes of subsection (a) —

22 “(1) The hearing examiner shall, upon application
23 of any party to a hearing under subsection (a) (3),
24 issue subpoenas requiring the attendance and testimony of
25 witnesses or the production of any evidence in such pro-

1 ceeding or investigation requested in such application,
2 Within 5 days after the service of a subpoena on a per-
3 son requiring the production of any evidence in the pos-
4 session or under the control of such person, such person
5 may petition the hearing examiner to revoke such sub-
6 pena. The hearing examiner shall revoke such subpoena
7 if in his or her opinion the evidence of which production
8 is required does not relate to any matter under investiga-
9 tion, or any matter in question in such proceedings, or
10 if in his or her opinion such subpoena does not describe
11 with sufficient particularity the evidence of which pro-
12 duction is required. The hearing examiner may adminis-
13 ter oaths and affirmations, examine witnesses, and re-
14 ceive evidence. Such attendance of witnesses and the
15 production of such evidence may be required from any
16 place in the United States or any territory or possession
17 thereof, at any designated place of hearing.

18 “(2) In case of contumacy or refusal to obey a sub-
19 pena issued to any person, any district court of the
20 United States or the United States courts of any terri-
21 tory or possession, or the District Court for the District
22 of Columbia, within the jurisdiction of which the person
23 guilty of contumacy or refusal to obey is found or re-
24 sides or transacts business, shall upon application by the
25 party seeking compliance have jurisdiction to issue such

“SUBCHAPTER II—HEARING EXAMINERS

“Sec.

“7521. Removal.

“SUBCHAPTER III—NATIONAL SECURITY

“7531. Definitions.

“7532. Suspension and removal.

“7533. Effect on other statutes.”.

1 **SEC. 5. (a) Chapter 77 of title 5, United States Code,**
2 **is hereby repealed.**

3 **(b) The analysis for part III of such title is amended by**
4 **striking out the matter pertaining to chapter 77.**

5 **SEC. 6. (a) Subchapter II of chapter 71 of title 5,**
6 **United States Code, is amended—**

7 **(1) by redesignating sections 7151, 7152, 7153,**
8 **and 7154 as sections 7201, 7202, 7203, and 7204,**
9 **respectively;**

10 **(2) by striking out the subchapter heading and**
11 **inserting in lieu thereof the following:**

12 **“Chapter 72—ANTIDISCRIMINATION; RIGHT TO**
13 **PETITION CONGRESS**

“SUBCHAPTER I—ANTIDISCRIMINATION IN
 EMPLOYMENT

“7201. Policy. •

“7202. Marital status.

“7203. Physical handicap.

“7204. Other prohibitions.

“SUBCHAPTER II—EMPLOYEES’ RIGHT TO PETITION
 CONGRESS

“7211. Employees’ right to petition Congress.”; and

14 **(3) by adding at the end thereof the following new**
15 **subchapter:**

74

1 “SUBCHAPTER II—EMPLOYEES’ RIGHT TO
2 PETITION CONGRESS

3 **“§ 7211. Employees’ right to petition Congress**

4 “The right of employees, individual or collectively, to
5 petition Congress or a Member of Congress, or to furnish
6 information to either House of Congress, or to a committee
7 or Member thereof, may not be interfered with or denied.”.

8 (b) The analysis for part III of title 5, United States
9 Code, is amended by striking out—

 “Subpart F—Employee Relations

“Sec.

“71. Policies ----- 7101”

10 and inserting in lieu thereof

 “Subpart F—Labor-Management and Employee Relations

“71. Labor-Management Relations ----- 7101

“72. Antidiscrimination; Right to Petition Congress. ----- 7201”.

11 (c) (1) Section 2105 (c) (1) of title 5, United States
12 Code, is amended by striking out “and 7154” and inserting
13 in lieu thereof “and 7204”.

14 (2) Section 3302 (2) of title 5, United States Code, is
15 amended by striking out “7152, 7153” and inserting in lieu
16 thereof “7202, 7203”.

17 (3) Sections 4540 (c), 7212 (a), and 9540 (c) of title
18 10, United States Code, are each amended by striking out
19 “7154 of title 5” and inserting in lieu thereof “7204 of title
20 5”.

21 (4) Section 410 (b) (1) of title 39, United States Code,

75

1 is amended by striking out “chapters 71 (employee
2 policies)” and inserting in lieu thereof the following: “chap-
3 ters 72 (antidiscrimination; right to petition Congress)”.

4 (5) Section 1002 (g) of title 39, United States Code,
5 is amended by striking out “section 7102 of title 5” and
6 inserting in lieu thereof “section 7211 of title 5”.

7 SEC. 7. (a) Section 5315 of title 5, United States Code,
8 is amended by adding at the end thereof the following clause:

9 “(105) Chairman, Federal Labor Relation Au-
10 thority.”.

11 (b) Section 5316 of such title is amended by adding at
12 the end thereof the following clause:

13 “(137) Members, Federal Labor Relations Author-
14 ity (2), and its General Counsel.”.

15 SEC. 8. (a) Subchapter I of chapter 53 of title 5, United
16 States Code, is amended by striking out sections 5301,
17 5305, and 5306.

18 (b) The analysis for chapter 53 of such title is amended
19 by striking out the items relating to sections 5301, 5305,
20 and 5306.

21 SEC. 9. If any provision of this Act (or the amendments
22 made thereby), or the application of such provision to any
23 person or circumstance, shall be held invalid, the remainder
24 of this Act (and the amendments made thereby) or the
25 application of such provision to persons or circumstances

1 other than those as to which it is held invalid, shall not be
2 affected thereby.

3 SEC. 10. (a) Except as provided in subsection (b) of
4 this section, the amendments made by this Act shall take
5 effect on the first day of the first calendar month beginning
6 more than 120 days after the date of the enactment of
7 this Act.

8 (b) Sections 7104, 7105 (other than subsections (f)
9 and (g) thereof), and 7136 of title 5, United States Code,
10 as enacted by section 2 of this Act, shall take effect on the
11 date of the enactment of this Act.

[COMMITTEE PRINT]

JULY 10, 1978

[The following reflects the proposed draft of title VII (labor-management relations) to be used in the consideration of the committee print of H.R. 11280 (dated June 15, 1978), but does not include necessary technical and conforming amendments.]

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- 1 *TITLE VII—FEDERAL SERVICE LABOR-*
 2 *MANAGEMENT RELATIONS*
 3 *FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS*
 4 *SEC. 701. So much of subpart F of part III of title 5,*
 5 *United States Code, as precedes subchapter II of chapter 71*
 6 *thereof is amended to read as follows:*
 7 ***“Subpart F—Labor-Management and Employee***
 8 ***Relations***
 9 ***“Chapter 71—LABOR-MANAGEMENT RELATIONS***
 “SUBCHAPTER I—GENERAL PROVISIONS
 “Sec.
 “7101. Findings and purpose.
 “7102. Employees’ rights.
 “7103. Definitions.
 “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.*

“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. *Appeals from adverse decisions.*

“7122. *Grievance procedures.*

“7123. *Judicial review.*

**“SUBCHAPTER IV—ADMINISTRATIVE AND OTHER
PROVISIONS**

“Sec.

“7131. *Reporting requirements for standards of conduct.*

“7132. *Official time.*

“7133. *Subpenas.*

“7134. *Compilation and publication of data.*

“7135. *Issuance of regulations.*

“7136. *Continuation of existing laws, recognitions, agreements, and procedures.*

1 **“SUBCHAPTER I—GENERAL PROVISIONS**

2 **“§ 7101. Findings and purpose**

3 “(a) *The Congress finds that experience in both pri-*
4 *vate and public employment indicates that the statutory*
5 *protection of the right of employees to organize, bargain*
6 *collectively, and participate through labor organizations of*
7 *their own choosing in decisions which affect them safeguards*
8 *the public interest and contributes to the effective conduct*
9 *of public business. Such protection facilitates and encourages*
10 *the amicable settlement of disputes between employees and*

1 *their employers involving conditions of employment. There-*
2 *fore, labor organizations and collective bargaining in the*
3 *Federal Service are in the public interest.*

4 *“(b) It is the purpose of this chapter to prescribe*
5 *certain rights and obligations of the employees of the Fed-*
6 *eral Government and to establish procedures which are de-*
7 *signed to meet the special requirements and needs of the*
8 *Federal Government.*

9 *“§ 7102. Employees' rights*

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

16 *“(1) to act for a labor organization in the capacity*
17 *of a representative and the right, in such capacity, to*
18 *present the views of such labor organization to agency*
19 *heads and other officials of the executive branch of the*
20 *Government, the Congress, or other appropriate*
21 *authorities,*

22 *“(2) to bargain collectively over conditions of em-*
23 *ployment through representatives chosen by them under*
24 *this chapter, and*

25 *“(3) to engage in other lawful activities for the*

1 *purpose of establishing, maintaining, and improving*
2 *conditions of employment.*

3 **“§ 7103. Definitions; application**

4 *“For the purpose of this chapter—*

5 *“(1) ‘person’ means an individual, labor organiza-*
6 *tion, or agency;*

7 *“(2) ‘employee’ means an individual—*

8 *“(A) employed in an agency;*

9 *“(B) employed in a nonappropriated fund in-*
10 *strumentality described in section 2105(c) of this*
11 *title and with respect to whom such section 2105*
12 *(c) applies;*

13 *“(C) employed in the Veterans’ Canteen Serv-*
14 *ice, Veterans’ Administration, and with respect to*
15 *whom section 5102(c)(14) of this title applies; or*

16 *“(D) whose work as such an employee (deter-*
17 *mined under the preceding provisions of this para-*
18 *graph) has ceased because of any unfair labor*
19 *practice under section 7116 of this title and who*
20 *has not obtained any other regular and substantially*
21 *equivalent employment, as determined under regu-*
22 *lations prescribed by the Federal Labor Relations*
23 *Authority;*

24 *but does not include—*

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

3 “(ii) a member of the armed forces;

4 “(iii) a supervisor or a management official; or

5 “(iv) an individual employed by the Govern-
6 ment of the District of Columbia or the Tennessee
7 Valley Authority;

8 “(3) ‘agency’ means any Executive agency, the
9 Library of Congress, the Government Printing Office,
10 and the Postal Rate Commission;

11 “(4) ‘labor organization’ means an organization
12 composed in whole or in part of employees of an agency,
13 in which employees participate and pay dues, and
14 which has as its primary purpose the dealing with an
15 agency concerning grievances and matters affecting con-
16 ditions of employment, except that such term does not
17 include—

18 “(A) an organization whose basic purpose is
19 purely social, fraternal, or limited to special interest
20 objectives which are only incidentally related to
21 matters affecting conditions of employment;

22 “(B) an organization which, by its constitution,
23 bylaws, tacit agreement among its members, or
24 otherwise, denies membership because of race, color,

1 *creed, national origin, sex, age, preferential or non-*
 2 *preferential civil service status, political affiliation,*
 3 *marital status, or handicapping condition; or*

4 “(C) *an organization sponsored by an agency;*

5 “(5) *‘affiliate’ means, when used with respect to*
 6 *a labor organization, any national or international union,*
 7 *federation, council, or department, or other organization*
 8 *in which such labor organization is represented or with*
 9 *which such labor organization is affiliated;*

10 “(6) *‘Authority’ means the Federal Labor Rela-*
 11 *tions Authority described in section 7104(a) of this*
 12 *title;*

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

15 “(8) *‘collective bargaining agreement’ means an*
 16 *agreement entered into as a result of collective bargain-*
 17 *ing pursuant to the provisions of this chapter;*

18 “(9) *‘grievance’ means any complaint by any*
 19 *person—*

20 “(A) *concerning any matter relating to the*
 21 *employment of such person with an agency;*

22 “(B) *concerning the effect or interpretation;*
 23 *or a claim of breach, of a collective bargaining*
 24 *agreement; or*

25 “(C) *concerning any claimed violation, mis-*

7

1 *interpretation, or misapplication of any law, rule,*
2 *or regulation, affecting conditions of employment;*

3 “(10) ‘supervisor’ means any employee having au-
4 *thority, in the interest of an agency, to hire, direct, as-*
5 *sign, promote, reward, transfer, lay off, recall, suspend,*
6 *discipline, or discharge other employees, or to adjust*
7 *their grievances, or to effectively recommend such ac-*
8 *tion, if the exercise of such authority is not merely*
9 *routine or clerical in nature but requires the consistent*
10 *exercise of independent judgment, except that with re-*
11 *spect to any unit which includes firefighters or nurses,*
12 *the term ‘supervisor’ includes only those employees who*
13 *devote a preponderance of their employment time in*
14 *exercising such authority;*

15 “(11) ‘management official’ means an individual
16 *employed by an agency in a position the duties and*
17 *responsibilities of which require or authorize such in-*
18 *dividual to formulate, determine, or influence the policies*
19 *of such agency;*

20 “(12) ‘collective bargaining’ or ‘bargaining’ means
21 *the performance of the mutual obligation of the repre-*
22 *sentatives of an agency and the exclusive representa-*
23 *tive of employees in a unit in such agency to meet at*
24 *reasonable times and to confer, consult, and bargain in*
25 *a good-faith effort to reach agreement with respect to*

1 *the conditions of employment affecting such employees*
 2 *and to execute, if requested by either party, a written*
 3 *document incorporating any collective bargaining agree-*
 4 *ment reached, but such obligation does not compel either*
 5 *party to agree to a proposal or to make a concession;*

6 *“(13) ‘confidential employee’ means an employee*
 7 *who acts in a confidential capacity to a person who for-*
 8 *mulates or effectuates management policies in the field*
 9 *of labor relations;*

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

15 *“(A) relating to discrimination in employment*
 16 *because of race, color, religion, sex, age, national*
 17 *origin, or handicapping condition;*

18 *“(B) relating to political activities prohibited*
 19 *under subchapter III of chapter 73 of this title; or*

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

22 *“(15) ‘professional employee’ means—*

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

25 *“(i) requiring knowledge of an advanced*

9

1 *type in a field of science or learning customarily*
2 *acquired by a prolonged course of specialized*
3 *intellectual instruction and study in an institu-*
4 *tion of higher learning or a hospital (as distin-*
5 *guished from knowledge acquired by a general*
6 *academic education, or from an apprenticeship,*
7 *or from training in the performance of routine*
8 *mental, manual, mechanical, or physical activi-*
9 *ties);*

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

12 “(iii) *which is predominantly intellectual*
13 *and varied in character (as distinguished from*
14 *routine mental, manual, mechanical, or physi-*
15 *cal work); and*

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

20 “(B) *an employee who has completed the*
21 *courses of specialized intellectual instruction and*
22 *study described in subparagraph (A)(i) of this*
23 *paragraph and is performing related work under the*
24 *direction or guidance of a professional person to*

1 *qualify such employee as a professional employee,*
2 *within the meaning of subparagraph (A);*

3 “(16) ‘exclusive representative’ means any labor
4 organization which has been—

5 “(A) selected or designated pursuant to the
6 provisions of section 7111 of this title as the repre-
7 sentative of employees in an appropriate unit; or

8 “(B) recognized by an agency before the effec-
9 tive date of this chapter as the exclusive representa-
10 tive of employees in an appropriate unit—

11 “(i) on the basis of an election, or

12 “(ii) on any basis other than an election;

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

17 “(18) ‘United States’ means the 50 States, the
18 District of Columbia, and any territory or possession of
19 the United States; and

20 “(19) ‘dues’ means dues, fees, and assessments.

21 **“§ 7104. Federal Labor Relations Authority**

22 “(a) The Federal Labor Relations Authority is com-
23 posed of three members, not more than two of whom may
24 be adherents of the same political party. A member shall
25 not engage in any other business or employment and none

1 of whom may hold another office or position in the Govern-
2 ment of the United States except where provided by law.

3 “(b) Members of the Authority shall be appointed by
4 the President, by and with the advice and consent of the Sen-
5 ate. Each member of the Authority may be removed by the
6 President, only upon notice and hearing, and only for mis-
7 conduct, inefficiency, neglect of duty, or malfeasance in Office.
8 The President shall designate one member to serve as Chair-
9 man of the Authority.

10 “(c) One of the original members of the Authority
11 shall be appointed for a term of 1 year, one for a term of 3
12 years, and the Chairman for a term of 5 years. Thereafter,
13 each member shall be appointed for a term of 5 years. Not-
14 withstanding the preceding provisions of this subsection, the
15 term of any member shall not expire before the earlier of (1)
16 the date on which such member’s successor takes office, or
17 (2) the last day of the Congress beginning after the date
18 such member’s term of office would (but for this sentence)
19 expire. An individual chosen to fill a vacancy shall be ap-
20 pointed for the unexpired term of the member replaced.

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

24 “(e) The Authority shall make an annual report to the
25 President for transmittal to the Congress, which shall include

1 information as to the cases it has heard and the decisions it
2 has rendered.

3 “(f)(1) The General Counsel of the Authority shall be
4 appointed by the President by and with the advice and
5 consent of the Senate for a term of 5 years. The General
6 Counsel may be removed by the President, only upon notice
7 and hearing, and only for misconduct, inefficiency, neglect
8 of duty, or malfeasance in office. The General Counsel may—

9 “(A) investigate alleged violations of this chapter,

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

12 “(C) intervene before the Authority in proceedings
13 brought under section 7118 of this title, and

14 “(D) exercise such other powers as the Authority
15 may prescribe.

16 “(2) The General Counsel shall have direct authority
17 over, and responsibility for, all employees in the office of
18 General Counsel, including employees of the General Coun-
19 sel in the regional offices of the Authority.

20 “(3) If a vacancy occurs in the Office of General Coun-
21 sel, the President shall promptly designate an Acting Gen-
22 eral Counsel and shall submit a nomination for a replacement
23 to the Senate within 40 days after the vacancy has occurred,
24 unless Congress adjourns sine die before the expiration of
25 such 40-day period, in which case the President shall submit

1 a nomination to the Senate not later than 10 days after
2 Congress reconvenes.

3 “§ 7105. Powers and duties of the Authority

4 “(a) The Authority shall provide leadership in estab-
5 lishing labor-management relations policies and guidance
6 under this chapter, and, except as otherwise provided, shall
7 be responsible for carrying out the purposes of this chapter.

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

10 “(c) The principal office of the Authority shall be in
11 the District of Columbia but it may meet and exercise any
12 or all of its powers at any time or place. Except where
13 expressly provided otherwise, the Authority may, by one or
14 more of its members or by such agents as it may designate,
15 make any inquiry necessary to carry out its duties wherever
16 persons subject to this chapter are located. A member who
17 participates in such inquiry shall not be disqualified from
18 later participating in a decision of the Authority in the same
19 case.

20 “(d) The Authority shall appoint an Executive Director,
21 administrative law judges under section 3105 of this title,
22 and other employees as it may from time to time find neces-
23 sary for the proper performance of its duties.

24 “(e) (1) The Authority may delegate to its regional
25 directors its authority under this title—

1 “(A) to determine whether a group of employees
2 is an appropriate unit,

3 “(B) to investigate and provide for hearings,

4 “(C) to determine whether a question of represen-
5 tation exists and to direct an election, and

6 “(D) to conduct secret ballot elections and certify
7 the results thereof,

8 except that upon the filing of a request therefor with the
9 Authority by any interested person, the Authority may re-
10 view any action of the regional director under authority dele-
11 gated under this paragraph, but such review shall not, unless
12 specifically ordered by the Authority, operate as a stay of
13 any action taken by the regional director.

14 “(2) The Authority may delegate to an administrative
15 law judge its authority under section 7118 of this title to deter-
16 mine whether any person has engaged in an unfair labor
17 practice. The Authority may review any action of an ad-
18 ministrative law judge under authority delegated under this
19 paragraph, but such review shall not, unless specifically
20 ordered by the Authority, operate as a stay of any action
21 taken by the administrative law judge.

22 “(f) If the Authority exercises the authority granted
23 by subsection (e) of this section to delegate any authority to
24 any regional director or administrative law judge, it may,
25 upon application by any interested person, review, and upon

1 such review, modify, affirm, or reverse the decision, certifi-
2 cation, or order of a regional director or administrative law
3 judge if it believes substantial questions of law or fact have
4 been raised. In the event that the Authority does not under-
5 take to grant review within 60 days after a request for
6 review is filed, the decision of such regional director or ad-
7 ministrative law judge shall become the decision of the
8 Authority.

9 “(g) In order to carry out its functions under this chap-
10 ter, the Authority may hold hearings, subpoena witnesses,
11 administer oaths, and take the testimony or deposition of any
12 person under oath, and in connection therewith, may issue
13 subpoenas requiring the production and examination of any
14 books or papers, including those of the Federal Government
15 to the extent otherwise available under law; relating to any
16 matter pending before it and to take such other action as
17 may be necessary to carry out the purpose of this chapter.

18 “§ 7106. Management rights

19 “(a) Nothing in this chapter shall affect the authority
20 of any management official of any agency—

21 “(1) subject to subsection (b); to determine the
22 mission, budget, organization, and internal security
23 practices of such agency; and

24 “(2) in accordance with applicable laws, to take

1 *whatever actions as may be necessary to carry out the*
 2 *mission of such agency during national emergencies.*

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

5 “(1) *procedures which management officials of such*
 6 *agency will observe in exercising their authority to deter-*
 7 *mine the mission, budget, organization, and internal*
 8 *security of such agency, or*

9 “(2) *appropriate arrangements for employees ad-*
 10 *versely affected by the exercise of such authority by*
 11 *such management officials.*

12 “**SUBCHAPTER II—RIGHTS AND DUTIES OF**
 13 **AGENCIES AND LABOR ORGANIZATIONS**

14 “§ 7111. **Exclusive recognition of labor organizations**

15 “(a) *Exclusive recognition shall be granted to a labor*
 16 *organization which has been selected by a majority of em-*
 17 *ployees in an appropriate unit who participate in an elec-*
 18 *tion in conformity with the requirements of this chapter.*

19 “(b) (1) *If a petition has been filed with the Au-*
 20 *thority—*

21 “(A) *by any person alleging—*

22 “(i) *in the case of an appropriate unit for*
 23 *which no exclusive representative has been certified,*
 24 *that 30 percent of the employees in the appropriate*

1 *unit wish to be represented for collective bargaining*
2 *purposes by an exclusive representative, or*

3 “*(ii) in the case of an appropriate unit for*
4 *which an exclusive representative has been certified,*
5 *that 30 percent of the employees in the unit allege*
6 *that the exclusive representative is no longer the*
7 *representative of the majority of the employees in*
8 *the unit; or*

9 “*(B) by any person seeking clarification of, or*
10 *an amendment to, an existing certification on a matter*
11 *relating to representation;*

12 *the Authority shall investigate such petition, and if it has*
13 *reasonable cause to believe that a question of representation*
14 *exists, it shall provide for an opportunity for a hearing (for*
15 *which a transcript will be kept) after reasonable and an ap-*
16 *propriate hearing on the record upon due notice. Except as*
17 *provided under subsection (e) of this section, if the Authority*
18 *finds on the record of such hearings that such a question of*
19 *representation exists, it shall, subject to paragraph (2), of*
20 *this subsection, conduct an election by secret ballot and shall*
21 *certify the results thereof. An election shall not be conducted*
22 *in any appropriate unit or in any subdivision thereof within*
23 *which, in the preceding 12 calendar months, a valid election*
24 *under this subsection has been held.*

1 “(2) (A) If, after 45 days following the date the peti-
2 tion is filed, unresolved issues exist concerning—

3 “(i) the appropriateness of the unit for the purposes
4 of collective bargaining,

5 “(ii) the eligibility of one or more individuals to
6 vote in the proposed election, or

7 “(iii) other matters determined by the Authority
8 to be relevant to the election,
9 the Authority shall direct an election by secret ballot in
10 the unit then sought by the petitioner and announce the
11 results thereof.

12 “(B) After conducting an election under subparagraph
13 (A) of this paragraph, the Authority shall expedite the
14 resolution of the disputed issues relating to such election. If
15 the Authority determines that matters raised by such issues
16 did not affect the outcome of such election, the Authority
17 shall certify the results of such election. If the Authority
18 determines that such matters affected the outcome of the
19 election, it shall direct that a new election by secret ballot
20 occur in accordance with such requirements as is appropriate
21 on the basis of such determination, and shall certify the re-
22 sults thereof.

23 “(c) A labor organization which—
24 “(1) has been designated by at least 10 percent
25 of the employees in the unit;

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

4 “(3) has submitted other evidence that it is the
5 exclusive representative of the employees involved;
6 may intervene with respect to a petition filed under sub-
7 section (b) of this section and shall be placed on the ballot
8 of any election ordered to be held under such subsection (b).

9 “(d) The Authority shall determine who is eligible to
10 vote in any election under this section and shall establish
11 rules governing the election, which shall include rules allow-
12 ing each employee eligible to vote the opportunity to
13 choose—

14 “(1) the labor organization such employee wishes
15 to be represented by from those on the ballot, or

16 “(2) not to have representation by a labor organi-
17 zation.

18 In any election in which no choice on the ballot receives
19 a majority of the votes cast, a runoff election shall be con-
20 ducted between the two choices receiving the largest number
21 of votes. A labor organization which receives the majority
22 of the votes cast in an election shall be certified by the
23 Authority as the exclusive representative.

24 “(e) The Authority may, on the petition of a labor or-

1 ganization, certify such labor organization as an exclusive
2 representative—

3 “(1) if, after investigation, it determines that the
4 conditions for a free and untrammelled election under
5 this section cannot be established because the agency
6 involved has engaged in or is engaging in an action
7 described in section 7116 of this title; or

8 “(2) if, after investigation, the Authority deter-
9 mines that—

10 “(A) the labor organization represents a ma-
11 jority of employees in an appropriate unit;

12 “(B) such majority status was achieved with-
13 out the benefit of an action described in section
14 7116 of this title;

15 “(C) no other person has filed a petition for
16 recognition under subsection (b) of this section or
17 a request for intervention under subsection (c) of
18 this section; and

19 “(D) no other question of representation exists
20 in the appropriate unit.

21 “(f) Any labor organization described in clause (ii)
22 of section 7103(a)(16)(B) of this title may petition for
23 an election for the determination of such organization as the
24 exclusive representative of any unit.

25 “(g) A labor organization seeking exclusive recognition

1 shall submit to the Authority and the agency involved a
2 roster of its officers and representatives, a copy of its con-
3 stitution and bylaws, and a statement of its objectives.

4 “(h) Exclusive recognition shall not be accorded to a
5 labor organization—

6 “(1) if the Authority determines the labor orga-
7 nization is subject to corrupt influences or influences
8 opposed to democratic principles;

9 “(2) in the case of a petition filed pursuant to
10 subsection (b)(1)(A), if there is not credible evi-
11 dence that at least 30 percent of the employees in
12 the unit described in such petition wish to be represented
13 for the purpose of collective bargaining by the labor
14 organization seeking exclusive recognition;

15 “(3) if there is then in effect a lawful written
16 collective bargaining agreement between such agency
17 and a labor organization (other than the labor orga-
18 nization seeking recognition) covering any employees
19 included in the unit described in the petition, unless—

20 “(A) such agreement has been in effect for
21 more than 3 years, or

22 “(B) the petition for exclusive recognition is
23 filed during the 4-month period which begins on the
24 180th day before the expiration date of such agree-
25 ment; or

1 “(4) if the Authority has, within the previous 12
2 calendar months, conducted a secret ballot election in-
3 volving any of the employees in the unit described in
4 the petition and in such election a majority of the em-
5 ployees voting chose a labor organization for certification
6 as the unit's exclusive representative or chose not to be
7 represented by any labor organization.

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

12 “§ 7112. Determination of appropriate units for labor
13 organization representation

14 “(a)(1) The Authority shall make a determination of
15 the appropriateness of a unit. The Authority shall deter-
16 mine in each case whether, in order to insure employees
17 the fullest freedom in exercising the rights guaranteed
18 under this chapter, the appropriate unit to be established
19 will be on an agency, plant, installation, functional, or
20 other basis which will insure a clear and identifiable
21 community of interest among the employees concerned and
22 will promote effective dealings with, and efficiency of, agency
23 operations.

24 “(b) A unit shall not be determined to be appropriate
25 under this section solely on the basis of the extent to which

1 *employees in the proposed unit have organized, nor shall a*
2 *unit be determined to be appropriate if it includes—*

3 “(1) *except as provided under section 7136(a) of*
4 *this title, any management official or supervisor, except*
5 *that, with respect to a unit a majority of which is*
6 *composed of firefighters or nurses, a unit which includes*
7 *both supervisors and nonsupervisors may be considered*
8 *appropriate;*

9 “(2) *a confidential employee;*

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

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

14 “(5) *both professional and nonprofessional employ-*
15 *ees, unless a majority of the professional employees vote*
16 *for inclusion in the unit;*

17 “(6) *any employee engaged in intelligence, investi-*
18 *gative, or security functions of any agency which directly*
19 *affect national security; or*

20 “(7) *any employee primarily engaged in investiga-*
21 *tion or audit functions relating to the work of an agency's*
22 *officers or employees whose duties directly affect the in-*
23 *ternal security of that agency but only if such functions*
24 *are undertaken to insure that such duties are discharged*
25 *honestly and with integrity.*

1 “(c) Two or more units which are in an agency and for
2 which a labor organization holds exclusive recognition by
3 reason of elections within each of such units shall be consoli-
4 dated into a single larger unit if the Authority deems the
5 larger unit to be appropriate. The Authority shall certify the
6 labor organization as the exclusive representative of such new
7 unit.

8 “(d) In the case of the reorganization of one or more
9 units for which, before the reorganization, a labor organiza-
10 tion was certified as the exclusive representative of any such
11 unit, such labor organization shall continue to be the exclusive
12 representative for such unit until new elections are held or a
13 period of 45 days has elapsed, whichever first occurs.

14 “§ 7113. National consultation rights

15 “(a) If there is no labor organization having exclusive
16 recognition on an agency basis, then a labor organization
17 which has been granted exclusive recognition below the agency
18 level as the representative of a substantial number of
19 employees of the agency, determined in accordance with cri-
20 teria prescribed by the Authority, shall be granted national
21 consultation rights by such agency. National consultation
22 rights shall terminate when the labor organization no longer
23 meets the criteria prescribed by the Authority. Any issue
24 as to a labor organization’s eligibility for, or continuation of,

1 *national consultation rights shall be subject to determination*
2 *by the Authority.*

3 “(b) *A labor organization having national consultation*
4 *rights under subsection (a) of this section shall—*

5 “(1) *be informed of any change in conditions of*
6 *employment proposed by an agency, and*

7 “(2) *shall be permitted reasonable time to present*
8 *its views and its recommendations regarding such*
9 *changes.*

10 *All views and recommendations presented under this sub-*
11 *section shall be considered by the agency before final action*
12 *is taken by the agency, and, if such views or recommenda-*
13 *tions are presented under this subsection, the agency shall*
14 *provide the organization making such presentation a written*
15 *statement of the reasons for its actions.*

16 “(c) *Nothing in this section shall be construed to*
17 *limit the right under this chapter to engage in collective*
18 *bargaining.*

19 “§ 7114. *Representation rights and duties*

20 “(a) *If a labor organization has been accorded exclu-*
21 *sive recognition such organization is the exclusive representa-*
22 *tive of employees in the appropriate unit and is entitled to*
23 *act for and negotiate collective bargaining agreements cover-*
24 *ing all employees in such unit. It is responsible for represent-*

1 *ing the interests of all employees in the unit without dis-*
2 *crimination and without regard to labor organization mem-*
3 *bership. Such labor organization shall be given the oppor-*
4 *tunity to be represented at—*

5 “(1) *any discussion between one or more represent-*
6 *atives of an agency and one or more employees or*
7 *their representatives concerning any grievance, person-*
8 *nel policy or practice,*

9 “(2) *any discussion between an employee and a*
10 *representative of an agency if the employee reasonably*
11 *believes such employee may be the subject of discipli-*
12 *nary or adverse action, or*

13 “(3) *any discussion regarding any other matter*
14 *affecting conditions of employment in the unit.*

15 *An agency and any labor organization accorded exclusive*
16 *recognition for any unit within such agency, through appro-*
17 *priate representatives, shall meet and negotiate in good faith*
18 *for the purpose of arriving at a collective bargaining agree-*
19 *ment. The rights of an exclusive representative under the*
20 *preceding provisions of this subsection shall not be con-*
21 *strued to preclude an employee from appointing an attor-*
22 *ney or other representative, other than the exclusive repre-*
23 *sentative, of the employee's own choosing in any appeal*
24 *action under procedures other than procedures negotiated*
25 *pursuant to this chapter.*

1 “(b) *The duty of an agency and a recognized labor or-*
2 *ganization to negotiate in good faith under subsection (a)*
3 *of this section shall include the obligation—*

4 “(1) *to approach the negotiations with a sincere*
5 *resolve to reach an agreement;*

6 “(2) *to be represented at the negotiations by duly*
7 *authorized representatives prepared to discuss and nego-*
8 *tiate on all matters affecting conditions of employment;*

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

12 “(4) *in the case of an agency, to furnish to the*
13 *labor organization involved, or its authorized representa-*
14 *tive, upon request and to the extent not prohibited by*
15 *the provisions of Federal law, data normally main-*
16 *tained by the agency in the regular course of business,*
17 *reasonably available, and necessary for full and proper*
18 *discussion, understanding, and negotiation of subjects*
19 *within the scope of collective bargaining; and*

20 “(5) *if an agreement is reached, to execute on the*
21 *request of any party to the negotiation a written docu-*
22 *ment embodying the agreed terms, and to take such*
23 *steps as are necessary to implement the agreement.*

24 “§ 7115. *Allotments to representatives*

25 “(a) *If an agency has received from an employee in*

1 *an appropriate unit a written assignment which authorizes*
2 *the agency to deduct from the pay of such employee amounts*
3 *for the payment of regular and periodic dues of a labor*
4 *organization having exclusive recognition for such unit,*
5 *such assignment shall be honored. The allotments shall*
6 *be made at no cost to the labor organization or the em-*
7 *ployee. Except as required under subsection (b) of this*
8 *section, any such assignment may not be revoked for a*
9 *period of 1 year.*

10 “(b) *An allotment for the deduction of labor organiza-*
11 *tion dues terminates when—*

12 “(1) *the agreement between the agency and the*
13 *labor organization ceases to be applicable to the em-*
14 *ployee; or*

15 “(2) *the employee has been suspended or expelled*
16 *from the labor organization.*

17 “(c)(1) *If a petition has been filed with the Author-*
18 *ity by a labor organization which has been granted exclu-*
19 *sive recognition under section 7111 of this title and such*
20 *petition alleges that a majority of the employees in the*
21 *appropriate unit wish that each employee in such unit who*
22 *is not a member of such labor organization be required, as a*
23 *condition of continued employment, to pay to such labor*
24 *organization an amount equal to the dues which an employee*
25 *in such unit who is a member of such labor organization is*

1 charged, the Authority shall conduct an election on such
2 issue by secret ballot and shall certify the results thereof. Such
3 requirement to make payments shall apply with respect to
4 the employees in such unit—

5 “(A) only if a majority of such employees voting
6 in such election vote in favor of such requirement, and

7 “(B) only during the period such labor organiza-
8 tion is the exclusive representative of such unit.

9 An election under this paragraph shall not be conducted in
10 any appropriate unit in which a valid election under this
11 paragraph has been held during the preceding 12 calendar
12 months.

13 “(2) If a petition signed by 30 percent of the employees
14 of an appropriate unit has been filed with the Authority
15 stating that such employees wish that such requirement
16 cease to apply, the Authority shall investigate such petition,
17 and if it has reasonable cause to believe that such petition
18 is valid, it shall conduct an election on such issue by secret
19 ballot and shall certify the results thereof. Such requirement
20 shall not apply with respect to the employees of such unit
21 if a majority of such employees voting in such election vote
22 in favor of the inapplicability of such requirement. An elec-
23 tion under this paragraph shall not be conducted in any
24 unit in which a valid election under this paragraph has
25 been held during the preceding 12 calendar months.

1 “(3) Notwithstanding any other provision of law, no
2 employee shall be required, as a condition of employment
3 in an agency, to make any payments to a labor organization,
4 unless such an employee is a member of a unit which has
5 chosen by election under this section to impose such dues on
6 all the employees in such unit.

7 “(4) Any employee who is a member of, and adheres
8 to established and traditional tenets or teachings of, a bona
9 fide religion, body, or sect which has historically held
10 conscientious objections to joining or financially supporting
11 labor unions shall not be required to make any payments to
12 any labor organization as a condition of employment, ex-
13 cept that such employee in a unit exclusively represented by
14 a labor organization may be required under this subsection
15 to pay, in lieu of dues, sums equal to such dues to—

16 “(A) a nonreligious charitable fund exempt from
17 taxation under section 501(c)(3) of the Internal Rev-
18 enue Code of 1954, chosen by such employee from a list
19 of at least three such funds, designated in a collective
20 bargaining agreement, or

21 “(B) if the collective bargaining agreement fails to
22 designate such funds, then to any such fund chosen by
23 the employee.

24 “(d)(1) Subject to paragraph (2) of this subsection,
25 if a petition has been filed with the Authority by any person

1 *alleging that 10 percent of the employees in an appropriate*
2 *unit have membership in a particular labor organization, the*
3 *Authority shall investigate such petition to determine its*
4 *validity. Upon certification by the Authority of its validity,*
5 *the agency shall be obligated to negotiate with the labor*
6 *organization solely concerning the establishment of a deduc-*
7 *tion of dues of the organization from the pay of members of*
8 *the organization who are employees in such unit and who*
9 *make a voluntary allotment for such purpose.*

10 *“(2)(A) The provisions of paragraph (1) of this sub-*
11 *section shall not apply in the case of any appropriate unit for*
12 *which there is an exclusive representative.*

13 *“(B) Any agreement under paragraph (1) between a*
14 *labor organization and an agency with respect to an appro-*
15 *priate unit shall be null and void upon the certification of an*
16 *exclusive representative of such unit.*

17 **“§ 7116. Unfair labor practices**

18 *“(a) For the purpose of this chapter, it shall be an un-*
19 *fair labor practice for an agency—*

20 *“(1) to interfere with, restrain, or coerce any em-*
21 *ployee in the exercise by such employee of any right*
22 *assured by this chapter;*

23 *“(2) to encourage or discourage membership in any*
24 *labor organization by discrimination in regard to hiring,*
25 *tenure, promotion, or other conditions of employment;*

1 *except that no provision of this chapter, or any other*
2 *provision of law, shall prevent an agency from requiring,*
3 *as a condition of continued employment, payment of a*
4 *representation fee equal to the amount of dues uniformly*
5 *required, pursuant to section 7115(c) of this title;*

6 “(3) to sponsor, control, or otherwise assist any
7 *labor organization, other than to furnish, if requested,*
8 *customary and routine services and facilities if such serv-*
9 *ices and facilities are also furnished on an impartial*
10 *basis to other labor organizations having equivalent*
11 *status;*

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

16 “(5) to refuse to consult, confer, or negotiate in
17 *good faith with a labor organization as required by this*
18 *chapter;*

19 “(6) to otherwise fail or refuse to cooperate in im-
20 *passe procedures and impasse decisions as required by*
21 *this chapter;*

22 “(7) to fail or refuse to comply with any provision
23 *of this chapter; or*

24 “(8) prescribe any rule or regulation which restricts
25 *the scope of collective bargaining permitted by this*

1 *chapter or which is in conflict with any applicable agree-*
2 *ment negotiated under this chapter.*

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

5 *“(1) to interfere with, restrain, or coerce an em-*
6 *ployee in the exercise of any right assured to such em-*
7 *ployee by this chapter;*

8 *“(2) to cause or attempt to cause an agency to*
9 *discriminate against an employee in the exercise of any*
10 *right assured to such employee by this chapter;*

11 *“(3) to coerce or attempt to coerce, discipline, or*
12 *fine a member of the labor organization as punishment*
13 *or reprisal for the purpose of hindering or impeding such*
14 *employee’s work performance, productivity, or the dis-*
15 *charge of duties as an employee of an agency;*

16 *“(4) to discriminate against an employee with re-*
17 *gard to the terms or conditions of membership in such*
18 *organization because of race, color, creed, national origin,*
19 *sex, age, preferential or nonpreferential civil service*
20 *status, political affiliation, marital status, or handicap-*
21 *ping condition;*

22 *“(5) to refuse to consult, confer, or negotiate in*
23 *good faith with an agency as required by this chapter;*

24 *“(6) to fail or refuse to cooperate in impasse pro-*

1 *cedures and impasse decisions as required by this*
2 *chapter;*

3 *“(7) to call or engage in a strike, work stoppage,*
4 *or slowdown, or to condone any such activity by failing*
5 *to take action to prevent or stop such activity; or*

6 *“(8) to fail or refuse to comply with any pro-*
7 *vision of this chapter.*

8 *“(c) For the purpose of this chapter it shall be an unfair*
9 *labor practice for a labor organization which is accorded ex-*
10 *clusive recognition to deny membership to an employee in*
11 *the appropriate unit except for failure to meet reasonable*
12 *occupational standards uniformly required for admission,*
13 *or for failure to tender dues uniformly required as a condi-*
14 *tion of acquiring and retaining membership. This subsec-*
15 *tion does not preclude a labor organization from enforcing*
16 *discipline in accordance with procedures under its consti-*
17 *tution or bylaws, to the extent consistent with the requirements*
18 *of this chapter.*

19 *“(d) Issues which properly can be raised under—*

20 *“(1) an appeals procedure prescribed by or pur-*
21 *suant to law; or*

22 *“(2) the grievance procedure under section 7121*
23 *of this title;*

24 *may, at the election of the aggrieved party, be raised either*
25 *(A) under the appropriate appeal or grievance procedure,*

1 or (B) if applicable, under the procedure for resolving com-
2 plaints of unfair labor practices under section 7118 of this
3 title. An election under the preceding sentence shall be made
4 at such time and in such manner as the Authority shall
5 prescribe. Any decision on such appeal or grievance under
6 such a procedure shall not be construed as a determination
7 of an unfair labor practice under this chapter nor as prec-
8 edent for any such determination.

9 “§ 7117. *Duty to bargain in good faith; compelling need*

10 “(a)(1) *Subject to paragraph (2) of this subsection,*
11 *the duty to bargain in good faith shall, to the extent not*
12 *inconsistent with Federal law, extend to matters which are*
13 *the subject of any rule or regulation which is not a Govern-*
14 *ment-wide rule or regulation.*

15 “(2) *The duty to bargain in good faith shall, to the*
16 *extent not inconsistent with Federal law, extend to matters*
17 *which are the subject of any Government-wide rule or regu-*
18 *lation for which the Authority has determined in a hearing*
19 *under subsection (b) of this section that no compelling need*
20 *(as determined under regulations prescribed by the Au-*
21 *thority) exists.*

22 “(b)(1) *In any case of collective bargaining in which*
23 *an exclusive representative alleges that no compelling need*
24 *exists for any Government-wide rule or regulation governing*
25 *any matter at issue in such collective bargaining, the Au-*

1 *thority shall conduct a hearing on the issue of compelling*
2 *need in accordance with regulations prescribed by the Au-*
3 *thority.*

4 “(2) *Any hearing under this subsection shall be expe-*
5 *dated to the extent practicable and shall not include the Gen-*
6 *eral Counsel as a party.*

7 “(3) *For the purpose of this section, a compelling need*
8 *shall be determined not to exist only if—*

9 “(A) *the agency which issued such rule or regula-*
10 *tion informs the Authority in writing that such a com-*
11 *PELLING need does not exist; or*

12 “(B) *the Authority determines after a hearing*
13 *under this section that such a compelling need does not*
14 *exist.*

15 “(4) *The agency which issued such rule or regulation*
16 *shall be a necessary party at any hearing under this*
17 *subsection.*

18 “§ 7118. *Prevention of unfair labor practices*

19 “(a) (1) *If an agency or labor organization is charged*
20 *by any person with having engaged in or engaging in an*
21 *unfair labor practice, the General Counsel shall investigate*
22 *the charge and may issue and cause to be served upon such*
23 *agency or labor organization a complaint. In any case in*
24 *which the General Counsel does not issue a complaint because*
25 *the charge fails to state an unfair labor practice, the Gen-*

1 eral Counsel shall furnish the person making such charge
2 with a written statement of the reasons for not issuing a
3 complaint.

4 (2) Any complaint under paragraph (1) of this sub-
5 section shall contain a notice—

6 “(A) of the charges;

7 “(B) that a hearing will be held before the Author-
8 ity or a member thereof, or before an employee of the
9 Authority designated for that purpose;

10 “(C) of the place fixed for the hearing; and

11 “(D) of the time for the hearing which shall be
12 not earlier than 5 days after the serving of the complaint.

13 “(3) The labor organization or agency involved shall
14 have the right to file an answer to the original and any
15 amended complaint and to appear in person or otherwise
16 and give testimony at the time and place of the hearing
17 fixed in the complaint. In the discretion of the person or
18 persons conducting the hearing, any person other than the
19 labor organization or agency involved may be allowed to
20 intervene in such proceeding and to present testimony. Any
21 such proceeding shall, so far as practicable, be conducted in
22 accordance with the provisions of subchapter II of chapter
23 5 of this title, except that the parties shall not be bound by
24 rules of evidence, whether statutory, common law, or adopted
25 by rules of court.

1 “(4) No complaint shall be issued based upon an un-
2 fair labor practice which occurred more than 6 months before
3 the filing of the charge with the Authority. If the person ag-
4 grieved was prevented from filing such charge within the 6
5 months—

6 “(A) by the failure of the agency or labor orga-
7 nization against whom such charge is made to perform a
8 duty owed to the aggrieved, or

9 “(B) due to concealment which prevented dis-
10 covery of the unfair labor practice within 6 months of
11 its occurrence,

12 the 6-month period during which a charge may be filed
13 shall be computed from the day of discovery of the
14 occurrence.

15 “(5) The Authority (or a member or employee of the
16 Authority designated for such purpose) shall conduct a hear-
17 ing on the complaint not earlier than 5 days after the com-
18 plaint is served, and may compel under section 7133 of this
19 title the attendance of witnesses and the production of docu-
20 ments. A transcript shall be kept of the proceeding. There-
21 after, in its discretion, the Authority upon notice may receive
22 further evidence or hear argument. If the Authority, or its
23 designee, determines that the preponderance of the evidence
24 received demonstrates that an agency or labor organization
25 named in the complaint has engaged in or is engaging in an

1 *unfair labor practice, then the Authority, or its designee,*
2 *shall state its findings of fact and shall issue and cause to*
3 *be served on such agency or labor organization an order to*
4 *cease and desist from such unfair labor practice, and to take*
5 *such action as will effectuate the policies of this chapter as*
6 *may be appropriate. Such action may include—*

7 *“(A) directing that a collective bargaining agree-*
8 *ment be amended and that such amendments be given*
9 *retroactive effect;*

10 *“(B) requiring an award of reasonable attorney’s*
11 *fees; or*

12 *“(C) reinstatement of employees with backpay to-*
13 *gether with an award of interest thereon.*

14 *Where any order directs reinstatement of an employee, back-*
15 *pay may be required of the agency (as provided in section*
16 *5596 of this title) or of the labor organization, as the case*
17 *may be, responsible for the discrimination or improper action.*

18 *“(6) If the Authority determines that the preponderance*
19 *of the evidence received fails to demonstrate that the agency*
20 *or labor organization named in the complaint has engaged in*
21 *or is engaging in an unfair labor practice, then the Authority*
22 *shall state its findings of fact and shall issue an order dis-*
23 *missing the complaint.*

24 *“(b) The Authority may request from the Director of the*
25 *Office of Personnel Management an advisory opinion concern-*

1 *ing the proper interpretation of rules, regulations, or other*
2 *policy directives issued by the Office of Personnel Manage-*
3 *ment in connection with any matter before the Authority in*
4 *any proceeding under this section.*

5 *“§ 7119. Negotiation impasses; Federal Service Impasses*

6 *Panel*

7 *“(a) Upon request, the Federal Mediation and Concilia-*
8 *tion Service shall provide services and assistance to agencies*
9 *and labor organizations in the resolution of negotiation*
10 *impasses.*

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

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

16 *“(2) the parties may agree to adopt a procedure*
17 *for binding arbitration of a negotiation impasse.*

18 *“(c) (1) The Federal Service Impasses Panel is an*
19 *entity within the Authority, the function of which is to pro-*
20 *vide assistance in resolving collective bargaining negotiation*
21 *impasses between agencies and labor organizations.*

22 *“(2) The Panel shall be composed of a Chairman and at*
23 *least six other members, who shall be appointed by the Au-*
24 *thority solely on the basis of fitness to perform the duties and*
25 *functions of the office from among individuals who are fa-*

1 *miliar with Government operations and knowledgeable in*
2 *labor-management relations.*

3 “(3) *Two members of the Panel shall be appointed for*
4 *a term of 1 year, two for a term of 3 years, and the Chair-*
5 *man and the remaining members for a term of 5 years. Their*
6 *successors shall be appointed for terms of 5 years, except*
7 *that an individual chosen to fill a vacancy shall be appointed*
8 *for the unexpired term of the member whom he shall re-*
9 *place. A member of the Panel may be removed by the Au-*
10 *thority only upon notice and hearing and only for miscon-*
11 *duct, inefficiency, neglect of duty, or malfeasance in office.*

12 “(4) *The Panel may appoint an Executive Director*
13 *and such other employees as it may from time to time find*
14 *necessary for the proper performance of its duties. Each*
15 *member of the Panel who is not an employee is entitled to*
16 *pay at a rate equal to the daily equivalent of the maximum*
17 *annual rate of basic pay then currently paid under the Gen-*
18 *eral Schedule for each day he is engaged in the performance*
19 *of official business on the work of the Panel, including*
20 *traveltime, and is entitled to travel expenses and a per diem*
21 *allowance under section 5703 of this title.*

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

1 “(i) recommend procedures to the parties for the
2 resolution of the impasse, or

3 “(ii) assist the parties in arriving at a settlement
4 through whatever methods and procedures, including
5 factfinding and recommendations, it may deem appro-
6 priate to accomplish the purposes of this section.

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

10 “(i) hold hearings,

11 “(ii) compel under section 7133 of this title the
12 attendance of witnesses and the production of docu-
13 ments, and

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

16 “(C) Notice of any final action of the Panel under this
17 section shall be promptly served upon the parties, and such
18 action shall be binding upon them during the term of the
19 agreement.

20 “§ 7120. Standards of conduct for labor organizations

21 “(a) A labor organization representing or seeking to
22 represent employees pursuant to this chapter shall adopt,
23 maintain, and enforce governing requirements containing
24 explicit and detailed provisions to which it subscribes, which
25 shall include requirements providing for—

1 “(1) the maintenance of democratic procedures
2 and practices, including provisions for—

3 “(A) periodic elections to be conducted subject
4 to recognized safeguards, and

5 “(B) provisions defining and securing the right
6 of individual members to—

7 “(i) participate in the affairs of the labor
8 organization,

9 “(ii) fair and equal treatment under the
10 governing rules of the organization, and

11 “(iii) fair process in disciplinary proceed-
12 ings;

13 “(2) the prohibition of business or financial inter-
14 ests on the part of labor organization officers and agents
15 which conflict with their duty to the organization and its
16 members; and

17 “(3) the maintenance of fiscal integrity in the
18 conduct of the affairs of the labor organization, includ-
19 ing provision for accounting and financial controls and
20 regular financial reports or summaries to be made avail-
21 able to members.

22 “(b) This chapter does not authorize participation in
23 the management of a labor organization or acting as a rep-
24 resentative of such an organization by a management official
25 or a supervisor, except as specifically provided in this chap-

1 ter, or by an employee if the participation or activity
 2 would result in a conflict or apparent conflict of interest or
 3 would otherwise be incompatible with law or with the official
 4 duties of the employee.

5 "SUBCHAPTER III—GRIEVANCES

6 "§ 7121. Grievance procedures

7 "(a) An agreement entered into by an agency and a
 8 labor organization having exclusive recognition shall pro-
 9 vide procedures for the settlement of grievances, including
 10 questions of arbitrability. An employee having a grievance
 11 to whom the agreement applies may elect to have such
 12 grievance processed under either—

13 "(1) a procedure negotiated in accordance with
 14 this chapter, or

15 "(2) any applicable appeals procedures established
 16 by or pursuant to law (including procedures specified
 17 in section 7116 (d) of this title).

18 "(b) A negotiated grievance procedure required under
 19 subsection (a) of this section shall—

20 "(1) be fair and simple,

21 "(2) provide for expeditious processing, and

22 "(3) shall include procedures that—

23 "(A) assure a labor organization the right, in
 24 its own behalf or on behalf of any employee in the
 25 unit, to present and process grievances;

1 “(B) assure an employee the right to present a
2 grievance on the employee’s own behalf, and assure
3 the labor organization the right to be present when
4 the grievance is adjusted; and

5 “(C) provide that any grievance not satisfac-
6 torily settled in the grievance process shall be sub-
7 ject to binding arbitration which may be invoked
8 by either the labor organization or the agency.

9 “(c) Any party to such agreement aggrieved by the
10 failure, neglect, or refusal of the other party to proceed
11 to arbitration pursuant to the procedure provided in such
12 agreement may file a complaint in the appropriate district
13 court of the United States or in any appropriate court of the
14 State, territory, or possession of the United States for an
15 order directing that arbitration proceed pursuant to the pro-
16 cedures provided therefor in such agreement. Such court
17 shall hear the matter without jury and shall cause the
18 hearing of such case to be expedited to the maximum extent
19 practicable.

20 “(d) The foregoing provisions of this section shall not
21 apply with respect to any grievance concerning any claimed
22 violation of—

23 “(1) section 717 of the Civil Rights Act of 1964
24 (42 U.S.C. 2000e-16), the Age Discrimination in Em-
25 ployment Act of 1967 (29 U.S.C. 631, 633a), or sec-

1 *tion 501 of the Rehabilitation Act of 1973 (29 U.S.C.*
2 *791); or*

3 *“(2) subchapter III of chapter 73 of this title (re-*
4 *lating to prohibited political activities).*

5 **“§ 7122. Exceptions to arbitral awards**

6 *“(a) Either party to arbitration may file an exception*
7 *with the Authority to an arbitrator’s award under this*
8 *chapter. If upon review the Authority finds that the award*
9 *is deficient because—*

10 *“(1) it is contrary to law, rules, or regulations;*

11 *“(2) it was obtained by corruption, fraud, or other*
12 *misconduct;*

13 *“(3) the arbitrator exercised partiality in making*
14 *such award; or*

15 *“(4) the arbitrator exceeded powers granted to*
16 *such arbitrator;*

17 *the Authority may take such action and make such recom-*
18 *mendations on the award as it considers necessary, consistent*
19 *with applicable law, rules, or regulations.*

20 *“(b) If no exception to an arbitration award is filed*
21 *under subsection (a) of this section, the decision of an*
22 *arbitrator shall be final and binding. An agency shall take*
23 *the actions required by a final decision of an arbitrator to*
24 *make an employee whole in the circumstances, including*
25 *the payment of backpay (as provided in section 5596 of this*

1 *title). A final decision under this section is subject to the provi-*
2 *sions of section 7123 of this title.*

3 **“§ 7123. Judicial review; enforcement**

4 *“(a) Any person aggrieved by a final order of the*
5 *Authority under section 7118 of this title (involving an*
6 *unfair labor practice), under section 7122 of this title (in-*
7 *volving an award by an arbitrator) or under section 7112*
8 *of this title (involving an appropriate unit determination)*
9 *may, within 60 days after the date on which the order was*
10 *issued, institute an action for judicial review of the Author-*
11 *ity’s order in the United States court of appeals in the*
12 *circuit in which such person resides or transacts business*
13 *or in the United States Court of Appeals for the District*
14 *of Columbia.*

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

19 *“(c) Upon the filing of a petition under subsection (a)*
20 *for judicial review or under subsection (b) for enforcement,*
21 *the Authority shall file in the court the record in the proceed-*
22 *ings, as provided in section 2112 of title 28. Upon such filing,*
23 *the court shall cause notice thereof to be served to the parties*
24 *involved, and thereupon shall have jurisdiction of the pro-*
25 *ceeding and of the question determined therein and may grant*

1 *such temporary relief or restraining order as it deems just*
2 *and proper, and may make and enter a decree affirming and*
3 *enforcing, modifying and enforcing as so modified, or setting*
4 *aside in whole or in part the order of the Authority. The filing*
5 *of a petition under subsection (a) or (b) shall not operate*
6 *as a stay of the Authority's order unless the court specifically*
7 *orders such stay. Review of the Authority's order shall*
8 *be on the record in accordance with section 706 of this*
9 *title. No objection that has been urged before the Authority,*
10 *or its member, agent, or agency, shall be considered*
11 *by the court, unless the failure or neglect to urge*
12 *such objection shall be excused because of extraordinary*
13 *circumstances. The findings of the Authority with respect to*
14 *questions of fact if supported by substantial evidence on the*
15 *record considered as a whole shall be conclusive. If any per-*
16 *son shall apply to the court for leave to adduce additional*
17 *evidence and shall show to the satisfaction of the court that*
18 *such additional evidence is material and that there were rea-*
19 *sonable grounds for the failure to adduce such evidence in the*
20 *hearing before the Authority, or its member, agent, or*
21 *agency, the court may order such additional evidence to be*
22 *taken before the Authority, or its member, agent, or agency,*
23 *and to be made a part of the record. The Authority may*
24 *modify its findings as to the facts, or make new findings by*

1 *reason of additional evidence so taken and filed, and it shall*
2 *file such modified or new findings, which findings with re-*
3 *spect to questions of fact if supported by substantial evidence*
4 *on the record considered as a whole shall be conclusive, and*
5 *shall file its recommendations, if any, for the modification*
6 *or setting aside of its original order. Upon the filing of the*
7 *record with it, the jurisdiction of the court shall be exclusive*
8 *and its judgment and decree shall be final, except that the*
9 *same shall be subject to review by the Supreme Court of the*
10 *United States upon writ of certiorari or certification as*
11 *provided in section 1254 of title 28.*

12 “(c) The Authority may, upon issuance of a complaint
13 as provided in section 7118 of this title charging that
14 any person has engaged in or is engaging in an unfair labor
15 practice, petition any United States district court, within
16 any district wherein the unfair labor practice in question is
17 alleged to have occurred or wherein such person resides or
18 transacts business, for appropriate temporary relief or re-
19 straining order. Upon the filing of any such petition the court
20 shall cause notice thereof to be served upon such person,
21 and thereupon shall have jurisdiction to grant such tempo-
22 rary relief (including a temporary restraining order) as it
23 deems just and proper.

1 *“SUBCHAPTER IV—ADMINISTRATIVE AND*
 2 *OTHER PROVISIONS*

3 *“§ 7131. Reporting requirements for standards of conduct*

4 *“The provisions of subchapter III of chapter 11 of*
 5 *title 29 shall be applicable to labor organizations that have*
 6 *been or are seeking to be certified under this chapter, and*
 7 *to such organizations’ officers, agents, shop stewards, other*
 8 *representatives and members to the extent to which such*
 9 *provisions would be applicable if the agency were an em-*
 10 *ployer under section 402 of title 29. In addition to the au-*
 11 *thority conferred on him under section 438 of title 29, the*
 12 *Secretary of Labor shall have authority, by regulations issued*
 13 *with the written concurrence of the Authority, to prescribe*
 14 *simplified reports for any such labor organization. The Sec-*
 15 *retary of Labor may revoke such provision for simplified*
 16 *reports of any such labor organization if he determines, after*
 17 *such investigation as he deems proper and after due notice*
 18 *and opportunity for a hearing, that the purposes of this*
 19 *chapter and of chapter 11 of title 29 would be served thereby.*

20 *“§ 7132. Official time*

21 *“(a) Employees representing an exclusively recognized*
 22 *labor organization—*

23 *“(1) at any grievance proceeding under this chap-*
 24 *ter, or*

25 *“(2) in the negotiation of an agreement under*

1 *this chapter, including attendance at impasse settlement*
2 *proceedings,*

3 *are authorized official time for such purposes during the*
4 *time the employees otherwise would be in a duty status.*
5 *However, the number of such employees for whom official*
6 *time is authorized under this subsection shall not exceed the*
7 *number of persons designated as representing the agency.*

8 *“(b) Matters relating to the internal business of a labor*
9 *organization (including the solicitation of membership, elec-*
10 *tions of labor organization officials, and collection of dues)*
11 *shall be performed during the nonduty hours of the employees*
12 *concerned.*

13 *“(c) Except as provided for under subsection (a) of*
14 *this section, the Authority shall determine whether employees*
15 *participating for, or on behalf of, a labor organization in any*
16 *phase of proceedings before the Authority, shall be author-*
17 *ized official time for such purposes during regular working*
18 *hours.*

19 *“(d) Except as provided under other subsections of this*
20 *section—*

21 *“(1) employees representing an exclusively recog-*
22 *nized labor organization, or*

23 *“(2) employees in a recognized unit in connection*
24 *with any matter governed by this chapter*

25 *shall be granted official time in such amount as agency*

1 *management and the exclusive representative shall agree to*
2 *as being reasonable, necessary, and in the public interest.*

3 **“§ 7133. Subpenas**

4 “(a) *For the purpose of all hearings and investigations*
5 *which the Authority or any member thereof, or its designee,*
6 *or the Panel, or any member thereof, determines are neces-*
7 *sary and proper for the exercise of its powers under the*
8 *Act, the Authority or its duly authorized agent shall at all*
9 *reasonable times have access to, for the purpose of exam-*
10 *ination, and the right to copy any evidence of any person*
11 *being investigated or proceeded against that relates to any*
12 *matter under investigation or question. The Authority, any*
13 *member thereof, or its designee, or the Panel, or any*
14 *member thereof (hereinafter referred to in this section as*
15 *the ‘issuer’) may upon application of any party issue to*
16 *such party subpoenas requiring the attendance and testimony*
17 *of witnesses or the production of any evidence in such*
18 *proceeding or investigation requested in such application.*
19 *Within 5 days after the service of a subpoena on any individual*
20 *or organization requiring the production of any evidence in*
21 *the possession or under the control of such individual or*
22 *organization, such individual or organization may petition the*
23 *issuer to revoke, and the issuer shall revoke, such subpoena*
24 *if in its opinion the evidence the production of which is*
25 *required does not relate to any matter under consideration, or*

1 *if in its opinion such subpoena does not describe with sufficient*
2 *particularity the evidence the production of which is re-*
3 *quired. The issuer, or any agent designated by the issuer for*
4 *such purposes may administer oaths and affirmations, examine*
5 *witnesses, and receive evidence.*

6 “(b) *In case of contumacy or refusal to obey a subpoena*
7 *issued to any individual or organization, any district court of*
8 *the United States or the United States court of any territory*
9 *or possession, within the jurisdiction of which the inquiry is*
10 *carried on or within the jurisdiction of which such individual*
11 *or organization guilty of contumacy or refusal to obey is found*
12 *or resides or transacts business, upon application by the issuer*
13 *shall have jurisdiction to issue to such individual or organiza-*
14 *tion an order requiring such person to appear before the issuer*
15 *to produce evidence if so ordered, or to give testimony touching*
16 *the matter under consideration. Any failure to obey such order*
17 *of the court may be punished by such court as a contempt*
18 *thereof.*

19 “(c) *Witnesses summoned before the issuer shall be paid*
20 *the same fees and mileage that are paid witnesses in the courts*
21 *of the United States, and witnesses whose depositions are taken*
22 *and the persons taking the same shall severally be entitled to*
23 *the same fees as are paid for like services in the courts of the*
24 *United States.*

25 “(d) *No person shall be excused from attending and*

1 *testifying or from producing books, records, correspondence,*
2 *documents, or other evidence in obedience to a subpoena*
3 *under this section on the ground that the testimony or*
4 *evidence required of such person may tend to incriminate*
5 *such person or subject such person to a penalty or forfeiture;*
6 *but no individual shall be prosecuted or subjected to any*
7 *penalty or forfeiture for or on account of any transaction,*
8 *matter, or thing concerning which such person is compelled,*
9 *after having claimed privilege against self-incrimination, to*
10 *testify or produce evidence, except that such person so testi-*
11 *fying shall not be exempt from prosecution and punishment*
12 *for perjury committed in so testifying.*

13 “(e) Any person who shall willfully resist, prevent,
14 impede, or interfere with any member of the Authority or
15 Panel or a member, agent, or agency thereof in the per-
16 formance of duties pursuant to this chapter shall be punished
17 by a fine of not more than \$5,000 or by imprisonment for
18 not more than one year, or both.

19 **“§ 7134. Compilation and publication of data**

20 “(a) The Authority shall maintain a file of its proceed-
21 ings, copies of all available agreements and arbitration deci-
22 sions, and shall publish the texts of its decisions and the
23 actions taken by the Panel under section 7119 of this title.

24 “(b) All files maintained under subsection (a) of this

1 *section shall be open to inspection and reproduction subject*
2 *to the provisions of sections 552 and 552a of this title.*

3 **“§ 7135. Issuance of regulations**

4 *“The Authority, the Federal Mediation and Conciliation*
5 *Service, and the Panel shall each prescribe rules and regula-*
6 *tions to carry out the provisions of this chapter applicable to*
7 *each of them, respectively. Unless otherwise specifically pro-*
8 *vided in this chapter, the provisions of subchapter II of chap-*
9 *ter 5 of this title shall be applicable to the issuance, revision,*
10 *or repeal of any such rule or regulation.*

11 **“§ 7136. Continuation of existing laws, recognitions, agree-**
12 **ments, and procedures**

13 *“(a) Nothing contained in this chapter shall preclude—*
14 *“(1) the renewal or continuation of an exclusive*
15 *recognition, certification of a representative, or a lawful*
16 *agreement between an agency and a representative of*
17 *its employees entered into before the effective date of*
18 *this chapter; or*

19 *“(2) the renewal, continuation, or initial according*
20 *of recognition for units of management officials or super-*
21 *visors represented by labor organizations which histori-*
22 *cally or traditionally represent the management officials*
23 *or supervisors in private industry and which hold exclu-*

1 *the pay, allowances, or differentials, as applicable,*
2 *that the employee normally would have earned or*
3 *received during that period if the personnel action*
4 *had not occurred, less any amounts earned by such*
5 *employee through other employment during that*
6 *period;*

7 *“(B) interest on the amount payable under*
8 *subparagraph (A) of this paragraph; and*

9 *“(C) reasonable attorney’s fees and reason-*
10 *able costs and expenses of litigation related to the*
11 *personnel action; and*

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

14 *“(A) annual leave restored under this para-*
15 *graph which is in excess of the maximum leave*
16 *accumulation permitted by law shall be credited to*
17 *a separate leave account for the employee and shall*
18 *be available for use by the employee within the time*
19 *limits prescribed by regulations of the Office of*
20 *Personnel Management, and*

21 *“(B) annual leave credited under subpara-*
22 *graph (A) of this paragraph but unused and still*
23 *available to the employee under regulations pre-*
24 *scribed by the Office shall be included in the lump-*
25 *sum payment under section 5551 or 5552(1) of*

1 *this title but may not be retained to the credit of the*
2 *employee under section 5552(2) of this title.*

3 *For the purpose of this subsection, 'unfair labor practice',*
4 *'grievance', and 'collective bargaining agreement' have the*
5 *same meanings as when used in chapter 71 of this title and*
6 *'personnel action' includes the omission or failure to take*
7 *action or confer a benefit."*

8 *(b) Section 5596(a) of title 5, United States Code, is*
9 *amended by—*

10 *(1) by striking out "and" at the end of paragraph*
11 *(4);*

12 *(2) by striking out the period at the end of para-*
13 *graph (6) and inserting in lieu thereof "; and"; and*

14 *(3) by adding at the end thereof the following new*
15 *paragraph:*

16 *"(6) the Postal Rate Commission."*

17 *TECHNICAL AMENDMENTS*

18 *SEC. 703. Subchapter II of chapter 71 of title 5, United*
19 *States Code, is amended—*

20 *(1) by redesignating sections 7151, 7152, 7153,*
21 *and 7154 as sections 7201, 7202, 7203, and 7204,*
22 *respectively;*

23 *(2) by striking out the subchapter heading and*
24 *inserting in lieu thereof the following:*

1 **“Chapter 72—ANTIDISCRIMINATION; RIGHT TO**
 2 **PETITION CONGRESS.**

“SUBCHAPTER I—ANTIDISCRIMINATION IN
 EMPLOYMENT

“Sec.

“7201. Policy.

“7202. Marital status.

“7203. Handicapping condition.

“7204. Other prohibitions.

“SUBCHAPTER II—EMPLOYEES’ RIGHT TO PETITION
 CONGRESS

“7211. *Employees’ right to petition Congress.*”; and

3 (3) by adding at the end thereof the following new
 4 subchapter:

5 **“SUBCHAPTER II—EMPLOYEES’ RIGHT TO**
 6 **PETITION CONGRESS**

7 **“§ 7211. Employees’ right to petition Congress**

8 *“The right of employees, individual or collectively, to*
 9 *petition Congress or a Member of Congress, or to furnish*
 10 *information to either House of Congress, or to a committee*
 11 *or Member thereof, may not be interfered with or denied.”.*

12 (c) *The analysis for part III of title 5, United States*
 13 *Code, is amended by striking out—*

“Subpart F—Employee Relations

“71. Policies ----- 7101”

14 and inserting in lieu thereof

“Subpart F—Labor-Management and Employee Relations

“71. Labor-Management Relations ----- 7101

“72. Antidiscrimination; Right to Petition Congress ----- 7201”.

15 (d) (1) *Section 2105(c)(1) of title 5, United States*

1 *Code, is amended by striking out “and 7154” and inserting*
2 *in lieu thereof “and 7204”.*

3 (2) *Section 3302(2) of title 5, United States Code, is*
4 *amended by striking out “7152, 7153” and inserting in lieu*
5 *thereof “7202, 7203”.*

6 (3) *Sections 4540(c), 7212(a), and 9540(c) of title*
7 *10, United States Code, are each amended by striking out*
8 *“7154 of title 5” and inserting in lieu thereof “7204 of title*
9 *5”.*

10 (4) *Section 410(b)(1) of title 39, United States Code,*
11 *is amended by striking out “chapters 71 (employee policies)”*
12 *and inserting in lieu thereof the following: “chapters 72 (an-*
13 *tidiscrimination; right to petition Congress)”.*

14 (5) *Section 1002(g) of title 39, United States Code, is*
15 *amended by striking out “section 7102 of title 5” and insert-*
16 *ing in lieu thereof “section 7211 of title 5”.*

17 (e) *Section 5315 of title 5, United States Code, is*
18 *amended by adding at the end thereof the following clause:*

19 “() *Chairman, Federal Labor Relations*
20 *Authority.”.*

21 (f) *Section 5316 of such title is amended by adding at*
22 *the end thereof the following clause:*

23 “() *Members, Federal Labor Relations Author-*
24 *ity (2), and its General Counsel.”.*

1 *MISCELLANEOUS PROVISIONS*

2 *SEC. 704. (a) Except as provided in subsection (b) of*
3 *this section, the amendments made by this title shall take effect*
4 *on the first day of the first calendar month beginning more*
5 *than 90 days after the date of the enactment of this title.*

6 *(b) Sections 7104, 7105, and 7136 of title 5, United*
7 *State Code, as enacted by section 701 of this title, shall take*
8 *effect on the date of the enactment of this title.*

95TH CONGRESS
2D SESSION**H. R. 11280**

[Report No. 95-1403]

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 1978

Mr. NIX (for himself and Mr. DERWINSKI) (by request) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

JULY 31, 1978

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To reform the civil service laws.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 ~~SHORT TITLE~~

4 ~~SECTION 1. This Act may be cited as the "Civil Service~~
5 ~~Reform Act of 1978".~~

6 ~~SEC. 2. The table of contents is as follows:~~

~~TABLE OF CONTENTS~~~~Sec. 1. Short title.~~~~Sec. 2. Table of contents.~~~~Sec. 3. Findings and statement of purpose.~~~~TITLE I—MERIT SYSTEM PRINCIPLES~~~~Sec. 101. Merit system principles; prohibited personnel practices.~~

TABLE OF CONTENTS—Continued

TITLE V—MERIT PAY

Sec. 501. Pay for performance.

Sec. 502. Technical and conforming amendments.

Sec. 503. Effective date.

TITLE VI—RESEARCH, DEMONSTRATION, AND
OTHER PROGRAMS

Sec. 601. Research programs and demonstration projects.

Sec. 602. Intergovernmental Personnel Act amendments.

Sec. 603. Amendments to the mobility program.

TITLE VII—FEDERAL SERVICE LABOR-
MANAGEMENT RELATIONS

Sec. 701. Federal service labor-management relations.

Sec. 702. Backpay in case of unfair labor practices and grievances.

Sec. 703. Technical and conforming amendments.

Sec. 704. Miscellaneous provisions.

TITLE VIII—GRADE AND PAY RETENTION

Sec. 801. Grade and pay retention.

TITLE IX—POLITICAL ACTIVITIES

Sec. 901. Federal employees' political activities.

Sec. 902. State and local employees' political activities.

Sec. 903. Effective date.

Sec. 904. Study concerning political participation by Federal employees.

TITLE X—FIREFIGHTERS

Sec. 1001. Basic workweek of firefighters.

Sec. 1002. Effective date.

TITLE XI—MISCELLANEOUS

Sec. 1101. Study on decentralization of governmental functions.

Sec. 1102. Savings provisions.

Sec. 1103. Authorization of appropriations.

Sec. 1104. Powers of President unaffected except by express provisions.

Sec. 1105. Technical and conforming amendments.

Sec. 1106. Effective date.

1 FINDINGS AND STATEMENT OF PURPOSE

2 SEC. 3. It is the policy of the United States that—

3 (1) the merit system principles which shall govern
4 in the competitive service and in the executive branch
5 of the Federal Government should be expressly stated

1 *to furnish guidance to Federal agencies in carrying out*
2 *their responsibilities in administering the public business,*
3 *and prohibited personnel practices should be statutorily*
4 *defined to enable Government officers and employees to*
5 *avoid conduct which undermines the merit system prin-*
6 *ciples and the integrity of the merit system;*

7 *(2) Federal employees should receive appropriate*
8 *protection through increasing the authority and powers*
9 *of the independent Merit Systems Protection Board in*
10 *processing hearings and appeals affecting Federal*
11 *employees;*

12 *(3) the authority and power of the Special Council*
13 *should be increased so that the Special Counsel may*
14 *investigate prohibited personnel practices and reprisals*
15 *against Government employees for the lawful disclosure*
16 *of certain information and may file complaints, against*
17 *agency officials and employees who engage in such*
18 *conduct;*

19 *(4) the function of filling positions and other per-*
20 *sonnel functions in the competitive service and in the*
21 *executive branch should be delegated in appropriate*
22 *cases to the agencies to expedite processing appoint-*
23 *ments and other personnel actions, with the control and*
24 *oversight of this delegation being maintained by the*

1 *Office of Personnel Management to protect against pro-*
2 *hibited personnel practices and the use of unsound man-*
3 *agement practices by the agencies;*

4 (5) *a Senior Executive Service should be estab-*
5 *lished to provide the flexibility needed by agencies to re-*
6 *cruit and retain the highly competent and qualified*
7 *managers needed to provide more effective management*
8 *of agencies and their functions, and the more expeditious*
9 *administration of the public business;*

10 (6) *in appropriate instances, pay increases should*
11 *be based on quality of performance rather than length*
12 *of service;*

13 (7) *research programs and demonstration projects*
14 *should be authorized to permit Federal agencies to ex-*
15 *periment, subject to congressional review, with new and*
16 *different personnel management concepts in controlled*
17 *situations to achieve more efficient management of the*
18 *Government's human resources and greater productivity*
19 *in the delivery of service to the public; and*

20 (8) *the training program of the Government should*
21 *include retraining of employees for positions in other*
22 *agencies to avoid separations during reductions in force*
23 *and the loss to the Government of the knowledge and*
24 *experience that these employees possess.*

1 *contribution of the State or local government, or a part*
 2 *thereof, to employee benefit systems.”.*

3 *(e) Section 3375(a) of title 5, United States Code, is*
 4 *further amended by striking out “and” at the end of para-*
 5 *graph (4), by redesignating paragraph (5) as paragraph*
 6 *(6), and by inserting after paragraph (4) thereof the*
 7 *following:*

8 *“(5) section 5724a(b) of this title, to be used by the*
 9 *employee for miscellaneous expenses related to change of*
 10 *station where movement or storage of household goods is*
 11 *involved; and”.*

12 **TITLE VII—FEDERAL SERVICE LABOR-**
 13 **MANAGEMENT RELATIONS**

14 **FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS**

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

18 **“Subpart F—Labor-Management and Employee**
 19 **Relations**

20 **“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.*

“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. *Reporting requirements for standards of conduct.*

“7132. *Official time.*

“7133. *Subpenas.*

“7134. *Compilation and publication of data.*

“7135. *Regulations.*

“7136. *Continuation of existing laws, recognitions, agreements, and procedures.*

1 **“SUBCHAPTER I—GENERAL PROVISIONS**

2 **“§ 7101. Findings and purpose**

3 “(a) *The Congress finds that experience in both pri-*
4 *vate and public employment indicates that the statutory*
5 *protection of the right of employees to organize, bargain*
6 *collectively, and participate through labor organizations of*
7 *their own choosing in decisions which affect them safeguards*
8 *the public interest and contributes to the effective conduct*
9 *of public business. Such protection facilitates and encourages*
10 *the amicable settlement of disputes between employees and*

1 *their employers involving conditions of employment. There-*
2 *fore, labor organizations and collective bargaining in the*
3 *civil service are in the public interest.*

4 “(b) *It is the purpose of this chapter to prescribe*
5 *certain rights and obligations of the employees of the Fed-*
6 *eral Government and to establish procedures which are de-*
7 *signed to meet the special requirements and needs of the*
8 *Federal Government.*

9 “§ 7102. *Employees’ rights*

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

16 “(1) *to act for a labor organization in the capacity*
17 *of a representative and the right, in such capacity, to*
18 *present the views of the labor organization to heads of*
19 *agencies and other officials of the executive branch of*
20 *the Government, the Congress, or other appropriate*
21 *authorities,*

22 “(2) *to engage in collective bargaining with respect*
23 *to conditions of employment through representatives*
24 *chosen by employees under this chapter, and*

25 “(3) *to engage in other lawful activities for the*

1 *purpose of establishing, maintaining, and improving*
2 *conditions of employment.*

3 **“§ 7103. Definitions; application**

4 *“(a) For the purpose of this chapter—*

5 *“(1) ‘person’ means an individual, labor organiza-*
6 *tion, or agency;*

7 *“(2) ‘employee’ means an individual—*

8 *“(A) employed in an agency; or*

9 *“(B) whose work as such an employee (deter-*
10 *mined under the preceding provisions of this para-*
11 *graph) has ceased because of any unfair labor*
12 *practice under section 7116 of this title and who*
13 *has not obtained any other regular and substantially*
14 *equivalent employment, as determined under regu-*
15 *lations prescribed by the Federal Labor Relations*
16 *Authority;*

17 *but does not include—*

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

20 *“(ii) a member of the uniformed services;*

21 *“(iii) a supervisor or a management official; or*

22 *“(iv) an officer or employee in the Foreign*
23 *Service of the United States employed in the Depart-*
24 *ment of State, the Agency for International Devel-*

1 *opment, or the International Communication*
 2 *Agency;*

3 “(3) ‘agency’ means an Executive agency (includ-
 4 *ing a nonappropriated fund instrumentality described in*
 5 *section 2105(c) of this title and the Veterans’ Canteen*
 6 *Service, Veterans’ Administration), the Library of Con-*
 7 *gress, and the Government Printing Office, but does not*
 8 *include—*

9 “(A) the General Accounting Office;

10 “(B) the Federal Bureau of Investigation;

11 “(C) the Central Intelligence Agency;

12 “(D) the National Security Agency;

13 “(E) the Tennessee Valley Authority;

14 “(F) the Federal Labor Relations Authority;

15 *or*

16 “(G) the Federal Service Impasses Panel;

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

22 “(A) an organization whose basic purpose is
 23 *entirely social, fraternal, or limited to special interest*
 24 *objectives which are only incidentally related to*
 25 *conditions of employment;*

1 “(B) an organization which, by its constitution,
2 bylaws, tacit agreement among its members, or
3 otherwise, denies membership because of race, color.
4 creed, national origin, sex, age, preferential or non-
5 preferential civil service status, political affiliation,
6 marital status, or handicapping condition; or

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

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

9 “(6) ‘Authority’ means the Federal Labor Rela-
10 tions Authority described in section 7104(a) of this
11 title;

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

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

17 “(9) ‘grievance’ means any complaint—

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

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

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

25 “(i) the effect or interpretation, or a claim

1 *of breach, of a collective bargaining agreement;*
2 *or*

3 *“(ii) any claimed violation, misinterpreta-*
4 *tion, or misapplication of any law, rule, or regu-*
5 *lation affecting conditions of employment;*

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

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

23 *“(12) ‘collective bargaining’ means the performance*
24 *of the mutual obligation of the representative of an*
25 *agency and the exclusive representative of employees*

1 *in an appropriate unit in the agency to meet at reason-*
2 *able times and to confer, consult, and bargain in a*
3 *good-faith effort to reach agreement with respect to*
4 *the conditions of employment affecting such employees*
5 *and to execute, if requested by either party, a written*
6 *document incorporating any collective bargaining*
7 *agreement reached, but the obligation referred to in*
8 *this paragraph does not compel either party to agree*
9 *to a proposal or to make a concession;*

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

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

19 *“(A) relating to discrimination in employment*
20 *on the basis of race, color, religion, sex, age, na-*
21 *tional origin, or handicapping condition;*

22 *“(B) relating to political activities prohibited*
23 *under subchapter III of chapter 73 of this title; or*

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

1 “(15) ‘professional employee’ means—

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

4 “(i) requiring knowledge of an advanced
5 type in a field of science or learning customarily
6 acquired by a prolonged course of specialized
7 intellectual instruction and study in an institu-
8 tion of higher learning or a hospital (as distin-
9 guished from knowledge acquired by a general
10 academic education, or from an apprenticeship,
11 or from training in the performance of routine
12 mental, manual, mechanical, or physical activi-
13 ties);

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

16 “(iii) which is predominantly intellectual
17 and varied in character (as distinguished from
18 routine mental, manual, mechanical, or physi-
19 cal work); and

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

24 “(B) an employee who has completed the
25 courses of specialized intellectual instruction and

1 *study described in subparagraph (A)(i) of this*
2 *paragraph and is performing related work under*
3 *appropriate direction or guidance to qualify the*
4 *employee as a professional employee described in*
5 *subparagraph (A) of this paragraph;*

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

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

11 “(B) was recognized by an agency immediately
12 before the effective date of this chapter as the ex-
13 clusive representative of employees in an appropriate
14 unit—

15 “(i) on the basis of an election, or

16 “(ii) on any basis other than an election,
17 and continues to be so recognized in accordance with
18 the provisions of this chapter.

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

23 “(18) ‘United States’ means the 50 States, the
24 District of Columbia, the Commonwealth of Puerto Rico,
25 Guam, the Virgin Islands, the Trust Territory of the

1 *Pacific Islands, and any territory or possession of the*
2 *United States.*

3 “(b) *An agency may file an application with the Au-*
4 *thority requesting that it, or any unit thereof, be excluded*
5 *from any provision or requirement of this chapter. The*
6 *Authority shall—*

7 “(1) *review the application, and*

8 “(2) *undertake any other investigation it considers*
9 *appropriate.*

10 *If, upon completion of its review and investigation, the Au-*
11 *thority determines that the agency, or any unit thereof, has as*
12 *a primary function intelligence, counterintelligence, investi-*
13 *gative, or security work, and that any requirement or pro-*
14 *vision of this chapter cannot be applied to the agency, or*
15 *unit thereof, with respect to which such a determination has*
16 *been made in a manner consistent with national security*
17 *requirements and considerations, the Authority may issue an*
18 *order excluding the agency, or unit thereof, with respect to*
19 *which such a determination has been made from such require-*
20 *ment or provision.*

21 “§ 7104. *Federal Labor Relations Authority*

22 “(a) *The Federal Labor Relations Authority is com-*
23 *posed of three members, not more than 2 of whom may*
24 *be adherents of the same political party. No member shall*
25 *engage in any other business or employment or hold another*

1 office or position in the Government of the United States
2 except as otherwise provided by law.

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

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

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

15 “(A) the date on which the member’s successor takes
16 office, or

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

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

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

25 “(e) The Authority shall make an annual report to the

1 *President for transmittal to the Congress which shall include*
2 *information as to the cases it has heard and the decisions it*
3 *has rendered.*

4 “(f) (1) *The General Counsel of the Authority shall*
5 *be appointed by the President, by and with the advice and*
6 *consent of the Senate, for a term of 5 years. The General*
7 *Counsel may be removed by the President.*

8 “(2) *The General Counsel may—*

9 “(A) *investigate alleged violations of this chapter,*

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

12 “(C) *intervene before the Authority in proceedings*
13 *brought under section 7118 of this title, and*

14 “(D) *exercise such other powers of the Authority*
15 *as the Authority may prescribe.*

16 “(3) *The General Counsel shall have direct authority*
17 *over, and responsibility for, all employees in the office of*
18 *General Counsel, including employees of the General Coun-*
19 *sel in the regional offices of the Authority.*

20 “(4) *If a vacancy occurs in the office of General Coun-*
21 *sel, the President shall promptly designate an Acting Gen-*
22 *eral Counsel and shall submit a nomination for General*
23 *Counsel to the Senate within 40 days after the vacancy*
24 *occurs, unless the Congress adjourns sine die before the ex-*
25 *piration of the 40-day period, in which case the President*

1 *shall submit the nomination to the Senate not later than 10*
2 *days after the Congress reconvenes.*

3 **“§ 7105. Powers and duties of the Authority**

4 *“(a) The Authority shall provide leadership in estab-*
5 *lishing policies and guidance relating to matters under this*
6 *chapter, and, except as otherwise provided, shall be respon-*
7 *sible for carrying out the purpose of this chapter.*

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

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

20 *“(d) The Authority shall appoint an Executive Director*
21 *and such regional directors, administrative law judges under*
22 *section 3105 of this title, and other individuals as it may*
23 *from time to time find necessary for the proper performance*
24 *of its functions.*

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

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

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

5 “(C) to determine whether a question of represen-
6 tation exists and to direct an election; and

7 “(D) to conduct secret ballot elections and certify
8 the results thereof.

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

14 “(f) If the Authority delegates any authority to any
15 regional director or administrative law judge to take any
16 action pursuant to subsection (e) of this section, the Authority
17 may, upon application by any interested person filed within
18 60 days after the date of the action, review such action, but
19 the review shall not, unless specifically ordered by the Au-
20 thority, operate as a stay of the action. The Authority
21 may affirm, modify, or reverse any action reviewed under this
22 subsection. If the Authority does not undertake to grant
23 review of the action under this subsection within 60 days after
24 the later of—

25 “(1) the date of the action; or

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

5 “(g) *In order to carry out its functions under this chap-*
 6 *ter, the Authority may—*

7 “(1) *hold hearings; and*

8 “(2) *administer oaths, take the testimony or depo-*
 9 *sition of any person under oath, and issue subpoenas as*
 10 *provided in section 7133 of this title.*

11 “§ 7106. *Management rights*

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

15 “(1) *to determine the mission, budget, organiza-*
 16 *tion, number of employees, and internal security prac-*
 17 *tices of the agency; and*

18 “(2) *in accordance with applicable laws—*

19 “(A) *to direct employees;*

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

24 “(C) *to take whatever actions may be necessary*

1 to carry out the agency mission during national
2 emergencies.

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

5 “(1) procedures which management officials of the
6 agency will observe in exercising their authority to deter-
7 mine the mission, budget, organization, number of em-
8 ployees, and internal security of the agency, or

9 “(2) appropriate arrangements for employees ad-
10 versely affected by the exercise of the authority described
11 in subsection (a) of this section by such management
12 officials.

13 **“SUBCHAPTER II—RIGHTS AND DUTIES OF**
14 **AGENCIES AND LABOR ORGANIZATIONS**

15 **“§ 7111. Exclusive recognition of labor organizations**

16 “(a) Exclusive recognition shall be accorded to a labor
17 organization which has been selected by a majority of em-
18 ployees in an appropriate unit who participate in an elec-
19 tion in conformity with the requirements of this chapter.

20 “(b) (1) If a petition is filed with the Authority—

21 “(A) by any person alleging—

22 “(i) in the case of an appropriate unit for
23 which there is no exclusive representative that 30
24 percent of the employees in the appropriate unit wish

1 to be represented for the purpose of collective bar-
2 gaining by an exclusive representative, or

3 “(ii) in the case of an appropriate unit for
4 which there is an exclusive representative that 30
5 percent of the employees in the unit allege that the
6 exclusive representative is no longer the representa-
7 tive of the majority of the employees in the unit; or

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

11 the Authority shall investigate the petition, and if it has
12 reasonable cause to believe that a question of representation
13 exists, it shall provide an opportunity for a hearing (for
14 which a transcript shall be kept) after reasonable notice. Ex-
15 cept as provided under subsection (e) of this section, if the
16 Authority finds on the record of the hearing that a
17 question of representation exists, the Authority shall, subject
18 to paragraph (2) of this subsection, conduct an election on
19 the question by secret ballot and shall certify the results
20 thereof. An election under this subsection shall not be con-
21 ducted in any appropriate unit or in any subdivision thereof
22 within which, in the preceding 12 calendar months, a valid
23 election under this subsection has been held.

24 “(2)(A) If, after the 45-day period beginning on the

1 *date on which the petition is filed pursuant to paragraph (1)*
2 *of this subsection, unresolved issues exist concerning—*

3 *“(i) the appropriateness of the unit in accordance*
4 *with section 7112 of this title;*

5 *“(ii) the eligibility of one or more employees to*
6 *vote in the proposed election; or*

7 *“(iii) other matters determined by the Authority*
8 *to be relevant to the election;*

9 *the Authority shall direct an election by secret ballot in*
10 *the unit specified in the petition and announce the results*
11 *thereof.*

12 *“(B) After conducting an election under subparagraph*
13 *(A) of this paragraph, the Authority shall expedite the*
14 *resolution of any disputed issues described in subparagraph*
15 *(A) of this paragraph. If the Authority determines that*
16 *matters raised by the disputed issues did not affect the outcome*
17 *of the election, the Authority shall certify the results of the*
18 *election. If the Authority determines that the matters affected*
19 *the outcome of the election, it shall conduct a new election*
20 *by secret ballot in accordance with such requirements as are*
21 *appropriate on the basis of its determination, and shall certify*
22 *the results thereof.*

23 *“(c) A labor organization which—*

24 *“(1) has been designated by at least 10 percent*

1 of the employees in the unit specified in any petition
2 filed pursuant to subsection (b) of this section;

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

6 “(3) has submitted other evidence that it is the
7 exclusive representative of the employees involved;
8 may intervene with respect to a petition filed pursuant
9 to subsection (b) of this section and shall be placed on the
10 ballot of any election under such subsection (b) with respect
11 to the petition.

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

16 “(1) from labor organizations on the ballot, that
17 labor organization which the employees wish to have rep-
18 resent them; or

19 “(2) not to be represented by a labor organization.
20 In any election in which no choice on the ballot receives
21 a majority of the votes cast, a runoff election shall be con-
22 ducted between the two choices receiving the highest number
23 of votes. A labor organization which receives the majority

1 of the votes cast in an election shall be certified by the
2 Authority as the exclusive representative.

3 “(e) The Authority may, on the petition of a labor or-
4 ganization, certify the labor organization as an exclusive
5 representative—

6 “(1) if, after investigation, the Authority determines
7 that the conditions for a free and untrammelled election
8 under this section cannot be established because the agency
9 involved has engaged in or is engaging in an unfair labor
10 practice described in section 7116 (a) of this title; or

11 “(2) if, after investigation, the Authority deter-
12 mines that—

13 “(A) the labor organization represents a ma-
14 jority of employees in an appropriate unit;

15 “(B) the majority status was achieved with-
16 out the benefit of any unfair labor practice described
17 in section 7116 of this title;

18 “(C) no other person has filed a petition for
19 recognition under subsection (b) of this section or
20 a request for intervention under subsection (c) of
21 this section; and

22 “(D) no other question of representation exists
23 in the appropriate unit.

24 “(f) Any labor organization described in section 7103
25 (a)(16)(B)(ii) of this title may petition for an election for

1 *the determination of that labor organization as the exclusive*
2 *representative of an appropriate unit.*

3 *“(g) A labor organization seeking exclusive recognition*
4 *shall submit to the Authority and the agency involved a*
5 *roster of its officers and representatives, a copy of its con-*
6 *stitution and bylaws, and a statement of its objectives.*

7 *“(h) Exclusive recognition shall not be accorded to a*
8 *labor organization—*

9 *“(1) if the Authority determines that the labor orga-*
10 *nization is subject to corrupt influences or influences*
11 *opposed to democratic principles;*

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

18 *“(3) if there is then in effect a lawful written*
19 *collective bargaining agreement between the agency in-*
20 *volved and an exclusive representative (other than the*
21 *labor organization seeking exclusive recognition) covering*
22 *any employees included in the unit specified in the petition,*
23 *unless—*

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

1 “(B) the petition for exclusive recognition is
2 filed during the 4-month period which begins on the
3 180th day before the expiration date of the collective
4 bargaining agreement; or

5 “(4) if the Authority has, within the previous 12
6 calendar months, conducted a secret ballot election in-
7 volving any of the employees in the unit described in
8 any petition under this section and in such election a
9 majority of the employees voting chose a labor organiza-
10 tion for certification as the unit’s exclusive representative
11 or chose not to be represented by any labor organization.

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

16 “§ 7112. **Determination of appropriate units for labor**
17 **organization representation**

18 “(a) (1) The Authority shall determine the appropriate-
19 ness of any unit. The Authority shall determine in each case
20 whether, in order to ensure employees the fullest freedom in
21 exercising the rights guaranteed under this chapter, the ap-
22 propriate unit should be established on an agency, plant, in-
23 stallation, functional, or other basis and shall determine any
24 unit to be an appropriate unit only if the determination
25 will ensure a clear and identifiable community of interest

1 among the employees in the unit and will promote effective
2 dealings with, and efficiency of the operations of, the agency
3 involved.

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

8 “(1) except as provided under section 7136(a)(2)
9 of this title, any management official or supervisor, ex-
10 cept that, with respect to a unit a majority of which is
11 composed of firefighters or nurses, a unit which includes
12 both supervisors and employees may be considered
13 appropriate;

14 “(2) a confidential employee;

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

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

19 “(5) both professional employees and other em-
20 ployees, unless a majority of the professional employees
21 vote for inclusion in the unit;

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

25 “(7) any employee primarily engaged in investiga-

1 *tion or audit functions relating to the work of individuals*
2 *employed by an agency whose duties directly affect the in-*
3 *ternal security of the agency but only if the functions*
4 *are undertaken to insure that the duties are discharged*
5 *honestly and with integrity.*

6 *“(c) Two or more units which are in an agency and for*
7 *which a labor organization is the exclusive representative by*
8 *reason of elections within each of the units shall be consoli-*
9 *dated into a single larger unit if the Authority considers the*
10 *larger unit to be appropriate. The Authority shall certify the*
11 *labor organization as the exclusive representative of the new*
12 *larger unit.*

13 *“(d) In the case of the reorganization of one or more*
14 *units for which, before the reorganization, a labor organiza-*
15 *tion was the exclusive representative of any such unit, the*
16 *labor organization shall continue to be the exclusive rep-*
17 *resentative for each such unit until new elections are held or a*
18 *period of 45 days has elapsed, whichever first occurs.*

19 **“§ 7113. National consultation rights**

20 *“(a) (1) If, in connection with any agency, no labor*
21 *organization has been accorded exclusive recognition on an*
22 *agency basis, a labor organization which is the exclusive rep-*
23 *resentative of a substantial number of the employees of the*
24 *agency, as determined in accordance with criteria prescribed*

1 *by the Authority, shall be granted national consultation rights*
2 *by the agency. National consultation rights shall terminate*
3 *when the labor organization no longer meets the criteria pre-*
4 *scribed by the Authority. Any issue relating to any labor*
5 *organization's eligibility for, or continuation of, national*
6 *consultation rights shall be subject to determination by the*
7 *Authority.*

8 *“(b)(1) Any labor organization having national con-*
9 *sultation rights in connection with any agency under subsec-*
10 *tion (a) of this section shall—*

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

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

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

18 *“(A) the agency shall consider the views or recom-*
19 *mendations before taking final action on any matter with*
20 *respect to which the views or recommendations are*
21 *presented; and*

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

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

4 “§ 7114. *Representation rights and duties*

5 “(a) *A labor organization which has been accorded exclu-*
6 *sive recognition is the exclusive representative of the employees*
7 *in the unit it represents and is entitled to act for, and negotiate*
8 *collective bargaining agreements covering, all employees in*
9 *the unit. An exclusive representative is responsible for rep-*
10 *resenting the interests of all employees in the unit it repre-*
11 *sents without discrimination and without regard to labor*
12 *organization membership. An exclusive representative of*
13 *an appropriate unit in an agency shall be given the oppor-*
14 *tunity to be represented at—*

15 “(1) *any discussion between one or more represent-*
16 *atives of the agency and one or more employees in the*
17 *unit or their representatives concerning any grievance,*
18 *personnel policy or practice, or other conditions of em-*
19 *ployment; or*

20 “(2) *any discussion between an employee in the unit*
21 *and a representative of the agency if the employee rea-*
22 *sonably believes that the employee may be the subject of*
23 *disciplinary action.*

24 *Any agency and any exclusive representative of any appropri-*
25 *ate unit in the agency, through appropriate representatives,*

1 shall meet and negotiate in good faith for the purpose of ar-
2 riving at a collective bargaining agreement. The rights of an
3 exclusive representative under the preceding provisions of this
4 subsection shall not be construed to preclude an employee from
5 being represented by an attorney or other representative, other
6 than the exclusive representative, of the employee's own choos-
7 ing in any appeal action under procedures other than pro-
8 cedures negotiated pursuant to this chapter.

9 “(b) The duty of an agency and an exclusive repre-
10 sentative to negotiate in good faith under subsection (a)
11 of this section shall include the obligation—

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

14 “(2) to be represented at the negotiations by duly
15 authorized representatives prepared to discuss and nego-
16 tiate on any conditions of employment;

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

20 “(4) in the case of an agency, to furnish to the
21 exclusive representative involved, or its authorized repre-
22 sentative, upon request and, to the extent not prohibited
23 by law, data which is normally maintained by the agency
24 in the regular course of business, and which is reason-
25 ably available and necessary for full and proper dis-

1 *cussion, understanding, and negotiation of subjects within*
2 *the scope of collective bargaining; and*

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

7 **“§ 7115. Allotments to representatives**

8 *“(a) If an agency has received from an employee in*
9 *an appropriate unit a written assignment which authorizes*
10 *the agency to deduct from the pay of the employee amounts*
11 *for the payment of regular and periodic dues of the exclusive*
12 *representative of the unit, the agency shall honor the assign-*
13 *ment and make an appropriate allotment pursuant to the*
14 *assignment. Any such allotment shall be made at no cost to*
15 *the exclusive representative or the employee. Except as pro-*
16 *vided under subsection (b) of this section, any such assign-*
17 *ment may not be revoked for a period of 1 year.*

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

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

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

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

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

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

19 “§ 7116. Unfair labor practices

20 “(a) For the purpose of this chapter, it shall be an un-
21 fair labor practice for an agency—

22 “(1) to interfere with, restrain, or coerce any em-
23 ployee in the exercise by the employee of any right
24 under this chapter;

25 “(2) to encourage or discourage membership in any

1 *labor organization by discrimination in connection with*
2 *hiring, tenure, promotion, or other conditions of*
3 *employment;*

4 “(3) to sponsor, control, or otherwise assist any
5 labor organization, other than to furnish, upon request,
6 customary and routine services and facilities if the serv-
7 ices and facilities are also furnished on an impartial
8 basis to other labor organizations having equivalent
9 status;

10 “(4) to discipline or discriminate against an em-
11 ployee because the employee has filed a complaint, affi-
12 davit, or petition, or has given any information or testi-
13 mony under this chapter;

14 “(5) to refuse to consult, confer, or negotiate in
15 good faith with a labor organization as required by this
16 chapter;

17 “(6) to fail or refuse to cooperate in impasse pro-
18 cedures and impasse decisions as required by this
19 chapter;

20 “(7) to prescribe any rule or regulation which re-
21 stricts the scope of collective bargaining permitted by this
22 chapter or which is in conflict with any applicable col-
23 lective bargaining agreement; or

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

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

3 “(1) to interfere with, restrain, or coerce any em-
4 ployee in the exercise by the employee of any right
5 under this chapter;

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

9 “(3) to coerce, discipline, fine, or attempt to coerce
10 a member of the labor organization as punishment, re-
11 prisal, or for the purpose of hindering or impeding the
12 member’s work performance or productivity as an
13 employee or the discharge of the member’s duties as an
14 employee;

15 “(4) to discriminate against an employee with re-
16 gard to the terms or conditions of membership in the labor
17 organization on the basis of race, color, creed, national
18 origin, sex, age, preferential or nonpreferential civil
19 service status, political affiliation, marital status, or
20 handicapping condition;

21 “(5) to refuse to consult, confer, or negotiate in
22 good faith with an agency as required by this chapter;

23 “(6) to fail or refuse to cooperate in impasse pro-
24 cedures and impasse decisions as required by this
25 chapter;

1 “(7) to call or engage in a strike, work stoppage,
2 or slowdown, or to condone any such activity by failing
3 to take action to prevent or stop such activity; or

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

6 “(c) For the purpose of this chapter it shall be an
7 unfair labor practice for an exclusive representative to deny
8 membership to any employee in the appropriate unit repre-
9 sented by such exclusive representative except for failure—

10 (1) to meet reasonable occupational standards uni-
11 formly required for admission, or

12 (2) to tender dues uniformly required as a condi-
13 tion of acquiring and retaining membership.

14 This subsection does not preclude any labor organization from
15 enforcing discipline in accordance with procedures under its
16 constitution or bylaws to the extent consistent with the provi-
17 sions of this chapter.

18 “(d) Issues which may properly be raised under—

19 “(1) an appeals procedure prescribed by or pur-
20 suant to law; or

21 “(2) any grievance procedure negotiated pursuant
22 to section 7121 of this title;

23 may, at the election of the aggrieved party, be raised either—

24 (A) under such appeals procedure or such grievance
25 procedure, as appropriate; or

1 *(B) if applicable, under the procedure for resolving*
2 *complaints of unfair labor practices under section 7118*
3 *of this title.*

4 *An election under the preceding sentence shall be made at*
5 *such time and in such manner as the Authority shall pre-*
6 *scribe. Any decision under subparagraph (B) of this sub-*
7 *section on any such issue shall not be construed to be a deter-*
8 *mination of an unfair labor practice under this chapter or*
9 *a precedent for any such determination.*

10 “§ 7117. *Duty to bargain in good faith; compelling need*

11 “(a)(1) *Subject to paragraph (2) of this subsection,*
12 *the duty to bargain in good faith shall, to the extent not*
13 *inconsistent with Federal law, extend to matters which are*
14 *the subject of any rule or regulation which is not a Govern-*
15 *ment-wide rule or regulation.*

16 “(2) *The duty to bargain in good faith shall, to the*
17 *extent not inconsistent with Federal law, extend to matters*
18 *which are the subject of any Government-wide rule or regu-*
19 *lation for which the Authority has determined under sub-*
20 *section (b) of this section that no compelling need (as*
21 *determined under regulations prescribed by the Authority)*
22 *exists.*

23 “(b)(1) *In any case of collective bargaining in which*
24 *an exclusive representative alleges that no compelling need*
25 *exists for any Government-wide rule or regulation which is*

1 *then in effect and which governs any matter at issue in such*
2 *collective bargaining, the Authority shall determine under*
3 *paragraph (2) of this subsection, in accordance with regula-*
4 *tions prescribed by the Authority, whether such a compelling*
5 *need exists.*

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

9 *“(A) the agency which issued the rule or regula-*
10 *tion informs the Authority in writing that a compelling*
11 *need for the rule or regulation does not exist; or*

12 *“(B) the Authority determines, after a hearing*
13 *under this section, that compelling need for the rule or*
14 *regulation does not exist.*

15 *“(3) Any hearing under this subsection shall be expe-*
16 *ditated to the extent practicable and shall not include the Gen-*
17 *eral Counsel as a party.*

18 *“(4) The agency which issued the rule or regulation*
19 *shall be a necessary party at any hearing under this*
20 *subsection.*

21 *“§ 7118. Prevention of unfair labor practices*

22 *“(a) (1) If an agency or labor organization is charged*
23 *by any person with having engaged in or engaging in an*
24 *unfair labor practice, the General Counsel shall investigate*
25 *the charge and may issue and cause to be served upon the*

1 agency or labor organization a complaint. In any case in
2 which the General Counsel does not issue a complaint be-
3 cause the charge fails to state an unfair labor practice, the
4 General Counsel shall provide the person making the charge
5 a written statement of the reasons for not issuing a complaint.

6 “(2) Any complaint under paragraph (1) of this sub-
7 section shall contain a notice—

8 “(A) of the charge;

9 “(B) that a hearing will be held before the Authority
10 (or any member thereof or before an individual em-
11 ployed by the Authority and designated for such pur-
12 pose); and

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

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

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

23 “(B) If the General Counsel determines that the person
24 filing any charge was prevented from filing the charge

1 *during the 6-month period referred to in subparagraph*
2 *(A) of this paragraph by reason of—*

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

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

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

13 *“(5) The Authority (or any member thereof or any*
14 *individual employed by the Authority and designated for*
15 *such purpose) shall conduct a hearing on the complaint not*
16 *earlier than 5 days after the date on which the complaint is*
17 *served. In the discretion of the individual or individuals con-*
18 *ducting the hearing, any person involved may be allowed to*
19 *intervene in the hearing and to present testimony. Any such*
20 *hearing shall, to the extent practicable, be conducted in ac-*
21 *cordance with the provisions of subchapter II of chapter 5*
22 *of this title, except that the parties shall not be bound by*
23 *rules of evidence, whether statutory, common law, or adopted*
24 *by a court. A transcript shall be kept of the hearing. After*

1 *such a hearing the Authority, in its discretion, may upon no-*
2 *tice receive further evidence or hear argument.*

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

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

16 *“(B) directing that a collective bargaining agree-*
17 *ment be amended and that the amendments be given*
18 *retroactive effect;*

19 *“(C) requiring an award of reasonable attorney*
20 *fees;*

21 *“(D) requiring reinstatement of an employee with*
22 *backpay, together with interest thereon; or*

23 *“(E) including any combination of the actions*
24 *described in subparagraphs (A) through (D) of this*

1 *paragraph or such other action as will carry out the pur-*
2 *pose of this chapter.*

3 *If any such order requires reinstatement of an employee with*
4 *backpay, backpay may be required of the agency (as pro-*
5 *vided in section 5596 of this title) or of the labor organiza-*
6 *tion, as the case may be, which is found to have engaged in*
7 *the unfair labor practice involved.*

8 “(7) *If the individual or individuals conducting the*
9 *hearing determine that the preponderance of the evidence*
10 *received fails to demonstrate that the agency or labor organi-*
11 *zation named in the complaint has engaged in or is engaging*
12 *in an unfair labor practice, the individual or individuals*
13 *shall state in writing their findings of fact and shall issue an*
14 *order dismissing the complaint.*

15 “(b) *In connection with any matter before the Author-*
16 *ity in any proceeding under this section, the Authority may*
17 *request from the Director of the Office of Personnel Man-*
18 *agement an opinion concerning the proper interpretation of*
19 *rules, regulations, or other policy directives issued by the*
20 *Office of Personnel Management. Any interpretation under*
21 *the preceding sentence shall be advisory in nature and shall*
22 *not be binding on the Authority.*

23 **“§ 7119. Negotiation impasses; Federal Service Impasses**
24 **Panel**

25 “(a) *The Federal Mediation and Conciliation Service*

1 *shall provide services and assistance to agencies and exclusive*
2 *representatives in the resolution of negotiation impasses. The*
3 *Service shall determine under what circumstances and in*
4 *what manner it shall provide services and assistance.*

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

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

11 “(2) *the parties may agree to adopt a procedure*
12 *for binding arbitration of the negotiation impasse.*

13 “(c) (1) *The Federal Service Impasses Panel is an*
14 *entity within the Authority, the function of which is to pro-*
15 *vide assistance in resolving negotiation impasses between*
16 *agencies and exclusive representatives.*

17 “(2) *The Panel shall be composed of a Chairman and at*
18 *least six other members, who shall be appointed by the Presi-*
19 *dent, solely on the basis of fitness to perform the duties and*
20 *functions involved, from among individuals who are fa-*
21 *miliar with Government operations and knowledgeable in*
22 *labor-management relations.*

23 “(3) *Of the original members of the Panel, 2 members*
24 *shall be appointed for a term of 1 year, 2 members shall be*
25 *appointed for a term of 3 years, and the Chairman and the*

1 *remaining members shall be appointed for a term of 5 years.*
 2 *Thereafter each member shall be appointed for a term of 5*
 3 *years, except that an individual chosen to fill a vacancy shall*
 4 *be appointed for the unexpired term of the member replaced.*
 5 *Any member of the Panel may be removed by the President.*

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

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

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

22 “(ii) *assist the parties in resolving through what-*
 23 *ever methods and procedures, including factfinding and*
 24 *recommendations, it may consider appropriate to accom-*
 25 *plish the purpose of this section.*

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

4 “(i) hold hearings;

5 “(ii) administer oaths, take the testimony or deposi-
6 tion of any person under oath, and issue subpoenas as
7 provided in section 7133 of this title; and

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

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

14 “§ 7120. Standards of conduct for labor organizations

15 “(a) A labor organization representing or seeking to
16 represent employees pursuant to this chapter shall adopt,
17 maintain, and enforce governing requirements containing
18 explicit and detailed provisions to which it shall subscribe,
19 which include provisions for—

20 “(1) the maintenance of democratic procedures
21 and practices, including—

22 “(A) provisions for periodic elections to be
23 conducted subject to recognized safeguards, and

24 “(B) provisions defining and securing the right
25 of individual members to—

1 “(i) participate in the affairs of the labor
2 organization,

3 “(ii) fair and equal treatment under the
4 governing rules of the organization, and

5 “(iii) fair process in disciplinary proceed-
6 ings;

7 “(2) the prohibition of business or financial inter-
8 ests on the part of labor organization officers and agents
9 which conflict with their duty to the organization and its
10 members; and

11 “(3) the maintenance of fiscal integrity in the
12 conduct of the affairs of the labor organization, includ-
13 ing provisions for accounting and financial controls and
14 regular financial reports or summaries to be made avail-
15 able to its members.

16 “(b) This chapter does not authorize participation in
17 the management of a labor organization or acting as a rep-
18 resentative of a labor organization by a management official
19 or a supervisor, except as specifically provided in this chap-
20 ter, or by an employee if the participation or activity
21 would result in a conflict or apparent conflict of interest or
22 would otherwise be incompatible with law or with the official.
23 duties of the employee.

1 “SUBCHAPTER III—GRIEVANCES

2 “§ 7121. *Grievance procedures*

3 “(a) *Any collective bargaining agreement shall provide*
4 *procedures for the settlement of grievances, including ques-*
5 *tions of arbitrability. Any employee who has a grievance and*
6 *who is covered by a collective bargaining agreement applies*
7 *may elect to have the grievance processed under a procedure*
8 *negotiated in accordance with this chapter.*

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

11 “(1) *be fair and simple,*

12 “(2) *provide for expeditious processing, and*

13 “(3) *include procedures that—*

14 “(A) *assure an exclusive representative the*
15 *right, in its own behalf or on behalf of any employee*
16 *in the unit represented by the exclusive representa-*
17 *tive, to present and process grievances;*

18 “(B) *assure such an employee the right to pre-*
19 *sent a grievance on the employee’s own behalf, and*
20 *assure the exclusive representative the right to be*
21 *present during the grievance proceeding; and*

22 “(C) *provide that any grievance not satisfac-*
23 *torily settled under the negotiated grievance pro-*

1 *cedure shall be subject to binding arbitration which*
2 *may be invoked by either the exclusive representative*
3 *or the agency.*

4 “(c) *Any party to a collective bargaining agreement*
5 *aggrieved by the failure, neglect, or refusal of the other*
6 *party to proceed to arbitration pursuant to the negotiated*
7 *grievance procedure provided in the agreement may file a*
8 *petition in the appropriate United States district court*
9 *requesting an order directing that arbitration proceed pur-*
10 *suant to the procedures provided therefor in the agreement.*
11 *The court shall hear the matter without jury, expedite the*
12 *hearing to the maximum extent practicable, and issue any*
13 *order it determines appropriate.*

14 “(d) *The preceding subsections of this section shall not*
15 *apply with respect to any grievance concerning—*

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

19 “(2) *retirement, life insurance, or health insurance;*
20 *or*

21 “(3) *a suspension or removal under section 7532*
22 *of this title.*

23 “(e) *The processing of a grievance under a procedure*
24 *negotiated under this chapter shall not limit the right of*
25 *an aggrieved employee to request the Equal Employment*

1 *Opportunity Commission to review a final decision under*
2 *the procedure—*

3 “(1) *pursuant to section 3 of Reorganization Plan*
4 *Numbered 1 of 1978; or*

5 “(2) *where applicable, in such manner as shall*
6 *otherwise be prescribed by regulation by the Equal*
7 *Employment Opportunity Commission.*

8 “§ 7122. *Exceptions to arbitral awards*

9 “(a) *Either party to arbitration under this chapter may*
10 *file with the Authority an exception to any arbitrator’s award*
11 *pursuant to the arbitration. If upon review the Authority*
12 *finds that the award is deficient because—*

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

14 “(2) *it was obtained by corruption, fraud, or other*
15 *misconduct;*

16 “(3) *the arbitrator exercised partiality in making*
17 *the award; or*

18 “(4) *the arbitrator exceeded powers granted to the*
19 *arbitrator;*

20 *the Authority may take such action and make such recom-*
21 *mendations concerning the award as it considers necessary,*
22 *consistent with applicable laws, rules, or regulations.*

23 “(b) *If no exception to an arbitrator’s award is filed*
24 *under subsection (a) of this section during the 60-day period*
25 *beginning on the date of such award, the award shall be final*

1 *and binding. An agency shall take the actions required by*
2 *an arbitrator's final award. The award may include the pay-*
3 *ment of backpay (as provided in section 5596 of this title)*
4 *together with interest thereon.*

5 **“§ 7123. Judicial review; enforcement**

6 *“(a) Any person aggrieved by a final order of the*
7 *Authority under—*

8 *“(1) section 7118 of this title (involving an unfair*
9 *labor practice);*

10 *“(2) section 7122 of this title (involving an award*
11 *by an arbitrator); or*

12 *“(3) section 7112 of this title (involving an appro-*
13 *prate unit determination),*

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

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

24 *“(c) Upon the filing of a petition under subsection (a)*
25 *of this section for judicial review or under subsection (b) of*

1 *this section for enforcement, the Authority shall file in the*
2 *court the record in the proceedings, as provided in section*
3 *2112 of title 28. Upon the filing of the petition, the court*
4 *shall cause notice thereof to be served to the parties involved,*
5 *and thereupon shall have jurisdiction of the proceeding and*
6 *of the question determined therein and may grant any tem-*
7 *porary relief (including a temporary restraining order) it*
8 *considers just and proper, and may make and enter a decree*
9 *affirming and enforcing, modifying and enforcing as so mod-*
10 *ified, or setting aside in whole or in part the order of the*
11 *Authority. The filing of a petition under subsection (a) or*
12 *(b) of this section shall not operate as a stay of the Author-*
13 *ity's order unless the court specifically orders the stay. Review*
14 *of the Authority's order shall be on the record in accordance*
15 *with section 706 of this title. No objection that has not been*
16 *urged before the Authority, or its designee, shall be considered*
17 *by the court, unless the failure or neglect to urge the objection*
18 *is excused because of extraordinary circumstances. The find-*
19 *ings of the Authority with respect to questions of fact, if*
20 *supported by substantial evidence on the record considered*
21 *as a whole, shall be conclusive. If any person applies to the*
22 *court for leave to adduce additional evidence and shows to*
23 *the satisfaction of the court that the additional evidence is*
24 *material and that there were reasonable grounds for the fail-*
25 *ure to adduce the evidence in the hearing before the Author-*

1 *ity, or its designee, the court may order the additional evidence*
2 *to be taken before the Authority, or its designee, and to be*
3 *made a part of the record. The Authority may modify its*
4 *findings as to the facts, or make new findings by reason of*
5 *additional evidence so taken and filed. The Authority shall*
6 *file its modified or new findings, which, with respect to ques-*
7 *tions of fact, if supported by substantial evidence on the*
8 *record considered as a whole, shall be conclusive. The Author-*
9 *ity shall file its recommendations, if any, for the modification*
10 *or setting aside of its original order. Upon the filing of the*
11 *record with the court, the jurisdiction of the court shall be*
12 *exclusive and its judgment and decree shall be final, except*
13 *that the judgment and decree shall be subject to review by the*
14 *Supreme Court of the United States upon writ of certiorari*
15 *or certification as provided in section 1254 of title 28.*

16 “(d) *The Authority may, upon issuance of a complaint*
17 *as provided in section 7118 of this title charging that*
18 *any person has engaged in or is engaging in an unfair labor*
19 *practice, petition any United States district court within*
20 *any district in which the unfair labor practice in question is*
21 *alleged to have occurred or in which such person resides or*
22 *transacts business for appropriate temporary relief or re-*
23 *straining order. Upon the filing of the petition, the court shall*
24 *cause notice thereof to be served upon the person, and there-*
25 *upon shall have jurisdiction to grant any temporary relief*

1 *(including a temporary restraining order) it considers just*
2 *and proper.*

3 **“SUBCHAPTER IV—ADMINISTRATIVE AND**
4 **OTHER PROVISIONS**

5 **“§ 7131. Reporting requirements for standards of conduct**

6 *“The provisions of subchapter III of chapter 11 of title*
7 *29 shall be applicable to labor organizations which have been*
8 *or are seeking to be certified as exclusive representatives un-*
9 *der this chapter, and to the organizations’ officers, agents,*
10 *shop stewards, other representatives, and members to the ex-*
11 *tent to which the provisions would be applicable if the*
12 *agency were an employer under section 402 of title 29. In*
13 *addition to the authority conferred on him under section 438*
14 *of title 29, the Secretary of Labor shall prescribe regulations,*
15 *with the written concurrence of the Authority, providing for*
16 *simplified reports for any such labor organization. The Sec-*
17 *retary of Labor may revoke the provision for simplified*
18 *reports of any such labor organization if the Secretary deter-*
19 *mines, after any investigation the Secretary considers proper*
20 *and after reasonable notice and opportunity for a hearing,*
21 *that the purpose of this chapter and of chapter 11 of title 29*
22 *would be served thereby.*

23 **“§ 7132. Official time**

24 *“(a) Any employee representing an exclusive repre-*
25 *sentative in the negotiation of a collective bargaining agree-*

1 *ment under this chapter shall be authorized official time for*
2 *such purposes, including attendance at impasse proceeding,*
3 *during the time the employee otherwise would be in a duty*
4 *status. The number of employees for whom official time is*
5 *authorized under this subsection shall not exceed the number*
6 *of individuals designated as representing the agency for such*
7 *purposes.*

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

13 “(c) *Except as provided in subsection (a) of this sec-*
14 *tion, the Authority shall determine whether any employee*
15 *participating for, or on behalf of, a labor organization in any*
16 *phase of proceedings before the Authority shall be authorized*
17 *official time for such purpose during the time the employee*
18 *otherwise would be in a duty status.*

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

21 “(1) *any employee representing an exclusive repre-*
22 *sentative, or*

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

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

4 **“§ 7133. Subpenas**

5 *“(a) For the purpose of any hearing or investigation*
6 *which the Panel or the Authority, or any member of the Au-*
7 *thority or any individual employed by the Authority and*
8 *designated for such purpose, (hereinafter in this section re-*
9 *ferred to as the ‘issuer’) determines is necessary and proper*
10 *for the exercise of its responsibilities under this chapter, the*
11 *issuer shall at all reasonable times have access to, for the*
12 *purpose of examination and copying any evidence relating*
13 *to the subject matter of the hearing or investigation. The*
14 *issuer may, on the application of any party or on its own ini-*
15 *tiative, issue subpenas requiring the attendance and testimony*
16 *of witnesses, the production and examination of any books*
17 *or papers (including those of the Federal Government to the*
18 *extent otherwise available under law), or any other evidence*
19 *relating to the hearing or investigation requested in any*
20 *such application or considered by the issuer to be relevant.*
21 *Within 5 days after the service of a subpoena on any person*
22 *requiring the production of any evidence the person may*
23 *petition the issuer to revoke, the subpoena. The issuer shall*
24 *revoke the subpoena if in its opinion the evidence sought*
25 *under the subpoena does not relate to any matter under con-*

1 *sideration in the hearing or investigation, or if in its opinion*
2 *the subpoena does not describe with sufficient particularity the*
3 *evidence.*

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

12 “(c) *Witnesses appearing pursuant to a subpoena issued*
13 *under subsection (a) of this section shall be paid the same fee*
14 *and mileage allowances which are paid subpoenaed witnesses*
15 *in the courts of the United States.*

16 “(d) *No person shall be excused from attending and*
17 *testifying or from producing books, records, correspondence,*
18 *documents, or other evidence in obedience to a subpoena*
19 *under this section on the ground that the testimony or*
20 *evidence required of the person may tend to incriminate*
21 *or subject the person to a penalty or forfeiture, except that no*
22 *person shall be prosecuted or subjected to any penalty or*
23 *forfeiture for or on account of any transaction or other mat-*
24 *ter concerning which the person is compelled, after having*
25 *claimed privilege against self-incrimination, to testify or*

1 produce evidence, except that the person so testifying shall
2 not be exempt from prosecution and punishment for perjury
3 committed in so testifying.

4 “(e) Any person who shall willfully resist, prevent,
5 impede, or interfere with any member of the Authority or
6 Panel or any individual employed by the Authority or Panel
7 in the performance of duties pursuant to this chapter shall
8 be punished by a fine of not more than \$5,000 or by impris-
9 onment for not more than one year, or both.

10 “§ 7134. *Compilation and publication of data*

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

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

19 “§ 7135. *Regulations*

20 “The Authority, the Federal Mediation and Conciliation
21 Service, and the Panel shall each prescribe rules and regula-
22 tions to carry out the provisions of this chapter applicable to
23 each of them, respectively. The provisions of subchapter II of
24 chapter 5 of this title shall be applicable to the issuance,
25 revision, or repeal of any such rule or regulation.

1 “§ 7136. *Continuation of existing laws, recognitions, agree-*
2 *ments, and procedures*

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

4 “(1) *the renewal or continuation of an exclusive*
5 *recognition, certification of an exclusive representative,*
6 *or a lawful agreement between an agency and an exclu-*
7 *sive representative of its employees, which is entered into*
8 *before the effective date of this chapter; or*

9 “(2) *the renewal, continuation, or initial according*
10 *of recognition for units of management officials or super-*
11 *visors represented by labor organizations which histori-*
12 *cally or traditionally represent management officials*
13 *or supervisors in private industry and which hold exclu-*
14 *sive recognition for units of such officials or supervisors*
15 *in any agency on the effective date of this chapter.*

16 “(b) *Policies, regulations, and procedures established*
17 *under and decisions issued under Executive Orders 11491,*
18 *11616, 11636, 11787, and 11838, or under any other*
19 *Executive order, as in effect on the effective date of this*
20 *chapter, shall remain in full force and effect until revised*
21 *or revoked by the President, or unless superseded by specific*
22 *provisions of this chapter or by regulations or decisions*
23 *issued pursuant to this chapter.”.*

1 **BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND**
2 **GRIEVANCES**

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

5 “(b) *An employee of an agency who, on the basis of*
6 *a timely appeal or an administrative determination (includ-*
7 *ing a decision relating to an unfair labor practice or a griev-*
8 *ance) is found by appropriate authority under applicable*
9 *law, rule, regulation, or collective bargaining agreement, to*
10 *have been affected by an unjustified or unwarranted personnel*
11 *action which has resulted in the withdrawal or reduction of*
12 *all or a part of the pay, allowances, or differentials of the*
13 *employee—*

14 “(1) *is entitled, on correction of the personnel*
15 *action, to receive for the period for which the personnel*
16 *action was in effect—*

17 “(A) *an amount equal to all or any part of*
18 *the pay, allowances, or differentials, as applicable,*
19 *which the employee normally would have earned or*
20 *received during the period if the personnel action*
21 *had not occurred, less any amounts earned by the*
22 *employee through other employment during that*
23 *period;*

1 “(B) interest on the amount payable under
2 subparagraph (A) of this paragraph; and

3 “(C) reasonable attorney fees and reason-
4 able costs and expenses of litigation related to the
5 personnel action; and

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

8 “(A) annual leave restored under this para-
9 graph which is in excess of the maximum leave
10 accumulation permitted by law shall be credited to
11 a separate leave account for the employee and shall
12 be available for use by the employee within the time
13 limits prescribed by regulations of the Office of
14 Personnel Management, and

15 “(B) annual leave credited under subpara-
16 graph (A) of this paragraph but unused and still
17 available to the employee under regulations pre-
18 scribed by the Office shall be included in the lump-
19 sum payment under section 5551 or 5552(1) of
20 this title but may not be retained to the credit of the
21 employee under section 5552(2) of this title.

22 For the purpose of this subsection, ‘grievance’ and ‘collective
23 bargaining agreement’ have the meanings set forth in section
24 7103 of this title , ‘unfair labor practice’ means an unfair
25 labor practice described in section 7116 of this title, and ‘per-

1 sonnel action' includes the omission or failure to take an
2 action or confer a benefit."

3 TECHNICAL AND CONFORMING AMENDMENTS

4 SEC. 703. (a) Subchapter II of chapter 71 of title 5,
5 United States Code, is amended—

6 (1) by redesignating sections 7151 (as amended by
7 section 312 of this Act), 7152, 7153, and 7154 as sec-
8 tions 7201, 7202, 7203, and 7204, respectively;

9 (2) by striking out the subchapter heading and
10 inserting in lieu thereof the following:

11 "Chapter 72—ANTIDISCRIMINATION; RIGHT TO
12 PETITION CONGRESS

"SUBCHAPTER I—ANTIDISCRIMINATION IN
EMPLOYMENT

"Sec.

"7201. Antidiscrimination policy; minority recruitment program.

"7202. Marital status.

"7203. Handicapping condition.

"7204. Other prohibitions.

"SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION
CONGRESS

"7211. Employees' right to petition Congress.;"

13 and

14 (3) by adding at the end thereof the following new
15 subchapter:

16 "SUBCHAPTER II—EMPLOYEES' RIGHT TO
17 PETITION CONGRESS

18 "§ 7211. Employees' right to petition Congress

19 "The right of employees, individual or collectively, to
20 petition Congress or a Member of Congress, or to furnish

1 *information to either House of Congress, or to a committee*
 2 *or Member thereof, may not be interfered with or denied.”.*

3 (b) *The analysis for part III of title 5, United States*
 4 *Code, is amended by striking out—*

“Subpart F—Employee Relations

“71. Policies ----- 7101”

5 *and inserting in lieu thereof*

“Subpart F—Labor-Management and Employee Relations

“71. Labor-Management Relations----- 7101

“72. Antidiscrimination; Right to Petition Congress----- 7201”.

6 (2) *Section 3302(2) of title 5, United States Code, is*
 7 *Code, is amended by striking out “and 7154” and inserting*
 8 *in lieu thereof “and 7204”.*

9 (c)(1) *Section 2105(c)(1) of title 5, United States*
 10 *amended by striking out “7152, 7153” and inserting in lieu*
 11 *thereof “7202, 7203”.*

12 (3) *Sections 4540(c), 7212(a), and 9540(c) of title*
 13 *10, United States Code, are each amended by striking out*
 14 *“7154 of title 5” and inserting in lieu thereof “7204 of title*
 15 *5”.*

16 (4) *Section 410(b)(1) of title 39, United States Code,*
 17 *is amended by striking out “chapters 71 (employee policies)”*
 18 *and inserting in lieu thereof the following: “chapters 72 (an-*
 19 *tidiscrimination; right to petition Congress)”.*

20 (5) *Section 1002(g) of title 39, United States Code, is*
 21 *amended by striking out “section 7102 of title 5” and insert-*
 22 *ing in lieu thereof “section 7211 of title 5”.*

1 (d) Section 5315 of title 5, United States Code, is
2 amended by adding at the end thereof the following clause:

3 “(124) Chairman, Federal Labor Relations
4 Authority.”.

5 (e) Section 5316 of such title is amended by adding at
6 the end thereof the following clause:

7 “(145) Members, Federal Labor Relations Author-
8 ity (2), and its General Counsel.”.

9 MISCELLANEOUS PROVISIONS

10 SEC. 704. (a) Except as provided in subsection (b) of
11 this section, the amendments made by this title shall take effect
12 on the first day of the first calendar month beginning more
13 than 90 days after the date of the enactment of this title.

14 (b) Sections 7104, 7105, and 7136 of title 5, United
15 States Code, as added by section 701 of this title, shall take
16 effect on the date of the enactment of this title.

17 (c) (1) The wages, terms, and conditions of employment,
18 and other employment benefits with respect to Government
19 prevailing rate employees to whom section 9 (b) of Public Law
20 92-392 applies shall be negotiated in accordance with pre-
21 vailing rates and practices without regard to any provision
22 of—

23 (A) chapter 71 of title 5, United States Code (as
24 amended by this title);

1 *(B) chapters 51, 53, and 55 of title 5, United States*
 2 *Code;*

3 *(C) or any other law, rule, regulation, decision, or*
 4 *order relating to rate of pay or pay practices with respect*
 5 *to Federal employees.*

6 *(2) No provision of chapter 71 of title 5, United States*
 7 *Code (as amended by this title), shall be considered to limit—*

8 *(A) any rights or remedies of employees referred to*
 9 *in paragraph (1) of this subsection under any other pro-*
 10 *vision of law or before any court or other tribunal; or*

11 *(B) any benefits otherwise available to such employ-*
 12 *ees under any other provision of law.*

13 **TITLE VIII—GRADE AND PAY RETENTION**

14 **GRADE AND PAY RETENTION**

15 *SEC. 801. (a) (1) Chapter 53 of title 5, United States*
 16 *Code, relating to pay rates and systems, is amended by insert-*
 17 *ing after subchapter V thereof the following new subchapter:*

18 **“SUBCHAPTER VI—GRADE AND PAY**

19 **RETENTION**

20 **“§ 5361. Definitions**

21 *“For the purpose of this subchapter—*

22 *“(1) ‘employee’ means an employee to whom chapter*
 23 *51 of this title applies, and a prevailing rate employee,*
 24 *as defined by section 5342(a)(2) of this title, whose*
 25 *employment is other than on a temporary or term basis;*

1 *fed for purposes of carrying out the mission of the*
2 *agency or agencies involved.*

3 *“§ 5367. Appeals*

4 *“(a)(1) In the case of the termination of any benefits*
5 *available to an employee under this subchapter on the grounds*
6 *such employee declined a reasonable offer of a position the*
7 *grade or pay of which was equal to or greater than his*
8 *retained grade or pay, such termination may be appealed*
9 *to the Office of Personnel Management under procedures*
10 *prescribed by the Office.*

11 *“(2) Nothing in this subchapter shall be construed to*
12 *affect the right of any employee to appeal—*

13 *“(A) under section 5112(b) or 5346(c) of this*
14 *title or otherwise, any reclassification of a position; or*

15 *“(B) under procedures prescribed by the Office of*
16 *Personnel Management, any reduction-in-force action.*

17 *“(b) For purposes of any appeal procedures (other than*
18 *those described in subsection (a) of this section)—*

19 *“(1) any action which is the basis of an individual’s*
20 *entitlement to benefits under this subchapter, and*

21 *“(2) any termination of any such benefits under this*
22 *subchapter,*
23 *shall not be treated as appealable under such appeals*
24 *procedures.”.*

1 *field offices located at points throughout the United*
2 *States.*

3 *Interested parties, including heads of agencies, other Federal*
4 *employees, and Federal employee organizations, shall be*
5 *allowed to submit views, arguments, and data in connection*
6 *with such study.*

7 *(c) On the completion of the study under subsection (a)*
8 *of this section, and in any event not later than one year*
9 *after the effective date of this Act, the Director of the Office*
10 *of Personnel Management shall submit to the President and*
11 *to the Congress a report on the results of such study together*
12 *with his recommendations. Any such recommendation which*
13 *involves the amending of existing statutes shall include draft*
14 *legislation.*

15 *SAVINGS PROVISIONS*

16 *SEC. 1102. (a) Except as otherwise provided in this*
17 *Act, all executive orders, rules, and regulations affecting*
18 *the Federal service shall continue in effect, according to their*
19 *terms, until modified, terminated, superseded, or repealed by*
20 *the President, the Office of Personnel Management, the*
21 *Merit Systems Protection Board, the Equal Employment*
22 *Opportunity Commission, or the Federal Labor Relations*
23 *Authority with respect to matters within their respective*
24 *jurisdictions.*

25 *(b) No provision of this Act shall affect any ad-*

1 *ministrative proceedings pending at the time such provision*
 2 *takes effect. Orders shall be issued in such proceedings and*
 3 *appeals shall be taken therefrom as if this Act had not been*
 4 *enacted.*

5 (c) *No suit, action, or other proceeding lawfully com-*
 6 *menced by or against the Director of the Office of Personnel*
 7 *Management or the members of the Merit Systems Protection*
 8 *Board, or officers or employees thereof, in their official ca-*
 9 *pacuity or in relation to the discharge of their official duties,*
 10 *as in effect immediately before the effective date of this Act,*
 11 *shall abate by reason of the enactment of this Act. Determi-*
 12 *nations with respect to any such suit, action, or other pro-*
 13 *ceeding shall be made as if this Act had not been enacted.*

14 **AUTHORIZATION OF APPROPRIATIONS**

15 *SEC. 1103. There are authorized to be appropriated,*
 16 *out of any moneys in the Treasury not otherwise appro-*
 17 *priated, such sums as may be necessary to carry out the pro-*
 18 *visions of this Act.*

19 **POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS**

20 **PROVISIONS**

21 *SEC. 1104. Except as otherwise expressly provided in*
 22 *this Act, no provision of this Act shall be construed to—*

23 *“(1) limit, curtail, abolish, or terminate any func-*
 24 *tion of, or authority available to, the President which*



SENATE BILLS

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Purpose:**Amdt. No. 2084**95TH CONGRESS
2^D SESSION**S. 2640**

IN THE SENATE OF THE UNITED STATES

MAY 15 (legislative day, APRIL 24), 1978

Referred to the Committee on Governmental Affairs and ordered to be printed

AMENDMENTS

Intended to be proposed by Mr. RIBICOFF (for himself, Mr. PERCY, Mr. SASSER, and Mr. JAVITS) to S. 2640, a bill to reform the civil service laws, viz:

- 1 On page 126, redesignate title VII as title VIII.
- 2 On page 126, between lines 18 and 19, insert the fol-
- 3 lowing new title:

1 “TITLE VII—LABOR-MANAGEMENT RELATIONS

2 “LABOR-MANAGEMENT RELATIONS

3 “SEC. 701. (a) Chapter 71 of subpart F of part III
4 of title 5, United States Code, is amended to add the follow-
5 ing subchapter III:

6 “SUBCHAPTER III—FEDERAL SERVICE LABOR-
7 MANAGEMENT RELATIONS

8 “§ 7161. Findings and purpose

9 “(a) The Congress finds that the public interest de-
10 mands the highest standards of employee performance and
11 the continued development and implementation of modern
12 and progressive work practices to facilitate and improve
13 employee performance and the efficient accomplishment of
14 the operations of the Government.

15 “(b) The Congress further finds that while significant
16 differences exist between Federal and private employment,
17 experience under Executive Order 11491, as amended, indi-
18 cates that the statutory protection of the right of employees
19 to organize, bargain collectively within limits prescribed by
20 this subchapter, and participate through labor organizations
21 of their own choosing in decisions which affect them can be
22 accomplished with full regard for the public interest and
23 contributes to the effective conduct of public business. Such
24 protection facilitates and encourages the amicable settlement
25 of disputes between employees and their employers involv-

1 ing personnel policies, practices and matters affecting work-
2 ing conditions.

3 ““(c) It is the purpose of this subchapter to prescribe
4 certain rights and obligations of the employees of the Fed-
5 eral Government, subject to the paramount interest of the
6 public, and to establish procedures which are designed to
7 meet the special requirements and needs of the Federal
8 Government.

9 ““§ 7162. Definitions; application

10 ““(a) For the purpose of this subchapter—

11 ““(1) “Agency” means an Executive agency as
12 defined in section 105 of this title, except the General
13 Accounting Office;

14 ““(2) “Employee” means an individual—

15 ““(A) employed in an agency;

16 ““(B) employed in a nonappropriated fund
17 instrumentality described in section 2105(c) of
18 this title;

19 ““(C) employed in the Veterans’ Canteen
20 Service, Veterans’ Administration, described in sec-
21 tion 5102(c) (14) of this title; or

22 ““(D) who was an employee (as defined
23 under subparagraphs (A), (B), or (C) of this
24 paragraph) and was separated from service as a
25 consequence of, or in connection with, an unfair

4

1 labor practice under section 7174 of this subchapter;
2 but does not include—

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

6 “(ii) a member of the uniformed services;

7 “(iii) for the purpose of exclusive recog-
8 nition or national consultation rights (except as
9 authorized under the provisions of this sub-
10 chapter), a supervisor, a management official
11 or a confidential employee;

12 “(3) “Labor organization” means a lawful or-
13 ganization of any kind in which employees participate
14 and which exists for the purpose, in whole or in part,
15 of dealing with agencies concerning grievances, person-
16 nel policies and practices, or other matters affecting the
17 working conditions of their employees; but does not
18 include an organization which—

19 “(A) consists of management officials, con-
20 fidential employees, or supervisors, except as au-
21 thorized under this subchapter;

22 “(B) assists or participates in a strike against
23 the Government of the United States or any agency
24 thereof or imposes a duty or obligation to conduct,
25 assist, or participate in such a strike;

5

1 “ (C) advocates the overthrow of the constitu-
2 tional form of government in the United States; or

3 “ (D) discriminates with regard to the terms
4 or conditions of membership because of race, color,
5 religion, national origin, sex, age, or handicapping
6 condition;

7 “ (4) “Agency management” means the agency
8 head and all management officials, supervisors, and other
9 representatives of management having authority to act
10 for the agency on any matters relating to the implement-
11 ation of the agency labor-management relations program
12 established under this subchapter;

13 “ (5) “Authority” means the Federal Labor Rela-
14 tions Authority under section 7163 of this subchapter;

15 “ (6) “General Counsel” means the General Coun-
16 sel of the Federal Labor Relations Authority;

17 “ (7) “Panel” means the Federal Service Impasses
18 Panel under section 7173 of this subchapter;

19 “ (8) “Assistant Secretary” means the Assistant
20 Secretary of Labor for Labor-Management Relations;

21 “ (9) “Confidential employee” means an employee
22 who assists and acts in a confidential capacity to per-
23 sons who formulate and effectuate management policies
24 in the field of labor relations;

25 “ (10) “Management official” means an employee

1 having authority to make, or to influence effectively the
2 making of, policy necessary to the agency or activity
3 with respect to personnel, procedures or programs;

4 “(11) “Supervisor” means an employee having
5 authority, in the interest of an agency, to hire, transfer,
6 suspend, layoff, recall, promote, discharge, assign, re-
7 ward, or discipline other employees or responsibly to
8 direct them, or to adjust their grievances, or effectively
9 to recommend such action, if in connection with the
10 foregoing the exercise of authority is not of a merely
11 routine or clerical nature, but requires the use of inde-
12 pendent judgment;

13 “(12) “Professional employee” means—

14 “(A) any employee engaged in the perform-
15 ance of work—

16 “(i) requiring knowledge of an advanced
17 type in a field of science or learning customarily
18 acquired by a prolonged course of specialized
19 intellectual instruction and study in an institu-
20 tion of higher learning or a hospital, as distin-
21 guished from knowledge acquired by a general
22 academic education, or from an apprenticeship,
23 or from training in the performance of routine
24 mental, manual or physical process;

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

3 “ (iii) which is predominantly intellectual
4 and varied in character (as opposed to routine
5 mental, manual, mechanical or physical work) ;
6 and

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

11 “ (B) any employee who has completed the
12 courses of specialized intellectual instruction and
13 study described in subparagraph (A) of this para-
14 graph and is performing related work under the
15 direction or guidance of a professional person to
16 qualify the employee to become a professional em-
17 ployee as defined in subparagraph (A) of this
18 paragraph.

19 “ (13) “Agreement” means an agreement entered
20 into as a result of collective bargaining pursuant to the
21 provisions of this subchapter ;

22 “ (14) “Collective bargaining”, “bargaining” or
23 “negotiating” means the performance of the mutual
24 obligation of the representatives of the agency and the

1 exclusive representative as provided in section 7169
2 of this subchapter;

3 “(15) “Exclusive representative” includes any
4 labor organization which has been—

5 “(A) selected pursuant to the provisions of
6 section 7168 of this subchapter as the representa-
7 tive of the employees in an appropriate collective
8 bargaining unit; or

9 “(B) certified or recognized prior to the effec-
10 tive date of this subchapter as the exclusive rep-
11 resentative of the employees in an appropriate col-
12 lective bargaining unit;

13 “(16) “Person” means an individual, labor orga-
14 nization, or agency covered by this subchapter; and

15 “(17) “Grievance” means any complaint by any
16 person concerning any matter which falls within the
17 coverage of a grievance procedure.

18 “(b) This subchapter applies to all employees and
19 agencies in the executive branch, except as provided in sub-
20 sections (c), (d), and (e) of this section.

21 “(c) This subchapter does not apply to—

22 “(1) the Federal Bureau of Investigation;

23 “(2) the Central Intelligence Agency;

24 “(3) the National Security Agency;

25 “(4) any other agency, or office, bureau, or entity

9

1 within an agency, which has as a primary function intelli-
2 gence, investigative, or security work, when the head
3 of the agency determines, in the agency head's sole
4 judgment, that this subchapter cannot be applied in a
5 manner consistent with national security requirements
6 and considerations;

7 “ (5) any office, bureau or entity within an agency
8 which has as a primary function investigation or audit of
9 the conduct or work of officials or employees of the
10 agency for the purpose of insuring honesty and integrity
11 in the discharge of their official duties, when the head
12 of the agency determines, in the agency head's sole
13 judgment, that this subchapter cannot be applied in a
14 manner consistent with the internal security of the
15 agency;

16 “ (6) the United States Postal Service; or

17 “ (7) the Foreign Service of the United States:
18 Department of State, International Communication
19 Agency, and Agency for International Development, and
20 their successor agency or agencies;

21 “ (8) the Tennessee Valley Authority; or

22 “ (9) personnel of the Federal Labor Relations
23 Authority, including the Office of General Counsel, and
24 the Federal Service Impasses Panel.

25 “ (d) The head of an agency may, in the agency

1 head's sole judgment, suspend any provision of this sub-
2 chapter with respect to any agency, installation or activity
3 located outside the United States, when the agency head
4 determines that this is necessary in the national interest,
5 subject to the conditions the agency head prescribes.

6 “(e) Employees engaged in administering a labor-
7 management relations law (except as otherwise provided
8 in subsection (c) (9) of this section) shall not be repre-
9 sented by a labor organization which also represents other
10 employees covered by the law, or which is affiliated directly
11 or indirectly with an organization which represents such
12 employees.

13 “§ 7163. Federal Labor Relations Authority; Office of the
14 General Counsel

15 “(a) The Federal Labor Relations Authority is an
16 independent establishment in the executive branch.

17 “(b) The Authority is composed of a Chairperson and
18 two members, not more than two of whom may be adher-
19 ents of the same political party and none of whom may
20 hold another office or position in the government of the
21 United States except where provided by law or by the
22 President.

23 “(c) Members of the Authority shall be appointed by
24 the President, by and with the advice and consent of the
25 Senate. Authority members shall be eligible for reappoint-

1 ment. The President shall designate one member to serve
2 as Chairperson of the Authority.

3 “ ‘(d) The term of office of each member of the Au-
4 thority is 5 years. Notwithstanding the preceding provisions
5 of this subsection, the term of any member shall not expire
6 before the earlier of—

7 “ ‘(1) the date on which the member’s successor
8 takes office or

9 “ ‘(2) the last day of the session of the Congress
10 beginning after the date the member’s term of office
11 would (but for this sentence) expire. An individual
12 chosen to fill a vacancy shall be appointed for the unex-
13 pired term of the member such individual replaces. Any
14 member of the Authority may be removed by the
15 President.

16 “ ‘(e) A vacancy in the Authority shall not impair the
17 right of the remaining members to exercise all of the powers
18 of the Authority.

19 “ ‘(f) The Authority shall make an annual report to
20 the President for transmittal to the Congress, which shall
21 include information as to the cases it has heard and the
22 decisions it has rendered.

23 “ ‘(g) There is an Office of the General Counsel in the
24 Federal Labor Relations Authority. The General Counsel
25 shall be appointed by the President by and with the advice

1 and consent of the Senate. The term of office of the General
2 Counsel is 5 years. The General Counsel shall be eligible
3 for reappointment. The General Counsel may be removed
4 by the President. The General Counsel shall hold no other
5 office or position in the government of the United States
6 except where provided by law or by the President.

7 “§ 7164. Powers and duties of the Authority; the General
8 **Counsel**

9 “(a) The Authority shall administer and interpret this
10 subchapter, decide major policy issues, prescribe regula-
11 tions, disseminate information appropriate to the needs of
12 agencies, labor organizations and the public pursuant to sec-
13 tion 7181 of this subchapter.

14 “(b) The Authority shall, subject to its regulations—

15 “(1) decide questions as to the appropriate unit
16 for the purpose of exclusive recognition and related
17 issues submitted for its consideration;

18 “(2) supervise elections to determine whether a
19 labor organization is the choice of a majority of the em-
20 ployees in an appropriate unit as their exclusive rep-
21 resentative, and certify the results;

22 “(3) decide questions as to the eligibility of labor
23 organizations for national consultation rights; and

24 “(4) decide unfair labor practice complaints.

13

1 “(c) The Authority may consider, subject to its reg-
2 ulations—

3 “(1) appeals on negotiability issues as provided
4 in subsection (e) of section 7169 of this subchapter;

5 “(2) exceptions to arbitration awards as provided
6 in section 7171 of this subchapter;

7 “(3) appeals from decisions of the Assistant Sec-
8 retary issued pursuant to section 7175 of this subchapter;

9 “(4) exceptions to final decisions and orders of
10 the Federal Service Impasses Panel issued pursuant to
11 section 7173 of this subchapter; and

12 “(5) other matters it deems appropriate to assure
13 the effectuation of the purposes of this subchapter.

14 “(d) The Authority shall adopt an official seal which
15 shall be judicially noticed.

16 “(e) The principal office of the Authority shall be in
17 or about the District of Columbia but it may meet and exer-
18 cise any or all of its powers at any time or place. Subject to
19 subsection (g) of this section, the Authority may by one or
20 more of its members or by such agents as it may designate,
21 make any inquiry necessary to carry out its duties wherever
22 persons subject to this subchapter are located. A member who
23 participates in such inquiry shall not be disqualified from
24 later participating in a decision of the Authority in the same
25 case.

14

1 “(f) The Authority shall appoint an Executive Direc-
2 tor, such attorneys, regional directors, administrative law
3 judges, and other officers and employees as it may from time
4 to time find necessary for the proper performance of its
5 duties and may delegate to such officers and employees au-
6 thority to perform such duties and make such expenditures
7 as may be necessary.

8 “(g) All of the expenses of the Authority including
9 all necessary traveling and subsistence expenses outside the
10 District of Columbia incurred by members, employees, or
11 agents of the Authority under its orders, shall be allowed
12 and paid on the presentation of itemized vouchers therefor
13 approved by the Authority or by an individual it designates
14 for that purpose and pursuant to applicable law.

15 “(h) The Authority is expressly empowered and di-
16 rected to prevent any person from engaging in conduct
17 found violative of this subchapter. In order to carry out its
18 functions under this subchapter, the Authority is authorized
19 to hold hearings, subpoena witnesses, administer oaths, and
20 take the testimony or deposition of any person under oath,
21 and in connection therewith, to issue subpoenas requiring
22 the production and examination of evidence as described in
23 section 7179 (d) of this subchapter relating to any matter
24 pending before it and to take such other action as may be
25 necessary. Also in the exercise of the functions of the
26 Authority under this subchapter—

1 “(1) the Authority may request from the Direc-
2 tor of the Office of Personnel Management an advisory
3 opinion concerning the proper interpretation of regu-
4 lations or other policy directives promulgated by the
5 Office of Personnel Management in connection with a
6 matter before the Authority for adjudication;

7 “(2) whenever a regulation or other policy direc-
8 tive issued by the Office of Personnel Management is at
9 issue in an appeal before the Authority, the Authority
10 shall timely notify the Director, and the Director shall
11 have standing to intervene in the proceeding and shall
12 have all the rights of a party to the proceeding; and

13 “(3) the Director may request that the Authority
14 reopen an appeal and reconsider its decision on the
15 ground that the decision was based on an erroneous in-
16 terpretation of law or of controlling regulation or other
17 policy directive issued by the Office of Personnel
18 Management.

19 “(i) In any matters arising under subsection (b) of
20 this section, the Authority may require an agency or a labor
21 organization to cease and desist from violations of this sub-
22 chapter and require it to take such affirmative action as it
23 considers appropriate to effectuate the policies of this sub-
24 chapter.

25 “(j) The General Counsel is authorized to—

1 “(1) investigate complaints of violations of sec-
2 tion 7174 of this subchapter;

3 “(2) make final decisions as to whether to issue
4 notices of hearing on unfair labor practice complaints and
5 to prosecute such complaints before the Authority;

6 “(3) direct and supervise all field employees of
7 the General Counsel in the field offices of the Federal
8 Labor Relations Authority;

9 “(4) perform such other functions as the Author-
10 ity prescribes; and

11 “(5) prescribe regulations needed to administer
12 the General Counsel’s functions under this subchapter.

13 “(k) Notwithstanding any other provisions of law,
14 including chapter 7 of this title, the decisions of the Au-
15 thority on any matter within its jurisdiction shall be final
16 and conclusive, and no other official or any court of the
17 United States shall have power or jurisdiction to review any
18 such decision by an action in the nature of mandamus on
19 appeal of that decision or by any other means: *Provided,*
20 That nothing in this section shall limit the right of persons
21 to judicial review of questions arising under the Constitu-
22 tion of the United States.

23 “§ 7165. **Employees’ rights**

24 “(a) Each employee shall have the right to form, join,
25 or assist any labor organization, or to refrain from such

1 activity, freely and without fear of penalty or reprisal, and
2 each such employee shall be protected in exercising such
3 right. Except as otherwise provided under this subchapter,
4 such right includes the right to participate in the manage-
5 ment of a labor organization, the right to act for the organi-
6 zation in the capacity of a representative, and the right, in
7 such capacity, to present the views of the organization to
8 agency heads and other officials of the executive branch of
9 the Government, the Congress, or other appropriate author-
10 ities; and the right to bargain collectively subject to the
11 limits prescribed in section 7169 (c) of this subchapter
12 through representatives of their own choosing.

13 “ (b) This subchapter does not authorize participation
14 in the management of a labor organization or acting as a
15 representative of such an organization by a management
16 official, a confidential employee or a supervisor, except as
17 specifically provided in this subchapter, or by an employee
18 when the participation or activity would result in a con-
19 flict or apparent conflict of interest or would otherwise be
20 incompatible with law or with the official duties of the
21 employee.

22 “ § 7166. Recognition of labor organizations in general

23 “ (a) An agency shall accord exclusive recognition
24 or national consultation rights at the request of a labor or-
25 ganization which meets the requirements for the recognition
26 or consultation rights under this subchapter.

1 “(b) When recognition of a labor organization has
2 been accorded, the recognition continues as long as the
3 organization continues to meet the requirements of this sub-
4 chapter applicable to that recognition, except that this sec-
5 tion does not require an election to determine whether an
6 organization should become, or continue to be recognized
7 as, exclusive representative of the employees in any unit or
8 subdivision thereof within 12 months after a prior valid
9 election with respect to such unit.

10 “(c) Recognition of a labor organization does not—

11 “(1) preclude an employee, regardless of whether
12 the employee is in a unit of exclusive recognition, from
13 exercising grievance or appellate rights established by
14 law or regulation, or from choosing the employee’s own
15 representative in a grievance or appellate action, except
16 when the grievance or appeal is covered under a negoti-
17 ated procedure as provided in section 7171 of this sub-
18 chapter.

19 “(2) preclude or restrict consultations and deal-
20 ings between an agency and a veterans organization
21 with respect to matters of particular interest to em-
22 ployees with veterans preference; or

23 “(3) preclude an agency from consulting or deal-
24 ing with a religious, social, fraternal, professional or other
25 lawful association, not qualified as a labor organization,

1 with respect to matters or policies which involve in-
2 dividual members of the association or are of particular
3 applicability to it or its members.

4 “ (d) Consultations and dealings under paragraph (3)
5 of subsection (c) of this section shall be so limited that they
6 do not assume the character or formal consultation on
7 matters of general employee-management policy covering
8 employees in that unit, or extend to areas where recogni-
9 tion of the interests of one employee group may result in
10 discrimination against or injury to the interest of other
11 employees.

12 “ § 7167. National consultation rights

13 “ (a) An agency shall accord national consultation
14 rights to a labor organization which qualifies under criteria
15 established by the Federal Labor Relations Authority as
16 the representative of a substantial number of employees of
17 the agency. National consultation rights shall not be
18 accorded for any unit where a labor organization already
19 holds exclusive recognition at the national level for that
20 unit. The granting of national consultation rights does not
21 preclude an agency from appropriate dealings at the national
22 level with other organizations on matters affecting their
23 members. An agency shall terminate national consultation
24 rights when the labor organization ceases to qualify under
25 the established criteria.

1 “(b) When a labor organization has been accorded
2 national consultation rights, the agency, through appropriate
3 officials, shall notify representatives of the organization of
4 proposed substantive changes in personnel policies that affect
5 employees it represents and provide an opportunity for the
6 organization to comment on the proposed changes. The labor
7 organization may suggest changes in the agency’s personnel
8 policies and have its views carefully considered. It may con-
9 sult in person at reasonable times, on request, with appro-
10 priate officials on personnel policy matters, and at all times
11 present its views thereon in writing. An agency is not re-
12 quired to consult with a labor organization on any matter
13 on which it would not be required to negotiate if the organi-
14 zation were entitled to exclusive recognition.

15 “(c) Questions as to the eligibility of labor organiza-
16 tions for national consultation rights may be referred to the
17 Authority for decision.

18 “§ 7168. Exclusive recognition

19 “(a) An agency shall accord exclusive recognition to
20 a labor organization when the organization has been selected,
21 in a secret ballot election, by a majority of the employees in
22 an appropriate unit as their representative; provided that
23 this section shall not preclude an agency from according ex-
24 clusive recognition to a labor organization, without an elec-
25 tion, where the appropriate unit is established through the

1 consolidation of existing exclusively recognized units repre-
2 sented by that organization.

3 “ (b) A unit may be established on a plant or installa-
4 tion, craft, functional, or other basis which will ensure a clear
5 and identifiable community of interest among the employees
6 concerned and will promote effective dealings and efficiency
7 of agency operations. A unit shall not be established solely
8 on the basis of the extent to which employees in the proposed
9 unit have organized, nor shall a unit be established if it
10 includes—

11 “ (1) any management official, confidential em-
12 ployee, or supervisor, except as provided in section
13 7182 of this subchapter;

14 “ (2) an employee engaged in Federal personnel
15 work in other than a purely clerical capacity; or

16 “ (3) both professional and nonprofessional em-
17 ployees, unless a majority of the professional employees
18 vote for inclusion in the unit.

19 “ Questions as to the appropriate unit and related
20 issues may be referred to the Authority for decision.

21 “ (c) All elections shall be conducted under the super-
22 vision of the Authority or persons designed by the Author-
23 ity and shall be by secret ballot. Employees eligible to
24 vote shall be provided the opportunity to choose the labor
25 organization they wish to represent them, from among

1 those on the ballot or “no union”, except as provided in
2 paragraph (4) of this subsection. Elections may be held
3 to determine whether—

4 “ (1) a labor organization should be recognized as
5 the exclusive representative of employees in a unit;

6 “ (2) a labor organization should replace another
7 labor organization as the exclusive representative;

8 “ (3) a labor organization should cease to be the
9 exclusive representative;

10 “ (4) a labor organization should be recognized
11 as the exclusive representative of employees in a unit
12 composed of employees in units currently represented
13 by that labor organization or continue to be recognized
14 in the existing separate units.

15 “ § 7169. **Representation rights and duties; good faith**
16 **bargaining; scope of negotiations; resolution**
17 **of negotiability disputes**

18 “ (a) When a labor organization has been accorded
19 exclusive recognition, it is the exclusive representative of
20 employees in the unit and is entitled to act for and nego-
21 tiate agreements covering all employees in the unit. It is re-
22 sponsible for representing the interests of all employees in
23 the unit without discrimination and without regard to labor
24 organization membership. The labor organization shall be
25 given the opportunity to be represented at formal discus-

1 sions between management and employees or employee rep-
2 resentatives concerning grievances, personnel policies and
3 practices, or other matters affecting general working con-
4 ditions of employees in the unit. The agency and the labor
5 organization, through appropriate representatives, shall meet
6 and negotiate in good faith for the purpose of arriving at an
7 agreement.

8 “ (b) The duty of the agency and the labor organiza-
9 tion to negotiate in good faith includes—

10 “ (1) to approach the negotiations with a sincere
11 resolve to reach an agreement;

12 “ (2) to be represented at the negotiations by ap-
13 propriate representatives prepared to discuss and nego-
14 tiate on all negotiable matters;

15 “ (3) to meet at reasonable times and places as
16 may be necessary; and

17 “ (4) if an agreement is reached, to execute upon
18 request a written document embodying the agreed terms,
19 and to take such steps as are necessary to implement
20 the agreement.

21 “ (c) An agency and a labor organization that has
22 been accorded exclusive recognition, through appropriate
23 representatives, shall meet at reasonable times and negotiate
24 in good faith with respect to personnel policies and prac-
25 tices and matters affecting working conditions, so far as may

1 be appropriate under this subchapter and other applicable
2 laws and regulations, including policies set forth in the Fed-
3 eral Personnel Manual; published agency policies and regula-
4 tions for which a compelling need exists under criteria estab-
5 lished by the Federal Labor Relations Authority and which
6 are issued at the agency headquarters level or at the level of a
7 primary national subdivision; and a national or other control-
8 ling agreement at a higher level in the agency. They may
9 negotiate an agreement; determine appropriate techniques,
10 consistent with section 7173 of this subchapter, to assist in
11 such negotiation; and execute a written agreement or memo-
12 randum of understanding.

13 “ (d) In prescribing regulations relating to personnel
14 policies and practices and working conditions, an agency
15 shall have due regard for the obligation imposed by this
16 section. However, the obligation to negotiate does not
17 include matters with respect to the number of employees
18 in an agency; the numbers, types, and grades of positions
19 or employees assigned to an organizational unit, work proj-
20 ect or tour of duty; or the technology of performing its work.
21 This does not preclude the parties from negotiating agree-
22 ments providing appropriate arrangements for employees
23 adversely affected by the impact of realignment of work
24 forces or technological change.

25 “ (e) If, in connection with negotiations, an issue de-

1 velops as to whether a proposal is contrary to this subchap-
2 ter or other applicable law, regulation, or controlling agree-
3 ment and therefore not negotiable, it shall be resolved as
4 follows:

5 “ (1) An issue which involves interpretation of a
6 controlling agreement at a higher agency level is re-
7 solved under the procedures of the controlling agreement,
8 or, if none, under agency regulations;

9 “ (2) An issue other than as described in para-
10 graph (1) of this subsection which arises at a local level
11 may be referred by either party to the head of the agency
12 for determination;

13 “ (3) An agency head’s determination as to the
14 interpretation of the agency’s regulations with respect
15 to a proposal is final;

16 “ (4) A labor organization may appeal to the Au-
17 thority for a decision when—

18 “ (i) it disagrees with an agency head’s deter-
19 mination that a proposal would violate this sub-
20 chapter or other applicable law or regulation of
21 appropriate authority outside the agency,

22 “ (ii) it believes that an agency’s regulations,
23 as interpreted by the agency head, violate this sub-
24 chapter or other applicable law or regulation of
25 appropriate authority outside the agency, or are not

1 otherwise applicable to bar negotiations under sub-
2 section (c) of this section.

3 “ § 7170. Basic provisions of agreements

4 “ Each agreement between an agency and a labor
5 organization is subject to the following requirements:

6 “ (a) In the administration of all matters covered by
7 the agreement, officials and employees are governed by
8 existing or future laws and the regulations of appropriate au-
9 thorities, including policies set forth in the Federal Personnel
10 Manual; by published agency policies and regulations in
11 existence at the time the agreement was approved; and by
12 subsequently published agency policies and regulations re-
13 quired by law or by the regulations of appropriate authorities,
14 or authorized by the terms of a controlling agreement at a
15 higher agency level;

16 “ (b) Management officials of the agency retain the
17 right to determine the mission, budget, organization, and in-
18 ternal security practices of the agency, and the right in
19 accordance with applicable laws and regulations—

20 “ (1) to direct employees of the agency;

21 “ (2) to hire, promote, transfer, assign, and retain
22 employees in positions within the agency, and to sus-
23 pend, demote, discharge, or take other disciplinary action
24 against employees;

1 “(3) to relieve employees from duties because of
2 lack of work or for other legitimate reasons;

3 “(4) to maintain the efficiency of the Government
4 operations entrusted to them;

5 “(5) to determine the methods, means, and per-
6 sonnel by which such operations are to be conducted;
7 and

8 “(6) to take whatever actions may be necessary to
9 carry out the mission of the agency in situations of
10 emergency.

11 However, nothing in this subsection shall preclude the parties
12 from negotiating procedures which management will observe
13 in exercising its authority to decide or act, reserved under
14 this subsection; or, from negotiating appropriate arrange-
15 ments for employees adversely affected by the impact of
16 management's exercising its authority to decide or act,
17 reserved under this subsection: *Provided*, That such negotia-
18 tions shall not unreasonably delay the exercise by manage-
19 ment of its authority to decide or act: *And provided fur-*
20 *ther*, That such procedures and arrangements so negotiated
21 shall be consonant with law and regulation as provided in
22 section 7169 (c) and shall not have the effect of negating
23 the authority reserved under this subsection; and

24 “(c) Nothing in the agreement shall require an em-
25 ployee to become or to remain a member of a labor organi-

1 zation, or to pay money to the organization except pursuant
2 to a voluntary, written authorization by a member for the
3 payment of dues through payroll deductions.

4 “The requirements of this section shall be expressly
5 stated in the initial or basic agreement and apply to all
6 supplemental, implementing, subsidiary, or informal agree-
7 ments between the agency and the organization.

8 “§ 7171. Grievance procedures

9 “(a) An agreement between an agency and a labor
10 organization shall provide a procedure, applicable only to
11 the unit, for the consideration of grievances. Subject to the
12 provisions of subsection (d) of this section and so long as
13 it does not otherwise conflict with statute, the coverage
14 and scope of the procedure shall be negotiated by the
15 parties to the agreement. It shall be the exclusive procedure
16 available to the parties and the employees in the unit for
17 resolving grievances which fall within its coverage except
18 as otherwise provided in this section.

19 “(b) Any employee or group of employees in the
20 unit may present grievances falling within the coverage of
21 the negotiated grievance procedure to the agency and have
22 them adjusted, without the intervention of the exclusive
23 representative, as long as the adjustment is not inconsistent
24 with the terms of the agreement and the exclusive repre-

1 sentative has been given opportunity to be present at the
2 adjustment.

3 “(c) A negotiated grievance procedure shall provide
4 for arbitration as the final step of the procedure. Arbitration
5 may be invoked only by the agency or the exclusive rep-
6 resentative. Except as provided in subsection (g) of this
7 section, the procedure must also provide that the arbitrator
8 is empowered to resolve questions as to whether or not a
9 grievance is on a matter subject to arbitration.

10 “(d) A negotiated grievance procedure may cover any
11 matter within the authority of an agency so long as it does
12 not otherwise conflict with this subchapter, except that it
13 may not include matters involving examination, certification
14 and appointment, suitability, classification, political activities,
15 retirement, life and health insurance, national security or the
16 Fair Labor Standards Act (chapter 8, title 29, United States
17 Code).

18 “(e) Matters covered under sections 4303 and 7512 of
19 this title which also fall within the coverage of the negotiated
20 grievance procedure may, in the discretion of the aggrieved
21 employee, be raised either under the appellate procedures
22 of section 7701 of this title or under the negotiated grievance
23 procedure, but not under both procedures. Similar matters
24 which arise under other personnel systems applicable to em-

1 ployées covered by this subchapter may, in the discretion
2 of the aggrieved employee, be raised either under the ap-
3 pellate procedures, if any, applicable to those matters, or
4 under the negotiated grievance procedure, but not under
5 both procedures.

6 “(f) An aggrieved employee affected by a prohibited
7 personnel practice under section 2302 (b) (1) of this title
8 which also falls under the coverage of the negotiated griev-
9 ance procedure may raise the matter under a statutory proce-
10 dure or the negotiated procedure, but not both. Selection of
11 the negotiated procedure in no manner prejudices the right
12 of an aggrieved employee to request the Equal Employment
13 Opportunity Commission to review a final decision in the
14 same manner as provided for in section 3 of Reorganization
15 Plan Numbered 1 of 1978; or, where applicable, to request
16 review by the Equal Employment Opportunity Commission
17 pursuant to its regulations.

18 “(g) Questions that cannot be resolved by the parties
19 as to whether or not a grievance is on a matter excepted by
20 subsection (d) of this section shall be referred for resolution
21 to the agency responsible for final decisions relating to those
22 matters.

23 “(h) In matters covered under sections 4303 and
24 7512 of this title which have been raised under the negotiated

1 grievance procedure in accordance with the provisions of sub-
2 section (e) of this section, an arbitrator shall be governed by
3 the provisions of section 7701 (c) of this title.

4 “ (i) Allocation of the costs of the arbitration shall be
5 governed by the collective-bargaining agreement. An arbi-
6 trator shall have no authority to award attorney or other
7 representative fees.

8 “ (j) Either party may file exceptions to any arbitra-
9 tor’s award with the Federal Labor Relations Authority:
10 *Provided, however,* That no exceptions may be filed to awards
11 concerning matters covered under subsection (e) of this sec-
12 tion. Decisions of the Authority on exceptions to arbitration
13 awards shall be final, except for the right of an aggrieved
14 employee under subsection (f) of this section.

15 “ (k) In matters covered under sections 4303 and 7512
16 of this title which have been raised under the provisions of
17 the negotiated grievance procedure in accordance with the
18 provisions of subsection (e) of this section, the provisions of
19 section 7702 of this title pertaining to judicial review shall
20 apply to the award of an arbitrator in the same manner and
21 under the same conditions as if the matter had been decided
22 by the Merit Systems Protection Board. In such cases the
23 word “arbitrator” shall replace the words “Merit Systems
24 Protection Board” and “Board” where appropriate in section

1. 7702 for purposes of applying its provisions. In matters simi-
2 lar to those covered under sections 4303 and 7512 which
3 arise under other personnel systems and which an aggrieved
4 employee has raised under the negotiated grievance pro-
5 cedure, judicial review of an arbitrator's award may be ob-
6 tained in the same manner and on the same basis as could
7 be obtained of a final decision in such matters raised under
8 applicable appellate procedures.

9 “§ 7172. Approval of agreements

10 “An agreement with a labor organization as the exclu-
11 sive representative of employees in a unit is subject to the
12 approval of the head of the agency or an official designated
13 by the head of the agency. An agreement shall be approved
14 within 45 days from the date of its execution if it conforms
15 to this subchapter and other applicable laws, existing pub-
16 lished agency policies and regulations (unless the agency
17 has granted an exception to a policy or regulation) and
18 regulations of other appropriate authorities. An agreement
19 which has not been approved or disapproved within 45 days
20 from the date of its execution shall go into effect without
21 the required approval of the agency head and shall be
22 binding on the parties subject to the provisions of this sub-
23 chapter and other applicable laws, and the regulations of
24 appropriate authorities outside the agency. A local agree-
25 ment subject to a national or other controlling agreement at

1 a higher level shall be approved under the procedures of the
2 controlling agreement, or, if none, under agency regulations.

3 “§ 7173. **Negotiation impasses; Federal Service Impasses**
4 **Panel**

5 “(a) Upon request, the Federal Mediation and Con-
6 ciliation Service shall provide services and assistance to
7 agencies and labor organizations in the resolution of nego-
8 tiation impasses.

9 “(b) When voluntary arrangements including the
10 services of the Federal Mediation and Conciliation Service
11 or other third-party mediation fail to resolve a negotiation
12 impasse, either party may request the Federal Service Im-
13 passes Panel provided for under subsection (c) of this section
14 to consider the matter.

15 “(c) There is a Federal Service Impasses Panel as
16 a distinct organizational entity within the Authority. The
17 Panel is composed of a Chairperson and at least two other
18 members, appointed by the President solely on the basis of
19 fitness to perform the duties and functions of the office from
20 among individuals who are familiar with Government opera-
21 tions and knowledgeable in labor-management relations. No
22 employee as defined under section 2105 of this title shall
23 be appointed to serve as a member of the Panel.

24 “(d) The members of the Panel (in equal numbers)
25 shall be appointed for respective terms of 1 year and of 3

1 years, and the Chairperson for a term of 5 years. Their
2 successors shall be appointed for terms of 5 years, except
3 that an individual chosen to fill a vacancy shall be appointed
4 for the unexpired term of the member whom such individual
5 shall replace. Any member of the Panel may be removed
6 by the President.

7 ““(e) The Panel may appoint an executive secretary
8 and such other employees as it may from time to time find
9 necessary for the proper performance of its duties. Each
10 member of the Panel is entitled to pay at a rate equal to
11 the daily equivalent of the maximum annual rate of basic
12 pay currently paid, from time to time, under the General
13 Schedule for each day the member is engaged in the per-
14 formance of official business on the work of the Panel, includ-
15 ing traveltime, and is entitled to travel expenses and a per
16 diem allowance under section 5703 of this title.

17 ““(f) The Panel or its designee shall promptly inves-
18 tigate any impasse presented to it under subsection (b) of
19 this section. The Panel shall consider the matter and shall
20 either recommend procedures to the parties for the reso-
21 lution of the impasse or assist the parties in arriving at a
22 settlement through whatever methods and procedures, includ-
23 ing factfinding and recommendations, it may deem appro-
24 priate to accomplish the purposes of this section. Arbitration
25 or third-party factfinding with recommendations to assist in

1 the resolution of an impasse may be used by the parties only
 2 when authorized or directed by the Panel. If the parties do
 3 not arrive at a settlement, the Panel may hold hearings,
 4 compel under section 7179 of this subchapter the attendance
 5 of witnesses and the production of documents, and take what-
 6 ever action is necessary and not inconsistent with this
 7 subchapter to resolve the impasse. Notice of any final action
 8 of the Panel shall be promptly served upon the parties, and
 9 such action shall be binding upon them during the term of
 10 the agreement unless the parties mutually agree otherwise.

11 “§ 7174. Unfair labor practices

12 “(a) It shall be an unfair labor practice for an
 13 agency—

14 “(1) to interfere with, restrain, or coerce an em-
 15 ployee in the exercise of rights assured by this sub-
 16 chapter;

17 “(2) to encourage or discourage membership in
 18 any labor organization by discrimination in regard to
 19 hiring, tenure, promotion, or other conditions of employ-
 20 ment;

21 “(3) to sponsor, control, or otherwise assist any
 22 labor organization, except that the agency may furnish
 23 to a labor organization customary and routine services
 24 and facilities when consistent with the best interest of
 25 the agency, its employees, and the organization and

1 when the services and facilities are furnished, if
2 requested, on an impartial basis to organizations having
3 equivalent status;

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

8 “ (5) to refuse to accord appropriate recognition
9 to a labor organization qualified for such recognition; or

10 “ (6) to refuse to consult or negotiate in good
11 faith with a labor organization as required by this
12 subchapter.

13 “ (b) It shall be an unfair labor practice for a labor
14 organization—

15 “ (1) to interfere with, restrain, or coerce an
16 employee in the exercise of the rights assured by this
17 subchapter;

18 “ (2) to cause or attempt to cause an agency to
19 coerce an employee in the exercise of rights under this
20 subchapter;

21 “ (3) to coerce or attempt to coerce an employee or
22 to discipline, fine, or take other economic sanction
23 against a member of the labor organization as punish-
24 ment or reprisal or for the purpose of hindering or im-

1 peding work performance, productivity, or the discharge
2 of duties owed as an employee of the United States;

3 “(4) to call or engage in a strike, work stoppage,
4 or slowdown; picket an agency in a labor-management
5 dispute when such picketing interferes or reasonably
6 threatens to interfere with an agency’s operations; or
7 condone any such activity by failing to take affirmative
8 action to prevent or stop it;

9 “(5) to discriminate against an employee with re-
10 gard to the terms or conditions of membership because
11 of race, color, religion, national origin, sex, age, or
12 handicapping condition; or

13 “(6) to refuse to consult, or negotiate in good
14 faith with an agency as required by this subchapter.

15 “(c) It shall be an unfair labor practice for a labor
16 organization which is accorded exclusive recognition to deny
17 membership to an employee in the appropriate unit except
18 for failure to meet reasonable occupational standards uni-
19 formly required for admission, or for failure to tender initia-
20 tion fees and dues uniformly required as a condition of acquir-
21 ing and retaining membership. This subsection does not pre-
22 clude a labor organization from enforcing discipline in ac-
23 cordance with procedures under its constitution or bylaws
24 which conform to the requirements of this subchapter.

1 “(d) Issues which can properly be raised under an
2 appeals procedure may not be raised under this section.
3 Except for matters wherein, under section 7171 (e) of this
4 title, an employee has an option of using either the appel-
5 late procedures of section 7701 of this title or the negotiated
6 grievance procedure, issues which can be raised under a
7 grievance procedure may, in the discretion of the aggrieved
8 party, be raised under that procedure or the complaint pro-
9 cedure under this section, but not under both procedures.
10 Appeals or grievance decisions shall not be construed as
11 unfair labor practice decisions under this subchapter nor as
12 a precedent for such decisions. All complaints under this
13 section that cannot be resolved by the parties shall be filed
14 with the Authority.

15 “(e) Questions as to whether an issue can properly
16 be raised under an appeals procedure shall be referred for
17 resolution to the agency responsible for final decisions
18 relating to those issues.

19 “§ 7175. Standards of conduct for labor organizations

20 “(a) An agency shall accord recognition only to a
21 labor organization that is free from corrupt influences and
22 influences opposed to basic democratic principles. Except as
23 provided in subsection (b) of this section, an organization
24 is not required to prove that it has the required freedom when
25 it is subject to governing requirements adopted by the orga-

1 nization or by a national or international labor organization
2 or federation of labor organizations with which it is affiliated
3 or in which it participates, containing explicit and detailed
4 provisions to which it subscribes calling for—

5 “(1) the maintenance of democratic procedures
6 and practices, including provisions for periodic elections
7 to be conducted subject to recognized safeguards and pro-
8 visions defining and securing the right of individual
9 members to participation in the affairs of the organiza-
10 tion, to fair and equal treatment under the governing
11 rules of the organization, and to fair process in disci-
12 plinary proceedings;

13 “(2) the exclusion from office in the organization
14 of persons affiliated with communist or other totalitarian
15 movements and persons identified with corrupt influ-
16 ences;

17 “(3) the prohibition of business or financial inter-
18 ests on the part of organization officers and agents which
19 conflict with their duty to the organization and its mem-
20 bers; and

21 “(4) the maintenance of fiscal integrity in the
22 conduct of the affairs of the organization, including pro-
23 vision for accounting and financial controls and regular
24 financial reports or summaries to be made available to
25 members.

1 “(b) Notwithstanding the fact that a labor organiza-
2 tion has adopted or subscribed to standards of conduct as
3 provided in subsection (a) of this section, the organization
4 is required to furnish evidence of its freedom from corrupt
5 influences or influences opposed to basic democratic prin-
6 ciples when there is reasonable cause to believe that—

7 “(1) the organization has been suspended or ex-
8 pelled from or is subject to other sanction by a parent
9 labor organization or federation of organizations with
10 which it had been affiliated because it has demonstrated
11 an unwillingness or inability to comply with governing
12 requirements comparable in purpose to those required
13 by subsection (a) of this section; or

14 “(2) the organization is in fact subject to influ-
15 ences that would preclude recognition under this sub-
16 chapter.

17 “(c) A labor organization which has or seeks recog-
18 nition as a representative of employees under this subchap-
19 ter shall file financial and other reports with the Assistant
20 Secretary, provide for bonding of officials and employees
21 of the organization, and comply with trusteeship and election
22 standards.

23 “(d) The Assistant Secretary shall prescribe the regu-
24 lations needed to effectuate this section. These regulations
25 shall conform generally to the principles applied to unions

1 in the private sector. Complaints of violations of this section
2 shall be filed with the Assistant Secretary. In any matters
3 arising under this section, the Assistant Secretary may re-
4 quire a labor organization to cease and desist from viola-
5 tions of this section and require it to take such affirmative
6 action as he considers appropriate to effectuate the policies
7 herein.

8 “§ 7176. Allotments to representatives

9 “(a) Where, pursuant to an agreement negotiated in
10 accordance with the provisions of this subchapter, an agency
11 has received from an employee in a unit of exclusive recog-
12 nition a written assignment which authorizes the agency to
13 deduct from the wages of such employee amounts for the
14 payment of regular and periodic dues of the labor organi-
15 zation having exclusive recognition for such unit, such assign-
16 ment shall be honored. Except as required under subsection
17 (b) of this section, any such assignment shall be revocable
18 at stated intervals of not more than 6 months.

19 “(b) An allotment for the deduction of labor orga-
20 nization dues terminates when—

21 “(1) the dues withholding agreement between the
22 agency and the labor organization is terminated or ceases
23 to be applicable to the employee; or

24 “(2) the employee has been suspended or ex-
25 pelled from the labor organization.

1 “§ 7177. Use of official time

2 “Solicitation of membership or dues, and other internal
3 business of a labor organization, shall be conducted during
4 the non-duty hours of the employees concerned. Employees
5 who represent a recognized labor organization shall not be
6 on official time when negotiating an agreement with agency
7 management, except to the extent that the negotiating parties
8 agree to other arrangements which may provide that the
9 agency will either authorize official time for up to 40 hours
10 or authorize up to one-half the time spent in negotiations
11 during regular working hours, for a reasonable number of
12 employees, which number normally shall not exceed the
13 number of management representatives.

14 “§ 7178. Remedial actions

15 “When it is determined by appropriate authority,
16 including an arbitrator, that certain affirmative action will
17 effectuate and further the policies of this subchapter, such
18 affirmative action may be directed by the appropriate author-
19 ity so long as such action is consistent with statute including
20 section 5596 of this title.

21 “§ 7179. Subpenas

22 “(a) Any member of the Federal Labor Relations Au-
23 thority, including the General Counsel, or the Panel, and any
24 employee of the Authority designated by the Authority
25 may—

1 “(1) issue subpoenas requiring the attendance and
2 testimony of witnesses and the production of docu-
3 mentary or other evidence from any place in the United
4 States or any territory or possession thereof, the Com-
5 monwealth of Puerto Rico, or the District of Columbia:
6 *Provided, however,* That no subpoena shall issue under
7 this section requiring the disclosure of intramanage-
8 ment guidance, advice, counsel, or training within an
9 agency or between an agency and the Office of Personnel
10 Management; and

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

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

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

1 **“§ 7180. Issuance of regulations**

2 “The Authority, including the General Counsel, and
3 the Panel and the Federal Mediation and Conciliation Serv-
4 ice shall each prescribe rules and regulations to carry out
5 the provisions of this subchapter applicable to each of them,
6 respectively. Unless otherwise specifically provided in this
7 subchapter, the provisions of subchapter II of chapter 5 of
8 this title shall be applicable to the issuance, revision, or
9 repeal of any such rule or regulation.

10 **“§ 7181. Compilation and publication of proceedings, deci-**
11 **sions, actions**

12 “(a) The Authority shall maintain a file of its pro-
13 ceedings and shall publish the texts of its decisions and the
14 actions taken by the Panel under section 7173 of this
15 subchapter.

16 “(b) All files maintained under subsection (a) of
17 this section shall be open to inspection and reproduction
18 subject to the provisions of section 552 of this title.

19 **“§ 7182. Continuation of existing laws, recognitions,**
20 **agreements, policies, regulations, procedures,**
21 **and decisions**

22 “(a) Nothing contained in this subchapter shall pre-
23 clude—

24 “(1) the renewal or continuation of an exclusive
25 recognition, certification of a representative, or a lawful

1 agreement between an agency and a representative of
2 its employees entered into before the effective date of
3 this subchapter; or

4 “ (2) the renewal, continuation, or initial accord-
5 ing of recognition for units of management officials or
6 supervisors represented by labor organizations which
7 historically or traditionally represent management offi-
8 cials or supervisors in private industry and which hold
9 exclusive recognition for units of such officials or super-
10 visors in any agency on the effective date of this sub-
11 chapter.

12 “ (b) Policies, regulations, and procedures established,
13 and decisions issued, under Executive Order 11491, as
14 amended, or under the provision of any related Executive
15 order in effect on the effective date of this statute shall re-
16 main in full force and effect until revised or revoked by
17 Executive order or statute, or unless superseded by appro-
18 priate decision or regulation of the Authority’.

19 “ (b) CONTINUANCE OF TERMS OF OFFICE.—Any term
20 of office of any member of the Federal Labor Relations
21 Authority and the General Counsel of the Federal Labor
22 Relations Authority serving on the effective date of this act
23 shall continue in effect until such time as such term would
24 expire under Reorganization Plan Numbered 2 of 1978, and
25 upon expiration of such term, appointments to such office

1 shall be made under section 7163 of title 5, United States
 2 Code. Any term of office of any member of the Federal Serv-
 3 ice Impasses Panel serving on the effective date of this Act
 4 shall continue in effect until such time as members of the
 5 Panel are appointed pursuant to section 7173 of title 5,
 6 United States Code.

7 “(c) FUNDING.—There are hereby authorized to be
 8 appropriated such sums as are necessary to carry out the
 9 functions and purposes of this subchapter.

10 “(d) SEVERABILITY.—If any provisions of this sub-
 11 chapter, or the application of such provision to any person
 12 or circumstance, shall be held invalid, the remainder of this
 13 subchapter or the application of such provision to persons or
 14 circumstances other than those as to which it is held invalid,
 15 shall not be affected thereby.

16 “(e) The analysis of chapter 71 of subpart F of part III
 17 of title 5, United States Code, is amended to add the follow-
 18 ing subchapter III:

“SUBCHAPTER III—FEDERAL SERVICE LABOR-
 MANAGEMENT RELATIONS

“Sec.

“7161. Findings and purpose.

“7162. Definitions; application.

“7163. Federal Labor Relations Authority; Office of the General Counsel.

“7164. Powers and duties of the Authority; the General Counsel.

“7165. Employees' rights.

“7166. Recognition of labor organizations in general.

“7167. National consultation rights.

“7168. Exclusive recognition.

“7169. Representation rights and duties; good faith bargaining; scope of
 negotiations; resolution of negotiability disputes.

“7170. Basic provisions of agreements.

“Sec.

“7171. Grievance procedure.

“7172. Approval of agreements.

“7173. Negotiation impasses; Federal Service Impasses Panel.

“7174. Unfair labor practices.

“7175. Standards of conduct for labor organizations.

“7176. Allotments to representatives.

“7177. Use of official time.

“7178. Remedial actions.

“7179. Subpenas.

“7180. Issuance of regulations.

“7181. Compilation and publication of proceedings, decisions, actions.

“7182. Continuation of existing laws, recognitions, agreements, policies, regulations, procedures, and decisions.’

1 “(f) Section 5314 of title 5, United States Code, is
2 amended by adding at the end thereof:

3 “ ‘(66) Chairperson, Federal Labor Relations Au-
4 thority.’

5 “(g) Section 5315 of title 5, United States Code, is
6 amended by adding at the end thereof:

7 “ ‘(114) Members (2), Federal Labor Relations
8 Authority.’

9 “(h) Section 5316 of title 5, United States Code, is
10 amended by adding at the end thereof:

11 “ ‘(141) General Counsel, Federal Labor Relations
12 Authority.’

13 “REMEDIAL AUTHORITY

14 “SEC. 702. Section 5596 of title 5, United States Code,
15 is amended to read after subsection (a) as follows:

16 “ ‘(b) An employee of an agency who, on the basis of an
17 administrative determination or a timely appeal, is found by
18 appropriate authority to have suffered a withdrawal, reduc-

1 tion, or denial of all or part of the employee's pay, allowances,
2 differentials, or other monetary or employment benefits, or a
3 denial of an increase in such pay, allowances, differentials, or
4 other monetary or employment benefits, which would not have
5 occurred but for unjustified or unwarranted action taken by the
6 agency—

7 “(1) is entitled, on correction of the action, to be
8 made whole for all losses suffered less, in applicable cir-
9 cumstances, interim earnings. Such correction may in-
10 clude, where appropriate, reinstatement or restoration to
11 the same or substantially similar position or promotion to
12 a higher level position; and

13 “(2) for all purposes, is deemed to have performed
14 service for the agency during the period of the unjustified
15 or unwarranted action except that—

16 “(A) annual leave restored under this para-
17 graph which is in excess of the maximum leave
18 accumulation permitted by law shall be credited to
19 a separate leave account for the employee and shall
20 be available for use by the employee within the time
21 limits prescribed by regulations of the Office of
22 Personnel Management, and

23 “(B) annual leave credited under subpara-
24 graph (A) of this paragraph but unused and still
25 available to the employee under regulations pre-

1 scribed by the Office of Personnel Management shall
2 be included in the lump-sum payment under section
3 5551 or 5552 (1) of this title but may not be re-
4 tained to the credit of the employee under section
5 5552 (2) of this title.

6 “ (c) For the purposes of this section—

7 “ (1) An “unjustified or unwarranted action” shall
8 include—

9 “ (A) any act of commission, either substan-
10 tive or procedural, which violates or improperly
11 applies a provision of law, Executive order, regu-
12 lation, or collective bargaining agreement; and

13 “ (B) any act of omission, or failure to take
14 an action, or confer a benefit, which must be taken
15 or conferred under a nondiscretionary provision of
16 law, Executive order, regulation, or collective bar-
17 gaining agreement;

18 “ (2) An “administrative determination” shall in-
19 clude, but is not limited to, a decision, award, or order,
20 issued by—

21 “ (A) a court having jurisdiction over the
22 matter involved;

23 “ (B) the Office of Personnel Management;

24 “ (C) the Merit Systems Protection Board;

1 “(D) the Federal Labor Relations Au-
2 thority;

3 “(E) the Comptroller General of the United
4 States;

5 “(F) the head of the employing agency or an
6 agency official to whom corrective action authority is
7 delegated;

8 “(G) an arbitrator under a negotiated bind-
9 ing arbitration agreement between a labor organi-
10 zation and agency management.

11 “(3) An “appropriate authority” shall include,
12 but is not limited to—

13 “(A) a court having jurisdiction;

14 “(B) the Office of Personnel Management;

15 “(C) the Merit Systems Protection Board;

16 “(D) the Federal Labor Relations Authority;

17 “(E) the Comptroller General of the United
18 States;

19 “(F) the head of the employing agency or
20 an agency official to whom corrective action author-
21 ity is delegated;

22 “(G) an arbitrator under a negotiated bind-
23 ing arbitration agreement between a labor organi-
24 zation and agency management.

25 “(d) The provisions of this section shall not apply to

1 reclassification actions nor shall they authorize the setting
2 aside of an otherwise proper promotion action by a selecting
3 official from a group of properly ranked and certified candi-
4 dates.

5 “ (e) The Office of Personnel Management shall pre-
6 scribe regulations to carry out this section. However, the
7 regulations are not applicable to the Tennessee Valley Au-
8 thority and its employees.’ ”.

9 On page 126, line 19, strike out “VII” and insert in lieu
10 thereof “VIII”.

11 On page 126, line 21, strike out “701” and insert in lieu
12 thereof “801”.

13 On page 127, line 18, strike out “702” and insert in lieu
14 thereof “802”.

15 On page 127, line 24, strike out “703” and insert in lieu
16 thereof “803”.

17 On page 128, line 7, strike out “704” and insert in lieu
18 thereof “804”.

19 On page 128, line 19, strike out “705” and insert in lieu
20 thereof “805”.

Calendar No. 900

95TH CONGRESS
2^D SESSION**S. 2640**

[Report No. 95-969]

IN THE SENATE OF THE UNITED STATES

MARCH 3 (legislative day, FEBRUARY 6), 1978

Mr. RIBICOFF (for himself, Mr. PERCY, Mr. SASSER, Mr. JAVITS, Mr. CHILES, Mr. EAGLETON, Mr. GLENN, Mrs. HUMPHREY, Mr. JACKSON, Mr. MUSKIE, and Mr. NUNN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

JULY 10 (legislative day, MAY 17), 1978

Reported by Mr. RIBICOFF, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To reform the civil service laws.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 ~~SHORT TITLE~~

4 ~~SECTION 1. This Act may be cited as the "Civil Service~~
5 ~~Reform Act of 1978".~~

6 ~~SEC. 2. The table of contents is as follows:~~

~~TABLE OF CONTENTS~~~~Sec. 1. Short title.~~~~Sec. 2. Table of contents.~~~~Sec. 3. Findings and statement of purpose.~~~~TITLE I—MERIT SYSTEM PRINCIPLES~~~~Sec. 101. Merit system principles, prohibited personnel practices.~~

TABLE OF CONTENTS—Continued

TITLE VII—LABOR-MANAGEMENT RELATIONS

Sec. 701. Labor-management relations.

Sec. 702. Remedial authority.

TITLE VIII—MISCELLANEOUS

Sec. 801. Savings provisions.

Sec. 802. Authorization of appropriations.

Sec. 803. Powers of President unaffected except by express provisions.

Sec. 804. Technical and conforming amendments.

Sec. 805. Effective dates.

FINDINGS AND STATEMENT OF PURPOSE

SEC. 3. It is the policy of the United States that—

(1) in order to provide the people of the United States with a competent, honest, and productive Federal work force reflective of the Nation's diversity, and to improve the quality of public service, Federal personnel management should be implemented consistent with merit system principles and free from prohibited personnel practices;

(2) the merit system principles which shall govern in the competitive service and in the executive branch of the Federal Government should be expressly stated to furnish guidance to Federal agencies in carrying out their responsibilities in administering the public business and prohibited personnel practices should be statutorily defined to enable Government officers and employees to avoid conduct which undermines the merit system principles and the integrity of the merit system;

(3) Federal employees should receive appropriate

1 *protection through increasing the authority and powers*
2 *of the independent Merit Systems Protection Board in*
3 *processing hearings and appeals affecting Federal*
4 *employees;*

5 *(4) the authority and power of the independent*
6 *Special Counsel should be increased so that the Special*
7 *Counsel may investigate allegations involving prohibited*
8 *personnel practices, protect Federal employees from re-*
9 *prisals for the lawful disclosure of information and from*
10 *political coercion, and bring complaints and disciplinary*
11 *charges against agencies and employees that engage in*
12 *prohibited personnel practices;*

13 *(5) the function of filling positions and other per-*
14 *sonnel functions in the competitive service and in the*
15 *executive branch should be delegated in appropriate*
16 *cases to the agencies to expedite processing appoint-*
17 *ments and other personnel actions, with the control and*
18 *oversight of this delegation being maintained by the*
19 *Office of Personnel Management to protect against pro-*
20 *hibited personnel practices and the use of unsound man-*
21 *agement practices by the agencies;*

22 *(6) a Senior Executive Service should be estab-*
23 *lished to provide the flexibility needed by Executive*
24 *agencies to recruit and retain the highly competent and*

1 *qualified executives needed to provide more effective*
2 *management of Executive agencies and their functions,*
3 *and the more expeditious administration of the public*
4 *business;*

5 *(7) in appropriate instances, pay increases should*
6 *be based on quality of performance rather than length*
7 *of service;*

8 *(8) a research and demonstration program should*
9 *be authorized to permit Federal agencies to experiment*
10 *with new and different personnel management concepts*
11 *in controlled situations to achieve more efficient manage-*
12 *ment of the Government's human resources and greater*
13 *productivity in the delivery of service to the public;*

14 *(9) the training program of the Government should*
15 *include retraining of employees for positions in other*
16 *agencies to avoid separations during reductions in force*
17 *and the loss to the Government of the knowledge and*
18 *experience that these employees possess, and to maintain*
19 *the morale and productivity of employees; and*

20 *(10) the right of Federal employees to organize,*
21 *bargain collectively, and participate through labor orga-*
22 *nizations in decisions which affect them, with full regard*
23 *for the public interest and the effective conduct of public*
24 *business, should be specifically recognized in statute.*

1 (2) in subsection (c)(1), by striking out the semi-
2 colon at the end thereof and by inserting in lieu thereof
3 the following: “, except to the extent that the compen-
4 sation received from the State or local government is
5 less than the appropriate rate of pay which the duties
6 would warrant under the applicable pay provisions of
7 this title or other applicable authority;” ; and

8 (3) by striking out the period at the end of sub-
9 section (c) and adding the following: “, or for the
10 contribution of the State or local government, or a part
11 thereof, to employee benefit systems.”.

12 (f) Section 3375(a) of title 5, United States Code, is
13 amended by striking out “and” at the end of paragraph (4),
14 by redesignating paragraph (5) as paragraph (6), and by
15 inserting after paragraph (4) thereof the following:

16 “(5) section 5724a(b) of this title, to be used by
17 the employee for miscellaneous expenses related to
18 change of station where movement or storage of house-
19 hold goods is involved; and”.

20 TITLE VII—LABOR-MANAGEMENT RELATIONS

21 LABOR-MANAGEMENT RELATIONS

22 SEC. 701. (a) Subpart F of part III of title 5, United
23 States Code, is amended by adding after chapter 71 the follow-
24 ing new chapter:

1 “CHAPTER 72—FEDERAL SERVICE LABOR-
2 MANAGEMENT RELATIONS

 “SUBCHAPTER I—GENERAL PROVISIONS

“Sec.

“7201. *Findings and purpose.*

“7202. *Definitions; application.*

“7203. *Federal Labor Relations Authority; General Counsel.*

“7204. *Powers and duties of the Authority and of the General Counsel.*

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

“7211. *Employees rights.*

“7212. *Recognition of labor organizations.*

“7213. *National consultation rights.*

“7214. *Exclusive recognition.*

“7215. *Representation rights and duties.*

“7216. *Unfair labor practices.*

“7217. *Standards of conduct for labor organizations.*

“7218. *Agreement requirements.*

“7219. *Approval of agreements.*

“SUBCHAPTER III—GRIEVANCES AND IMPASSES

“7221. *Grievance procedures.*

“7222. *Federal Service Impasses Panel; negotiation impasses.*

“SUBCHAPTER IV—ADMINISTRATIVE AND OTHER
 PROVISIONS

“7231. *Allotments to representatives.*

“7232. *Use of official time.*

“7233. *Remedial action.*

“7234. *Subpenas.*

“7235. *Regulations.*

3 “SUBCHAPTER I—GENERAL PROVISIONS

4 “§ 7201. *Findings and purpose*

5 “(a) *The Congress finds that the public interest de-*
6 *mands the highest standards of employee performance and*
7 *the continued development and implementation of modern*
8 *and progressive work practices to facilitate and improve*
9 *employee performance and the efficient accomplishment of*
10 *the operations of the Government.*

1 “(b) *The Congress also finds that, while significant*
2 *differences exist between Federal and private employment,*
3 *experience under Executive Order Numbered 11491 indicates*
4 *that the statutory protection of the right of employees to or-*
5 *ganize, to bargain collectively within prescribed limits, and*
6 *to participate through labor organizations of their own*
7 *choosing in decisions which affect them—*

8 “(1) *may be accomplished with full regard for the*
9 *public interest,*

10 “(2) *contributes to the effective conduct of public*
11 *business, and*

12 “(3) *facilitates and encourages the amicable settle-*
13 *ment between employees and their employers of disputes*
14 *involving personnel policies and practices and matters*
15 *affecting working conditions.*

16 “(c) *It is the purpose of this chapter to prescribe cer-*
17 *tain rights and obligations of the employees of the Federal*
18 *government subject to the paramount interest of the public*
19 *and to establish procedures which are designed to meet the*
20 *special requirements and needs of the Federal government*
21 *in matters relating to labor-management relations.*

22 “§ 7202. *Definitions; application*

23 “(a) *For purposes of this chapter—*

24 “(1) *‘agency’ means an Executive agency other*
25 *than the General Accounting Office;*

1 “(2) ‘employee’ means an individual who—

2 “(A) is employed in an agency;

3 “(B) is employed in a nonappropriated fund
4 instrumentality described in section 2105(c) of this
5 title;

6 “(C) is employed in the Veterans’ Canteen
7 Service, Veterans’ Administration, and who is de-
8 scribed in section 5102(c)(14) of this title; or

9 “(D) is an employee (within the meaning of
10 subparagraph (A), (B), or (C)) who was sepa-
11 rated from the service as a consequence of, or in con-
12 nection with, an unfair labor practice described in
13 section 7216 of this title;

14 but does not include—

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

17 “(ii) a member of the uniformed services (with-
18 in the meaning of section 2101(3) of this title);

19 “(iii) for purposes of exclusive recognition or
20 national consultation rights unless authorized under
21 the provisions of this chapter, a supervisor, a man-
22 agement official, or a confidential employee;

23 “(3) ‘labor organization’ means any lawful organi-
24 zation of employees which was established for the
25 purpose, in whole or in part, of dealing with agencies

1 *in matters relating to grievances and personnel policies*
2 *and practices or in other matters affecting the working*
3 *conditions of the employees, but does not include an or-*
4 *ganization which—*

5 *“(A) except as authorized under this chapter,*
6 *consists of, or includes, management officials, con-*
7 *fidential employees, or supervisors;*

8 *“(B) assists, or participates, in the conduct of a*
9 *strike against the Government of the United States*
10 *or any agency thereof or imposes a duty or obligation*
11 *to conduct, assist, or participate in such a strike;*

12 *“(C) advocates the overthrow of the constitu-*
13 *tional form of government of the United States; or*

14 *“(D) discriminates with regard to the terms or*
15 *conditions of membership because of race, color,*
16 *religion, national origin, sex, age, or handicapping*
17 *condition;*

18 *“(4) ‘agency management’ means the agency head*
19 *and all management officials, supervisors, and other rep-*
20 *resentatives of management having authority to act for*
21 *the agency on any matters relating to the implementation*
22 *of the agency labor-management relations program estab-*
23 *lished under this chapter;*

24 *“(5) ‘Authority’ means the Federal Labor Relations*
25 *Authority established under section 7203 of this title;*

1 “(6) ‘General Counsel’ means the General Counsel
2 of the Federal Labor Relations Authority;

3 “(7) ‘Panel’ means the Federal Service Impasses
4 Panel established under section 7222 of this title;

5 “(8) ‘Assistant Secretary’ means the Assistant Sec-
6 retary of Labor for Labor-Management Relations;

7 “(9) ‘confidential employee’ means an employee who
8 assists, and acts in a confidential capacity to, individuals
9 who formulate and carry out management policies in the
10 field of labor relations;

11 “(10) ‘management official’ means an employee
12 having authority to make, or to influence effectively the
13 making of, policy with respect to personnel procedures
14 or programs which is necessary to an agency or an
15 activity;

16 “(11) ‘supervisor’ means an employee having au-
17 thority, in the interest of an agency, to hire, transfer,
18 suspend, lay off, recall, promote, discharge, assign, re-
19 ward, or discipline other employees or responsibly to di-
20 rect them, or to adjust their grievances, or effectively to
21 recommend such action, if in connection with the fore-
22 going the exercise of authority is not of a merely routine
23 or clerical nature, but requires the use of independent
24 judgment;

1 “(12) ‘professional employee’ means—

2 “(A) any employee engaged in the perform-
3 ance of work—

4 “(i) requiring knowledge of an advanced
5 type in a field of science or learning customarily
6 acquired by a prolonged course of specialized
7 intellectual instruction and study in an institu-
8 tion of higher learning or in a hospital, as
9 distinguished from work requiring knowledge
10 acquired from a general academic education,
11 an apprenticeship, or training in the perform-
12 ance of routine mental, manual, or physical
13 processes;

14 “(ii) requiring the consistent exercise of dis-
15 cretion and judgment in its performance;

16 “(iii) which is predominantly intellectual
17 and varied in character and not routine mental,
18 manual, mechanical or physical work; and

19 “(iv) which is of such a character that the
20 measurement of the output produced, or of the
21 result accomplished, cannot be standardized by
22 relating it to a given period of time; or

23 “(B) any employee who has completed the
24 courses of specialized intellectual instruction and
25 study described in subparagraph (A) and who is

1 *performing related work under the direction or*
2 *guidance of a professional employee to qualify the*
3 *employee to become a professional employee.*

4 “(13) ‘agreement’ means an agreement entered into
5 as a result of collective bargaining pursuant to the pro-
6 visions of this chapter;

7 “(14) ‘collective bargaining’, ‘bargaining’, or ‘ne-
8 gotiating’ means the performance of the mutual obliga-
9 tion of the representatives of the agency and the exclusive
10 representative as provided in section 7215 of this title;

11 “(15) ‘exclusive representative’ includes any labor
12 organization which has been—

13 “(A) selected pursuant to the provisions of
14 section 7214 of this title as the representative of
15 the employees in an appropriate collective bargain-
16 ing unit; or

17 “(B) certified or recognized prior to the effec-
18 tive date of this chapter as the exclusive representa-
19 tive of the employees in an appropriate collective
20 bargaining unit;

21 “(16) ‘person’ means an individual, labor organi-
22 zation, or agency covered by this chapter; and

23 “(17) ‘grievance’ means any complaint by any
24 person concerning any matter which falls within the
25 coverage of a grievance procedure.

1 “(b) *Except as provided in subsections (c), (d), and*
2 *(e) of this section, this chapter applies to all employees of*
3 *an agency.*

4 “(c) *This chapter shall not apply to—*

5 “(1) *the Federal Bureau of Investigation;*

6 “(2) *the Central Intelligence Agency;*

7 “(3) *the National Security Agency;*

8 “(4) *any agency not described in paragraph (1),*
9 *(2), or (3), or any unit within any agency, which has*
10 *as a primary function intelligence, investigative, or na-*
11 *tional security work, if the head of the agency determines,*
12 *in the agency head's sole judgment, that this chapter can-*
13 *not be applied in a manner consistent with national se-*
14 *curity requirements and considerations;*

15 “(5) *any unit of an agency which has as a primary*
16 *function investigation or audit of the conduct or work*
17 *of officers or employees of the agency for the purpose of*
18 *insuring honesty and integrity in the discharge of official*
19 *duties, if the head of the agency determines, in the agency*
20 *head's sole judgment, that this chapter cannot be applied*
21 *in a manner consistent with the internal security of the*
22 *agency;*

23 “(6) *the United States Postal Service;*

24 “(7) *the Foreign Service of the United States;*

25 “(8) *the Tennessee Valley Authority; or*

1 “(9) officers and employees of the Federal Labor
2 *Relations Authority, including the Office of General*
3 *Counsel and the Federal Service Impasses Panel.*

4 “(d) *The head of an agency may, in the agency*
5 *head’s sole judgment and subject to such conditions as he may*
6 *prescribe, suspend any provision of this chapter with respect*
7 *to any agency, installation, or activity located outside the*
8 *United States if the agency head determines that such suspen-*
9 *sion is necessary for the national interest.*

10 “(e) *Employees engaged in administering a labor-man-*
11 *agement relations law who are otherwise authorized by this*
12 *chapter to be represented by a labor organization shall not*
13 *be represented by a labor organization which also represents*
14 *other employees covered by such law or which is affiliated*
15 *directly or indirectly with an organization which represents*
16 *such employees.*

17 “§ 7203. *Federal Labor Relations Authority; Office of Gen-*
18 *eral Counsel*

19 “(a) *There is established, as an independent establish-*
20 *ment of the executive branch of the Government, the Federal*
21 *Labor Relations Authority.*

22 “(b) *The Authority shall consist of three members, not*
23 *more than two of whom may be adherents of the same political*
24 *party and none of whom may hold another office or position*

1 *in the Government of the United States except as provided by*
2 *law or by the President.*

3 “(c) *Members of the Authority shall be appointed by*
4 *the President, by and with the advice and consent of the*
5 *Senate, and shall be eligible for reappointment. The Presi-*
6 *dent shall designate one member to serve as Chairman of the*
7 *Authority. Any member of the Authority may be removed by*
8 *the President.*

9 “(d) *The term of office of each member of the Authority*
10 *is 5 years, except that a member may continue to serve beyond*
11 *the expiration of the term to which appointed until the earlier*
12 *of—*

13 “(1) *the date on which the member’s successor has*
14 *been appointed and has qualified, or*

15 “(2) *the last day of the session of the Congress be-*
16 *ginning after the date the member’s term of office would*
17 *(but for this sentence) expire.*

18 “(e) *A vacancy in the Authority shall not impair the*
19 *right of the remaining members to exercise all of the powers*
20 *of the Authority. An individual chosen to fill a vacancy*
21 *shall be appointed for the unexpired term of the member*
22 *such individual replaces.*

23 “(f) *The Authority shall make an annual report to the*
24 *President for transmittal to the Congress and shall include*

1 *in such report information as to the cases it has heard and*
2 *the decisions it has rendered under this chapter.*

3 “(g) *There is established within the Authority an Office*
4 *of General Counsel. The General Counsel shall be appointed*
5 *by the President, by and with the advice and consent of the*
6 *Senate. The General Counsel shall be appointed for a term of*
7 *5 years and may be reappointed to any succeeding term.*
8 *The General Counsel may be removed by the President.*
9 *The General Counsel shall hold no other office or position*
10 *in the Government of the United States except as provided by*
11 *law or by the President.*

12 “§ 7204. *Powers and duties of the Authority and of the*
13 *General Counsel*

14 “(a) *The Authority shall administer and interpret the*
15 *provisions of this chapter, decide major policy issues, pre-*
16 *scribe regulations, and disseminate information appropriate*
17 *to the needs of agencies, labor organizations, and the public.*

18 “(b) *The Authority shall, in accordance with regula-*
19 *tions prescribed by it—*

20 “(1) *decide questions submitted to it with respect*
21 *to the appropriate unit for the purpose of exclusive*
22 *recognition and with respect to any related issue;*

23 “(2) *supervise elections to determine whether a la-*
24 *bor organization has been selected by a majority of the*

1 *employees in an appropriate unit who cast valid ballots*
2 *in the election;*

3 • *“(3) decide questions with respect to the eligibility*
4 *of labor organizations for national consultation rights;*
5 *and*

6 *“(4) decide unfair labor practice complaints.*

7 *“(c) The Authority may consider, in accordance with*
8 *regulations prescribed by it, any—*

9 *“(1) appeal from any decision on the negotiabil-*
10 *ity of any issue as provided in subsection (e) of section*
11 *7215 of this title;*

12 *“(2) exception to any arbitration award as provided*
13 *in section 7221 of this title;*

14 *“(3) appeal from any decision of the Assistant*
15 *Secretary issued pursuant to section 7217 of this title;*

16 *“(4) exception to any final decision and order of the*
17 *Panel issued pursuant to section 7222 of this title; and*

18 *“(5) other matters it deems appropriate in order*
19 *to assure it carries out the purposes of this chapter.*

20 *“(d) The Authority shall adopt an official seal which*
21 *shall be judicially noticed.*

22 *“(e) The Authority shall maintain its principal office*
23 *in or about the District of Columbia but it may meet and*
24 *exercise any or all of its powers at any time or place. Sub-*
25 *ject to subsection (g) of this section, the Authority may, by*

1 *one or more of its members or by such agents as it may desig-*
2 *nate, make any inquiry necessary to carry out its duties*
3 *wherever persons subject to this chapter are located. A mem-*
4 *ber who participates in such inquiry shall not be disqualified*
5 *from later participating in a decision of the Authority in the*
6 *same case.*

7 “(f) *The Authority shall appoint an Executive Direc-*
8 *tor, such attorneys, regional directors, administrative law*
9 *judges, and other officers and employees as it may from time to*
10 *time find necessary for the proper performance of its duties*
11 *and may delegate to such officers and employees authority to*
12 *perform such duties and make such expenditures as may be*
13 *necessary.*

14 “(g) *All of the expenses of the Authority, including all*
15 *necessary traveling and subsistence expenses outside the Dis-*
16 *trict of Columbia, incurred by members, employees, or agents*
17 *of the Authority under its orders, shall be allowed and paid*
18 *on the presentation of itemized vouchers therefor approved by*
19 *the Authority or by an individual it designates for that pur-*
20 *pose and in accordance with applicable law.*

21 “(h) (1) *The Authority is expressly empowered and di-*
22 *rected to prevent any person from engaging in conduct found*
23 *violative of this chapter. In order to carry out its functions*
24 *under this chapter, the Authority is authorized to hold hear-*
25 *ings, subpoena witnesses, administer oaths, and take the testi-*

1 *mony or deposition of any person under oath, and in connec-*
2 *tion therewith, to issue subpoenas requiring the production and*
3 *examination of evidence as provided in section 7234 of this*
4 *title relating to any matter pending before it and to take such*
5 *other action as may be necessary. In the exercise of the func-*
6 *tions of the Authority under this title, the Authority may re-*
7 *quest from the Director of the Office of Personnel Manage-*
8 *ment an advisory opinion concerning the proper interpretation*
9 *of regulations or other policy directives promulgated by the*
10 *Office of Personnel Management in connection with a matter*
11 *before the Authority for adjudication.*

12 “(2) *If a regulation or other policy directive issued by*
13 *the Office of Personnel Management is at issue in an appeal*
14 *before the Authority, the Authority shall timely notify the*
15 *Director, and the Director shall have standing to intervene*
16 *in the proceeding and shall have all the rights of a party to*
17 *the proceeding.*

18 “(3) *The Director may request that the Authority re-*
19 *open an appeal and reconsider its decision on the ground*
20 *that the decision was based on an erroneous interpretation of*
21 *law or of a controlling regulation or other policy directive*
22 *issued by the Office of Personnel Management.*

23 “(i) *In any matter arising under subsection (b) of this*
24 *section, the Authority may require an agency or a labor or-*
25 *ganization to cease and desist from violations of this chapter*

1 *and require it to take such remedial action as it considers*
2 *appropriate to carry out the policies of this chapter.*

3 “(j)(1) *The Authority shall maintain a record of its*
4 *proceedings and make public any decision made by it or any*
5 *action taken by the Panel under section 7222 of this title.*

6 “(2) *The provisions of section 552 of this title shall*
7 *apply with respect to any record maintained under para-*
8 *graph (1).*

9 “(k) *The General Counsel is authorized to—*

10 “(1) *investigate complaints of violations of section*
11 *7216 of this title;*

12 “(2) *make final decisions as to whether to issue*
13 *notices of hearing on unfair labor practice complaints*
14 *and to prosecute such complaints before the Authority;*

15 “(3) *direct and supervise all field employees of the*
16 *General Counsel in the field offices of the Authority; and*

17 “(4) *perform such other functions as the Authority*
18 *prescribes.*

19 “(l) *Notwithstanding any other provision of law, in-*
20 *cluding chapter 7 of this title, the decision of the Authority*
21 *on any matter within its jurisdiction shall be final and con-*
22 *clusive, and no other official or any court of the United*
23 *States shall have power or jurisdiction to review any such*
24 *decision by an action in the nature of mandamus on appeal*
25 *of that decision or by any other means, except that nothing in*

1 *this section shall limit the right of persons to judicial review*
 2 *of questions arising under the Constitution of the United*
 3 *States.*

4 *“SUBCHAPTER II—RIGHTS AND DUTIES OF*
 5 *EMPLOYEES, AGENCIES AND LABOR OR-*
 6 *GANIZATIONS*

7 *“§ 7211. Employees’ rights*

8 *“(a) Each employee shall have the right freely and*
 9 *without fear of penalty or reprisal to form, join, or assist*
 10 *any labor organization, or to refrain from such activity, and*
 11 *each employee shall be protected in exercising such rights.*
 12 *Except as otherwise provided under this chapter, such rights*
 13 *include the right to—*

14 *“(1) participate in the management of a labor or-*
 15 *ganization,*

16 *“(2) act for the organization in the capacity of a*
 17 *representative,*

18 *“(3) present, in such representative capacity, the*
 19 *views of the organization to agency heads and other*
 20 *officials of the executive branch of the Government, the*
 21 *Congress, or other appropriate authorities, and*

22 *“(4) bargain collectively, subject to the limits pre-*
 23 *scribed in section 7215(c) of this title, through represent-*
 24 *atives of their own choosing.*

25 *“(b) This chapter does not authorize—*

1 “(1) a management official, a confidential employee,
2 or a supervisor to participate in the management of a
3 labor organization or to act as a representative of such
4 an organization, unless such participation or activity
5 is specifically authorized by this chapter, or

6 “(2) any employee to so participate or act if such
7 participation or activity would result in any conflict of
8 interest, or appearance thereof, or would otherwise be
9 inconsistent with any law or the official duties of the
10 employee.

11 “§ 7212. **Recognition of labor organizations**

12 “(a) An agency shall accord exclusive recognition or
13 national consultation rights at the request of a labor orga-
14 nization which meets the requirements for such recognition or
15 consultation rights under this chapter.

16 “(b) Recognition of a labor organization, once accorded,
17 shall continue as long as the organization meets the require-
18 ments of this chapter for recognition.

19 “(c) Recognition of a labor organization shall not—

20 “(1) preclude an employee, regardless of whether
21 the employee is in a unit of exclusive recognition, from
22 exercising grievance or appellate rights established by
23 law or regulation or from choosing the employee’s own
24 representative in a grievance or appellate action, ex-
25 cept when the grievance or appeal is covered by and

1 *pursued under a negotiated procedure as provided in*
2 *section 7221 of this title;*

3 *“(2) preclude or restrict consultations and dealings*
4 *between an agency and a veterans organization with re-*
5 *spect to matters of particular interest to employees in*
6 *connection with veterans preference; or*

7 *“(3) preclude an agency from consulting or deal-*
8 *ing with a religious, social, fraternal, professional, or*
9 *other lawful association not qualified as a labor orga-*
10 *nization with respect to matters or policies which involve*
11 *individual members of the association or are of particu-*
12 *lar applicability to it or its members.*

13 *Consultations and dealings under paragraph (3) shall not*
14 *assume the character of formal consultation on matters of*
15 *general employee-management policy covering employees in*
16 *that unit or extend to areas where recognition of the interests*
17 *of one employee group may result in discrimination against*
18 *or injury to the interest of other employees.*

19 **“§ 7213. National consultation rights**

20 *“(a) An agency shall accord national consultation*
21 *rights to a labor organization which qualifies under criteria*
22 *established by the Authority as the representative of a*
23 *substantial number of employees of the agency. National*
24 *consultation rights shall not be accorded for any unit if a*

1 *labor organization already holds exclusive recognition at*
2 *the national level for that unit. The granting of national*
3 *consultation rights shall not preclude an agency from appro-*
4 *priate dealings at the national level with other organizations*
5 *on matters affecting their members. An agency shall terminate*
6 *national consultation rights if the labor organization ceases*
7 *to qualify under the established criteria.*

8 “(b) *If a labor organization has been accorded national*
9 *consultation rights, the agency shall notify representatives of*
10 *such organization of proposed substantive changes in person-*
11 *nel policies that affect employees such organization represents*
12 *and provide an opportunity for such organization to comment*
13 *on the proposed changes. Such organization may suggest*
14 *changes in the agency’s personnel policies and have its views*
15 *carefully considered. Representatives of such organization*
16 *may consult, at reasonable times, with appropriate officials*
17 *on personnel policy matters and may, at all times, present in*
18 *writing the organization’s views on such matters. An agency*
19 *is not required to consult with any such organization on any*
20 *matter on which it would not be required to negotiate if the*
21 *organization were entitled to exclusive recognition.*

22 “(c) *Any question with respect to the eligibility of a*
23 *labor organization for national consultation rights may be*
24 *referred to the Authority for decision.*

1 “§ 7214. *Exclusive recognition*

2 “(a) *An agency shall accord exclusive recognition to*
3 *a labor organization if the organization has been selected*
4 *as the representative, in a secret ballot election, by a major-*
5 *ity of the employees in an appropriate unit who cast valid*
6 *ballots in the election.*

7 “(b) *A unit may be established on an agency, plant,*
8 *installation, craft, functional, or other basis which will as-*
9 *sure a clear and identifiable community of interest among*
10 *the employees concerned and will promote effective dealings*
11 *and efficiency in the agency's operations. A unit shall not*
12 *be established solely on the basis of the extent to which em-*
13 *ployees in the proposed unit have organized, nor shall a unit*
14 *be established if it includes—*

15 “(1) *except as provided in section 701(b)(1) of*
16 *the Civil Service Reform Act of 1978, any management*
17 *official, confidential employee, or supervisor;*

18 “(2) *an employee engaged in Federal personnel*
19 *work in other than a purely clerical capacity; or*

20 “(3) *both professional and nonprofessional em-*
21 *ployees, unless a majority of the professional employees*
22 *vote for inclusion in the unit.*

23 *Any question with respect to the appropriate unit may be*
24 *referred to the Authority for decision.*

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1 “(c) All elections shall be conducted under the super-
2 sion of the Authority or persons designated by the Author-
3 ity and shall be by secret ballot. Employees eligible to vote
4 shall be provided the opportunity to choose the labor organi-
5 zation they wish to represent them from among those on the
6 ballot and, except in the case of an election described in para-
7 graph (4), the opportunity to choose not to be represented by
8 a labor organization. Elections may be held to determine
9 whether a labor organization should—

10 “(1) be recognized as the exclusive representative
11 of employees in a unit;

12 “(2) replace another labor organization as the ex-
13 clusive representative;

14 “(3) cease to be the exclusive representative;

15 “(4) be recognized as the exclusive representative
16 of employees in a unit composed of employees in units
17 currently represented by that labor organization or con-
18 tinue to be recognized in the existing separate units.

19 An election need not be held to determine whether an organi-
20 zation should become, or continue to be recognized as, the
21 exclusive representative of the employees in any unit, or
22 subdivision thereof, during the 12-month period after a valid
23 election has been held under this chapter with respect to such
24 unit.

1 “§ 7215. *Representation rights and duties*

2 “(a) *If a labor organization has been accorded exclusive*
3 *recognition, such organization shall be—*

4 “(1) *the exclusive representative of employees in the*
5 *unit and is entitled to act for and negotiate agreements*
6 *covering all employees in the unit;*

7 “(2) *responsible for representing the interests of all*
8 *employees in the unit without discrimination and without*
9 *regard to labor organization membership; and*

10 “(3) *given the opportunity to be represented at for-*
11 *mal discussions between management and employees or*
12 *employee representatives concerning grievances, person-*
13 *nel policies and practices, or other matters affecting gen-*
14 *eral working conditions of employees in the unit.*

15 “(b) *An agency and an exclusive representative shall*
16 *have a duty to negotiate in good faith and in exercising such*
17 *duty shall—*

18 “(1) *approach the negotiations with a sincere re-*
19 *solve to reach an agreement;*

20 “(2) *be represented at the negotiations by appro-*
21 *priate representatives prepared to discuss and negotiate*
22 *on all negotiable matters;*

23 “(3) *meet at such reasonable times and places as*
24 *may be necessary; and*

25 “(4) *execute upon request of the agency or the*

1 *organization a written document embodying the terms of,*
2 *and take such steps as are necessary to implement, any*
3 *agreement which is reached.*

4 *“(c) An agency and an exclusive representative shall,*
5 *through appropriate representatives, negotiate in good faith as*
6 *prescribed under subsection (b) of this section with respect to*
7 *personnel policies and practices and matters affecting work-*
8 *ing conditions but only to the extent appropriate under laws*
9 *and regulations, including policies which—*

10 *“(1) are set forth in the Federal Personnel Manual,*

11 *“(2) consist of published agency policies and regula-*
12 *tions for which a compelling need exists (as determined*
13 *under criteria established by the Authority) and which*
14 *are issued at the agency headquarters level or at the*
15 *level of a primary national subdivision, or*

16 *“(3) are set forth in a national or other controlling*
17 *agreement entered into by a higher unit of the agency.*

18 *In addition, such organization and the agency may determine*
19 *appropriate techniques, consistent with section 7222 of this*
20 *title, to assist in any negotiation.*

21 *“(d) In prescribing regulations relating to personnel*
22 *policies and practices and working conditions, an agency shall*
23 *give due regard to the obligation to negotiate imposed by this*
24 *section, except that such obligation does not include an obliga-*
25 *tion to negotiate with respect to matters concerning the num-*

1 *ber of employees in an agency, the numbers, types, and grades*
2 *of positions or employees assigned to an organizational unit,*
3 *work project or tour of duty, or the technology of performing*
4 *the agency's work. The preceding sentence shall not preclude*
5 *the parties from negotiating agreements providing appro-*
6 *priate arrangements for employees adversely affected by the*
7 *impact of realignment of work forces or technological change.*

8 *“(e)(1) If, in connection with negotiations, an issue*
9 *develops as to whether a proposal is negotiable under this*
10 *chapter or any other applicable law, regulation, or controlling*
11 *agreement, it shall be resolved as follows:*

12 *“(A) An issue which involves interpretation of a*
13 *controlling agreement at a higher agency level is resolved*
14 *under the procedures of the controlling agreement, or,*
15 *if none, under regulations prescribed by the agency.*

16 *“(B) An issue not described in paragraph (1)*
17 *which arises at a local level may be referred by either*
18 *party to the head of the agency for determination.*

19 *“(2) An agency head's determination under paragraph*
20 *(1) concerning the interpretation of the agency's regulations*
21 *with respect to a proposal shall be final.*

22 *“(3) A labor organization may appeal to the Authority*
23 *from a decision under paragraph (1) if it—*

24 *“(A) disagrees with an agency head's determination*

1 *that a proposal is not negotiable under this chapter or*
2 *any other applicable law or regulation of appropriate*
3 *authority outside the agency, or*

4 *“(B) believes that an agency’s regulations, as inter-*
5 *preted by the agency head, are in violation of this chapter*
6 *or any other applicable law or regulation of appro-*
7 *priate authority outside the agency, or are not otherwise*
8 *applicable to bar negotiations under subsection (c) of this*
9 *section.*

10 “§ 7216. *Unfair labor practices*

11 *“(a) It shall be an unfair labor practice for an agency—*

12 *“(1) to interfere with, restrain, or coerce an em-*
13 *ployee in connection with the exercise of rights assured*
14 *by this chapter;*

15 *“(2) to encourage or discourage membership in any*
16 *labor organization by discrimination in regard to hiring,*
17 *tenure, promotion, or other conditions of employment;*

18 *“(3) to sponsor, control, or otherwise assist any*
19 *labor organization, unless such assistance consists of*
20 *furnishing customary and routine services and facilities—*

21 *“(A) in a manner consistent with the best in-*
22 *terest of the agency, its employees, and the organiza-*
23 *tion, and*

24 *“(B) on an impartial basis to organizations (if*
25 *any) having equivalent status;*

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

5 “(5) to refuse to accord appropriate recognition to
6 a labor organization qualified for such recognition; or

7 “(6) to refuse to consult or negotiate in good faith
8 with a labor organization as required by this chapter.

9 “(b) It shall be an unfair labor practice for a labor
10 organization—

11 “(1) to interfere with, restrain, or coerce an em-
12 ployee in connection with the exercise of the rights assured
13 by this chapter;

14 “(2) to cause or attempt to cause an agency to
15 coerce an employee in the exercise of rights under this
16 chapter;

17 “(3) to coerce or attempt to coerce an employee, or
18 to discipline, fine or take other economic sanction against
19 a member of the labor organization, as punishment or re-
20 prisal or for the purpose of hindering or impeding work
21 performance, productivity, or the discharge of duties of
22 such employee;

23 “(4) to—

24 “(A) call, or participate in, a strike, work
25 stoppage, slowdown, or picketing of an agency in

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1 *a labor-management dispute if such picketing inter-*
2 *feres or reasonably threatens to interfere with an*
3 *agency's operations, or*

4 *“(B) condone any activity described in sub-*
5 *paragraph (A) by failing to take action to prevent*
6 *or stop it;*

7 *“(5) to discriminate against an employee with re-*
8 *gard to the terms or conditions of membership in the or-*
9 *ganization because of race, color, religion, national ori-*
10 *gin, sex, age, or handicapping condition; or*

11 *“(6) to refuse to consult or negotiate in good faith*
12 *with an agency as required by this chapter.*

13 *“(c) It shall be an unfair labor practice for a labor or-*
14 *ganization which is accorded exclusive recognition to deny*
15 *membership to an employee in an appropriate unit unless*
16 *such denial is for failure to meet reasonable occupational*
17 *standards uniformly required for admission or for failure*
18 *to tender initiation fees and dues uniformly required as a*
19 *condition of acquiring and retaining membership. This sub-*
20 *section shall not preclude a labor organization from enforcing*
21 *discipline in accordance with procedures under its constitu-*
22 *tion or bylaws which conform to the requirements of this*
23 *chapter.*

24 *“(d) Issues which can properly be raised under an ap-*
25 *peals procedure may not be raised as unfair labor practices*

1 *prohibited under this section. Except for matters wherein,*
2 *under sections 7221 (e) and (f) of this title, an employee has*
3 *an option of using the negotiated grievance procedure or an*
4 *appeals procedure, issues which can be raised under a griev-*
5 *ance procedure may, in the discretion of the aggrieved party,*
6 *be raised under that procedure or as an unfair labor practice*
7 *under this section, but not under both procedures. Appeals or*
8 *grievance decisions shall not be construed as unfair labor*
9 *practice decisions under this chapter nor as a precedent*
10 *for such decisions. All complaints of unfair labor practices*
11 *prohibited under this section that cannot be resolved by the*
12 *parties shall be filed with the Authority.*

13 “(e) Any question with respect to whether an issue can
14 properly be raised under an appeals procedure shall be re-
15 ferred for resolution to the agency responsible for final de-
16 cisions relating to those issues.

17 “§ 7217. *Standards of conduct for labor organizations*

18 “(a) An agency shall only accord recognition to a labor
19 organization that is free from corrupt influences and influ-
20 ences opposed to basic democratic principles. Except as pro-
21 vided in subsection (b) of this section, an organization is not
22 required to prove that it is free from such influences if it is
23 subject to governing requirements adopted by the organiza-
24 tion or by a national or international labor organization or
25 federation of labor organizations with which it is affiliated,

1 *or in which it participates, containing explicit and detailed*
2 *provisions to which it subscribes calling for—*

3 “(1) *the maintenance of democratic procedures and*
4 *practices, including provisions for periodic elections to*
5 *be conducted subject to recognized safeguards and pro-*
6 *visions defining and securing the right of individual mem-*
7 *bers to participate in the affairs of the organization, to*
8 *receive fair and equal treatment under the governing*
9 *rules of the organization, and to receive fair process in*
10 *disciplinary proceedings;*

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

14 “(3) *the prohibition of business or financial inter-*
15 *ests on the part of organization officers and agents which*
16 *conflict with their duty to the organization and its mem-*
17 *bers; and*

18 “(4) *the maintenance of fiscal integrity in the con-*
19 *duct of the affairs of the organization, including provi-*
20 *sions for accounting and financial controls and regular*
21 *financial reports or summaries to be made available to*
22 *members.*

23 “(b) *Notwithstanding the fact that a labor organization*
24 *has adopted or subscribed to standards of conduct as provided*
25 *in subsection (a) of this section, the organization is required*

1 *to furnish evidence of its freedom from corrupt influences or*
2 *influences opposed to basic democratic principles if there is*
3 *reasonable cause to believe that—*

4 “(1) *the organization has been suspended or ex-*
5 *pelled from, or is subject to other sanction, by a parent*
6 *labor organization, or federation of organizations with*
7 *which it had been affiliated, because it has demonstrated*
8 *an unwillingness or inability to comply with governing*
9 *requirements comparable in purpose to those required by*
10 *subsection (a) of this section; or*

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

13 “(c) *A labor organization which has or seeks recognition*
14 *as a representative of employees under this chapter shall file*
15 *financial and other reports with the Assistant Secretary, pro-*
16 *vide for bonding of officials and employees of the organiza-*
17 *tion, and comply with trusteeship and election standards.*

18 “(d) *The Assistant Secretary shall prescribe such regu-*
19 *lations as are necessary to carry out the purposes of this*
20 *section. Such regulations shall conform generally to the*
21 *principles applied to labor organizations in the private sec-*
22 *tor. Complaints of violations of this section shall be filed*
23 *with the Assistant Secretary. In any matter arising under*
24 *this section, the Assistant Secretary may require a labor*
25 *organization to cease and desist from violations of this section*

1 *and require it to take such action as he considers appropri-*
2 *ate to carry out the policies of this section.*

3 *“§ 7218. Basic provisions of agreements*

4 *“(a) Each agreement between an agency and a labor*
5 *organization shall provide the following:*

6 *“(1) In the administration of all matters covered*
7 *by the agreement, officials and employees shall be gov-*
8 *erned by—*

9 *“(A) existing or future laws and the regula-*
10 *tions of appropriate authorities, including policies*
11 *which are set forth in the Federal Personnel*
12 *Manual,*

13 *“(B) published agency policies and regula-*
14 *tions in existence at the time the agreement was ap-*
15 *proved, and*

16 *“(C) subsequently published agency policies*
17 *and regulations required by law or by the regula-*
18 *tions of appropriate authorities, or authorized by*
19 *the terms of a controlling agreement at a higher*
20 *agency level.*

21 *“(2) Management officials of the agency shall re-*
22 *tain the right to determine the mission, budget, organi-*
23 *zation, and internal security practices of the agency,*
24 *and the right, in accordance with applicable laws and*
25 *regulations, to—*

1 “(A) direct employees of the agency;

2 “(B) hire, promote, transfer, assign, and re-
3 tain employees in positions within the agency, and
4 to suspend, demote, discharge, or take other dis-
5 ciplinary action against employees;

6 “(C) relieve employees from duties because of
7 lack of work or for other legitimate reasons;

8 “(D) maintain the efficiency of the Government
9 operations entrusted to such officials;

10 “(E) determine the methods, means, and per-
11 sonnel by which such operations are to be conducted;
12 and

13 “(F) take such actions as may be necessary
14 to carry out the mission of the agency in situations
15 of emergency.

16 “(b) Nothing in subsection (a) of this section shall
17 preclude the parties from negotiating—

18 “(1) procedures which management will observe in
19 exercising its authority to decide or act in matters re-
20 served under such subsection; or

21 “(2) appropriate arrangements for employees ad-
22 versely affected by the impact of management’s exercis-
23 ing its authority to decide or act in matters reserved under
24 such subsection,

25 except that such negotiations shall not unreasonably delay

1 *the exercise by management of its authority to decide or act,*
2 *and such procedures and arrangements shall be consistent*
3 *with the provisions of any law or regulation described in*
4 *7215(c) of this title, and shall not have the effect of negating*
5 *the authority reserved under subsection (a).*

6 “(c) *Nothing in the agreement shall require an employee*
7 *to become or to remain a member of a labor organization or to*
8 *pay money to the organization except pursuant to a voluntary,*
9 *written authorization by a member for the payment of dues*
10 *through payroll deductions.*

11 “(d) *The requirements of this section shall be expressly*
12 *stated in the initial or basic agreement and apply to all supple-*
13 *mental, implementing, subsidiary, or informal agreements*
14 *between the agency and the organization.*

15 “§ 7219. *Approval of agreements*

16 “*An agreement with a labor organization as the exclusive*
17 *representative of employees in a unit is subject to the approval*
18 *of the head of the agency or his designee. An agreement shall*
19 *be approved within 45 days from the date of its execution if it*
20 *conforms to this chapter and other applicable laws, existing*
21 *published agency policies and regulations (unless the agency*
22 *has granted an exception to a policy or regulation), and regu-*
23 *lations of other appropriate authorities. An agreement which*
24 *has not been approved or disapproved within 45 days from the*
25 *date of its execution shall go into effect without the required*

1 *approval of the agency head and shall be binding on the*
 2 *parties subject to the provisions of this chapter, other applica-*
 3 *ble laws, and the regulations of appropriate authorities out-*
 4 *side the agency. A local agreement subject to a national or*
 5 *other controlling agreement at a higher level shall be approved*
 6 *under the procedures of the controlling agreement, or, if*
 7 *none, under agency regulations.*

8 “SUBCHAPTER III—GRIEVANCES AND
 9 IMPASSES

10 § 7221. *Grievance procedures*

11 “(a) *An agreement between an agency and a labor or-*
 12 *ganization which has been accorded exclusive recognition shall*
 13 *provide a procedure, applicable only to the unit, for the com-*
 14 *sideration of grievances. Subject to the provisions of subsec-*
 15 *tion (d) of this section and to the extent not contrary to any*
 16 *law, the coverage and scope of the procedure shall be nego-*
 17 *tiated by the parties to the agreement. Except as otherwise*
 18 *provided in this section, such procedure shall be the exclusive*
 19 *procedure available to the parties and the employees in the*
 20 *unit for resolving grievances which fall within its coverage.*

21 “(b) *Any employee or group of employees in the unit*
 22 *may present grievances falling within the coverage of the*
 23 *negotiated grievance procedure to the agency and have them*
 24 *adjusted without the intervention of the exclusive represent-*
 25 *ative if the adjustment is not inconsistent with the terms of the*

1 *agreement and the exclusive representative has been given an*
2 *opportunity to be present at the adjustment.*

3 “(c) *A negotiated grievance procedure shall provide for*
4 *arbitration as the final step of the procedure. Arbitration may*
5 *be invoked only by the agency or the exclusive representative.*
6 *Except as provided in subsection (g) of this section, the pro-*
7 *cedure must also provide that the arbitrator is empowered to*
8 *resolve questions as to whether or not any grievance is on a*
9 *matter subject to arbitration under the agreement.*

10 “(d) *A negotiated grievance procedure may cover any*
11 *matter within the authority of an agency if not inconsistent*
12 *with the provisions of this chapter, except that it may not*
13 *include matters involving examination, certification and ap-*
14 *pointment, suitability, classification, political activities, retire-*
15 *ment, life and health insurance, national security, or the Fair*
16 *Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).*

17 “(e) *Matters covered under sections 4303 and 7512 of*
18 *this title which also fall within the coverage of the negotiated*
19 *grievance procedure may, in the discretion of the aggrieved*
20 *employee, be raised either under the appellate procedures of*
21 *section 7701 of this title or under the negotiated grievance*
22 *procedure, but not both. Similar matters which arise under*
23 *other personnel systems applicable to employees covered by*
24 *this chapter may, in the discretion of the aggrieved employee,*
25 *be raised either under the appellate procedures, if any, appli-*

1 cable to those matters, or under the negotiated grievance pro-
2 cedure, but not both. An employee shall be deemed to have
3 exercised his option under this subsection to raise a matter
4 either under the applicable appellate procedures or under the
5 negotiated grievance procedure at such time as the employee
6 timely files a notice of appeal under the applicable appellate
7 procedures or timely files a grievance in writing in accord-
8 ance with the provisions of the parties' negotiated grievance
9 procedure, whichever event occurs first.

10 “(f) An aggrieved employee affected by a prohibited per-
11 sonnel practice under section 2302(b)(1) of this title which
12 also falls under the coverage of the negotiated grievance pro-
13 cedure may raise the matter under a statutory procedure or
14 the negotiated procedure, but not both. An employee shall be
15 deemed to have exercised his option under this subsection to
16 raise the matter under either a statutory procedure or the
17 negotiated procedure at such time as the employee timely
18 initiates an action under the applicable statutory procedure or
19 timely files a grievance in writing, in accordance with the
20 provisions of the parties' negotiated procedure, whichever
21 event occurs first. Selection of the negotiated procedure in
22 no manner prejudices the right of an aggrieved employee to
23 request the Merit Systems Protection Board to review the
24 final decision pursuant to subsections (h) and (i) of sec-
25 tion 7701 of this title in the case of any personnel action

1 *that could have been appealed to the Board, or, where ap-*
2 *plicable, to request the Equal Employment Opportunity*
3 *Commission to review a final decision in any other matter*
4 *involving a complaint of discrimination of the type prohibited*
5 *by any law administered by the Equal Employment Oppor-*
6 *tunity Commission.*

7 “(g) *Any question that cannot be resolved by the parties*
8 *as to whether or not a grievance is on a matter excepted by*
9 *subsection (d) of this section shall be referred for resolution*
10 *to the agency responsible for final decisions relating to those*
11 *matters.*

12 “(h) *In matters covered under sections 4303 and 7512*
13 *of this title which have been raised under the negotiated griev-*
14 *ance procedure in accordance with the provisions of subsection*
15 *(e) of this section, an arbitrator shall be governed by the*
16 *provisions of section 4303(f) or 7701(d) of this title, as*
17 *applicable.*

18 “(i) *Allocation of the costs of the arbitration shall be*
19 *governed by the collective-bargaining agreement. An arbitra-*
20 *tor shall have no authority to award attorney or other repre-*
21 *sentative fees, except that in matters where an employee is*
22 *the prevailing party and the arbitrator’s decision is based*
23 *on a finding of discrimination prohibited by any law re-*
24 *ferred to in section 7701(h) of this title attorney fees may*
25 *be awarded and shall be governed by the standards applicable*

1 *under the Civil Rights Act of 1964, as amended (42 U.S.C.*
2 *2000e-5(k)).*

3 “(j) *Either party may file exceptions to any arbitrator’s*
4 *award with the Authority, except that no exceptions may be*
5 *filed to awards concerning matters covered under subsection*
6 *(e) of this section. The Authority shall sustain a challenge*
7 *to an arbitrator’s award only on grounds that the award*
8 *violates applicable law, appropriate regulation, or other*
9 *grounds similar to those applied by Federal courts in private*
10 *sector labor-management relations. Decisions of the Author-*
11 *ity on exceptions to arbitration awards shall be final, except*
12 *for the right of an aggrieved employee under subsection (f)*
13 *of this section.*

14 “(k) *In matters covered under sections 4303 and 7512*
15 *of this title which have been raised under the provisions of*
16 *the negotiated grievance procedure in accordance with the*
17 *provisions of subsection (e) of this section, the provisions of*
18 *section 7702 of this title pertaining to judicial review shall*
19 *apply to the award of an arbitrator in the same manner and*
20 *under the same conditions as if the matter had been decided*
21 *by the Merit Systems Protection Board. In matters similar*
22 *to those covered under sections 4303 and 7512 which arise*
23 *under other personnel systems and which an aggrieved em-*
24 *ployee has raised under the negotiated grievance procedure,*
25 *judicial review of an arbitrator’s award may be obtained in*

1 *the same manner and on the same basis as could be obtained*
2 *of a final decision in such matters raised under applicable*
3 *appellate procedures.*

4 *“§ 7222. Federal Service Impasses Panel; negotiation im-*
5 *passes*

6 *“(a) (1) There is established within the Authority, as*
7 *a distinct organizational entity, the Federal Service Impasses*
8 *Panel. The Panel is composed of the Chairman, and an even*
9 *number of other members, appointed by the President solely*
10 *on the basis of fitness to perform the duties and functions of*
11 *the Office, from among individuals who are familiar with*
12 *Government operations and knowledgeable in labor-manage-*
13 *ment relations. No employee (as defined under section 2105*
14 *of this title) shall be appointed to serve as a member of the*
15 *Panel.*

16 *“(2) At the time the members of the Panel (other than*
17 *the Chairman) are first appointed, half shall be appointed for*
18 *a term of 1 year and half for the term of 3 years. An individual*
19 *appointed to serve as the Chairman shall serve for a term of 5*
20 *years. A successor of any member shall be appointed for terms*
21 *of 5 years, except that an individual chosen to fill a vacancy*
22 *shall be appointed for the unexpired term of the member whom*
23 *such individual replaces. Any member of the Panel may be*
24 *removed by the President.*

1 “(3) *The Panel may appoint an executive secretary and*
2 *such other employees as it may from time to time find necessary*
3 *for the proper performance of its duties. Each member of the*
4 *Panel is entitled to pay at a rate equal to the daily equivalent of*
5 *the maximum annual rate of basic pay currently paid, from time*
6 *to time, under the General Schedule for each day the member is*
7 *engaged in the performance of official business on the work of*
8 *the Panel, including traveltime, and is entitled to travel ex-*
9 *penses and a per diem allowance under section 5703 of this title.*

10 “(b) *Upon request, the Federal Mediation and Concilia-*
11 *tion Service shall provide services and assistance to agencies*
12 *and labor organizations in the resolution of negotiation*
13 *impasses.*

14 “(c) *If voluntary arrangements, including the services of*
15 *the Federal Mediation and Conciliation Service or other third-*
16 *party mediation fail to resolve a negotiation impasse, either*
17 *party may request the Panel to consider the matter.*

18 “(d) *The Panel or its designee shall promptly investigate*
19 *any impasse presented to it under subsection (c) of this section.*
20 *The Panel shall consider the matter and shall either recommend*
21 *procedures to the parties for the resolution of the impasse or as-*
22 *sist the parties in arriving at a settlement through such methods*
23 *and procedures, including fact finding and recommendations, as*
24 *it may find appropriate to accomplish the purposes of this sec-*
25 *tion. Arbitration, or third-party fact finding with recommenda-*

1 *tions to assist in the resolution of an impasse, may be used by*
2 *the parties only when authorized or directed by the Panel. If the*
3 *parties do not arrive at a settlement, the Panel may hold hear-*
4 *ings, compel under section 7234 of this title the attendance of*
5 *witnesses and the production of documents, and take whatever*
6 *action is necessary and not inconsistent with the provisions of*
7 *this chapter to resolve the impasse. Notice of any final action of*
8 *the Panel shall be promptly served upon the parties and such ac-*
9 *tion shall be binding upon them during the term of the agree-*
10 *ment unless the parties mutually agree otherwise.*

11 “*SUBCHAPTER IV—ADMINISTRATIVE AND*
12 *OTHER PROVISIONS*”

13 “§ 7231. *Allotments to representatives*”

14 “(a) *If, pursuant to an agreement negotiated in accord-*
15 *ance with the provisions of this chapter, an agency has received*
16 *from an employee in a unit of exclusive recognition a written*
17 *assignment which authorizes the agency to deduct from the*
18 *wages of such employee amounts for the payment of regular*
19 *and periodic dues of the exclusive representative for such unit,*
20 *such assignment shall be honored. Except as required under*
21 *subsection (b) of this section, any such assignment shall be*
22 *revocable at stated intervals of not more than 6 months.*

23 “(b) *An allotment for the deduction of labor organiza-*
24 *tion dues terminates when—*

1 “(1) the dues withholding agreement between the
2 agency and the exclusive representative is terminated
3 or ceases to be applicable to the employee; or

4 “(2) the employee has been suspended or expelled
5 from the labor organization which is the exclusive
6 representative.

7 “§ 7232. Use of official time

8 “Solicitation of membership or dues and other internal
9 business of a labor organization shall be conducted during
10 the nonduty hours of the employees concerned. Employees
11 who represent a recognized labor organization shall not be
12 on official time when negotiating an agreement with agency
13 management, except that the negotiating parties may agree
14 to arrangements which provide that the agency will author-
15 ize a reasonable number of such employees (not normally
16 in excess of the number of management representatives) to
17 negotiate on official time for up to 40 hours, or up to one-half
18 the time spent in negotiations during regular working hours.

19 “§ 7233. Remedial actions

20 “If it is determined by appropriate authority, includ-
21 ing an arbitrator, that certain action will carry out the poli-
22 cies of this chapter, such action may be directed by the ap-
23 propriate authority if consistent with law, including section
24 5596 of this title.

1 “§ 7234. *Subpenas*

2 “(a) *Any member of the Authority, including the Gen-*
3 *eral Counsel, any member of the Panel, and any employee*
4 *of the Authority designated by the Authority may—*

5 “(1) *issue subpoenas requiring the attendance and*
6 *testimony of witnesses and the production of documen-*
7 *tary or other evidence from any place in the United*
8 *States or any territory or possession thereof, the Com-*
9 *monwealth of Puerto Rico, or the District of Columbia,*
10 *except that no subpoena shall be issued under this sec-*
11 *tion which requires the disclosure of intramanagement*
12 *guidance, advice, counsel, or training within an agency*
13 *or between an agency and the Office of Personnel Man-*
14 *agement; and*

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

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

1 “(c) Witnesses (whether appearing voluntarily or un-
2 der subpoena) shall be paid the same fee and mileage allow-
3 ances which are paid subpoenaed witnesses in the courts of
4 the United States.

5 “§ 7235. Regulations

6 “The Authority, including the General Counsel and the
7 Panel, and the Federal Mediation and Conciliation Service
8 shall each prescribe rules and regulations to carry out the
9 provisions of this chapter applicable to them. Unless other-
10 wise specifically provided in this chapter, the provisions of
11 subchapter II of chapter 5 of this title shall be applicable to
12 the issuance, revision, or repeal of any such rule or regula-
13 tion.”.

14 (b) (1) The amendments made by subsection (a) shall
15 not preclude—

16 (A) the renewal or continuation of an exclusive
17 recognition, certification of a representative, or a lawful
18 agreement between an agency and a representative of its
19 employees entered into before the effective date of this sec-
20 tion; or

21 (B) the renewal, continuation, or initial according
22 of recognition for units of management officials or super-
23 visors represented by labor organizations which his-
24 torically or traditionally represent management officials

1 *or supervisors in private industry and which hold ex-*
2 *clusive recognition for units of such officials or super-*
3 *visors in any agency on the effective date of this section.*

4 *(2) Policies, regulations, and procedures established, and*
5 *decisions issued, under Executive Order Numbered 11491,*
6 *or under the provision of any related Executive order in effect*
7 *on the effective date of this section, shall remain in full force*
8 *and effect until revised or revoked by Executive order or*
9 *statute, or unless superseded by appropriate decision or regu-*
10 *lation of the Federal Labor Relations Authority.*

11 *(c) Any term of office of any member of the Federal*
12 *Labor Relations Authority and the General Counsel of the*
13 *Federal Labor Relations Authority serving on the effective*
14 *date of this section shall continue in effect until such time as*
15 *such term would expire under Reorganization Plan Num-*
16 *bered 2 of 1978, and upon expiration of such term, appoint-*
17 *ments to such office shall be made under section 7203 of title*
18 *5, United States Code. Any term of office of any member of*
19 *the Federal Service Impasses Panel serving on the effective*
20 *date of this section shall continue in effect until such time as*
21 *members of the Panel are appointed pursuant to section 7222*
22 *of title 5, United States Code.*

23 *(d) There are hereby authorized to be appropriated such*
24 *sums as may be necessary to carry out the functions and pur-*
25 *poses of this section.*

1 *or a denial of an increase in such pay, allowances, differen-*
2 *tials, or other monetary or employment benefits, which would*
3 *not have occurred but for unjustified or unwarranted action*
4 *taken by the agency—*

5 “(1) *is entitled, on correction of the action, to be*
6 *made whole for—*

7 “(A) *all losses suffered less, in applicable cir-*
8 *cumstances, interim earnings, and*

9 “(B) *if appropriate, to reinstatement or restor-*
10 *ation to the same or a substantially similar position,*
11 *or promotion to a higher level position; and*

12 “(2) *for all purposes is deemed to have performed*
13 *service for the agency during the period of the unjustified*
14 *or unwarranted action except that—*

15 “(A) *annual leave restored under this para-*
16 *graph which is in excess of the maximum leave ac-*
17 *cumulation permitted by law shall be credited to a*
18 *separate leave account for the employee and shall be*
19 *available for use by the employee within the time*
20 *limits prescribed by regulations of the Office of*
21 *Personnel Management, and*

22 “(B) *annual leave credited under subpara-*
23 *graph (A) of this paragraph but unused and still*
24 *available to the employee under regulations pre-*

1 *scribed by the Office of Personnel Management shall*
2 *be included in the lump-sum payment under sec-*
3 *tion 5551 or 5552(1) of this title but may not be*
4 *retained to the credit of the employee under section*
5 *5552(2) of this title.*

6 “(c) *For the purposes of this section—*

7 “(1) *‘unjustified or unwarranted action’ includes—*

8 “(A) *any act of commission, either substan-*
9 *tive or procedural, which violates or improperly*
10 *applies a provision of law, Executive order, regu-*
11 *lation, or collective bargaining agreement; and*

12 “(B) *any act of omission, or failure to take*
13 *an action, or confer a benefit, which must be taken*
14 *or conferred under a nondiscretionary provision of*
15 *law, Executive order, regulation, or collective-bar-*
16 *gaining agreement;*

17 “(2) *‘administrative determination’ includes, but is*
18 *not limited to, a decision, award, or order issued by—*

19 “(A) *a court having jurisdiction over the matter*
20 *involved;*

21 “(B) *the Office of Personnel Management;*

22 “(C) *the Merit Systems Protection Board;*

23 “(D) *the Federal Labor Relations Authority;*

24 “(E) *the Comptroller General of the United*
25 *States;*

1 “(F) the head of the employing agency or an
2 agency official to whom corrective action authority is
3 delegated; or

4 “(G) an arbitrator under a negotiated binding
5 arbitration agreement between a labor organization
6 and agency management;

7 “(3) ‘appropriate authority’ includes, but is not
8 limited to—

9 “(A) a court having jurisdiction;

10 “(B) the Office of Personnel Management;

11 “(C) the Merit Systems Protection Board;

12 “(D) the Federal Labor Relations Authority;

13 “(E) the Comptroller General of the United
14 States;

15 “(F) the head of the employing agency or
16 agency official to whom corrective action authority
17 is delegated; or

18 “(G) an arbitrator under a negotiated binding
19 arbitration agreement between a labor organization
20 and agency management.

21 “(d) The provisions of this section shall not apply to
22 reclassification actions nor shall they authorize the setting
23 aside of an otherwise proper promotion by a selecting official
24 from a group of properly ranked and certified candidates.

1 “(e) *The Office of Personnel Management shall prescribe*
2 *regulations to carry out this section. However, the regulations*
3 *are not applicable to the Tennessee Valley Authority and its*
4 *employees.”.*

5 *TITLE VIII—MISCELLANEOUS*

6 *SAVINGS PROVISIONS*

7 *SEC. 801. (a) Except as provisions of this Act may*
8 *govern, all Executive orders, rules, and regulations affecting*
9 *the Federal service shall continue in effect, according to their*
10 *terms, until modified, terminated, superseded, or repealed by*
11 *the President, the Office of Personnel Management, the*
12 *Merit Systems Protection Board, the Equal Employment*
13 *Opportunity Commission, or the Federal Labor Relations*
14 *Authority as to matters within their respective jurisdictions.*

15 *(b) No provision of this Act shall affect any adminis-*
16 *trative proceedings pending at the time such provision takes*
17 *effect. Orders shall be issued in such proceedings and appeals*
18 *shall be taken therefrom as if this Act had not been enacted.*

19 *(c) No suit, action, or other proceeding lawfully com-*
20 *menced by or against the Director of the Office of Personnel*
21 *Management or the board members of the Merit Systems*
22 *Protection Board, or officers or employees thereof in their*
23 *official capacity or in relation to the discharge of their official*
24 *duties, as in effect immediately before the effective date of*
25 *this Act, shall abate by reason of enactment of this Act. Such*

1 *suits, actions, or other proceedings shall be determined as if*
2 *this Act had not been enacted.*

3 **AUTHORIZATION OF APPROPRIATIONS**

4 *SEC. 802. There are authorized to be appropriated, out*
5 *of any moneys in the Treasury not otherwise appropriated,*
6 *such sums as may be necessary to carry out the provisions of*
7 *this Act.*

8 **POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS**

9 **PROVISIONS**

10 *SEC. 803. Except as expressly provided in this Act,*
11 *nothing contained herein shall be construed to limit, curtail,*
12 *abolish, or terminate any function of, or authority available*
13 *to, the President which the President had immediately before*
14 *the effective date of this Act; or to limit, curtail, or terminate*
15 *the President's authority to delegate, redelegate, or terminate*
16 *any delegation of functions.*

17 **TECHNICAL AND CONFORMING AMENDMENTS**

18 *SEC. 804. (a) Any provision in either Reorganization*
19 *Plan Numbered 1 or 2 of 1978 inconsistent with any pro-*
20 *vision in this Act is hereby superseded.*

21 *(b) The President or his designee shall, as soon as*
22 *practicable but in any event not later than 30 days after the*
23 *date of the enactment of this Act, submit to the Committee on*
24 *Post Office and Civil Service of the House of Representatives*
25 *and the Committee on Governmental Affairs of the Senate a*

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TITLE VI—RESEARCH, DEMONSTRATION, AND
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- Sec. 601. Research and demonstration projects.
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TITLE VII—LABOR-MANAGEMENT RELATIONS

- Sec. 701. Labor-management relations.
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- Sec. 801. Savings provisions.
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FINDINGS AND STATEMENT OF PURPOSE

1
 2 SEC. 3. It is the policy of the United States that—

3 (1) in order to provide the people of the United
 4 States with a competent, honest, and productive Federal
 5 work force reflective of the Nation's diversity, and to
 6 improve the quality of public service, Federal personnel
 7 management should be implemented consistent with
 8 merit system principles and free from prohibited person-
 9 nel practices;

10 (2) the merit system principles which shall govern
 11 in the competitive service and in the executive branch
 12 of the Federal Government should be expressly stated
 13 to furnish guidance to Federal agencies in carrying out
 14 their responsibilities in administering the public business
 15 and prohibited personnel practices should be statutorily

1 defined to enable Government officers and employees to
2 avoid conduct which undermines the merit system prin-
3 ciples and the integrity of the merit system;

4 (3) Federal employees should receive appropriate
5 protection through increasing the authority and powers
6 of the independent Merit Systems Protection Board in
7 processing hearings and appeals affecting Federal
8 employees;

9 (4) the authority and power of the independent
10 Special Counsel should be increased so that the Special
11 Counsel may investigate allegations involving prohibited
12 personnel practices, protect Federal employees from re-
13 prisals for the lawful disclosure of information and from
14 political coercion, and bring complaints and disciplinary
15 charges against agencies and employees that engage in
16 prohibited personnel practices;

17 (5) the function of filling positions and other per-
18 sonnel functions in the competitive service and in the
19 executive branch should be delegated in appropriate
20 cases to the agencies to expedite processing appoint-
21 ments and other personnel actions, with the control and
22 oversight of this delegation being maintained by the
23 Office of Personnel Management to protect against pro-
24 hibited personnel practices and the use of unsound man-
25 agement practices by the agencies;

5

1 (6) a Senior Executive Service should be estab-
2 lished to provide the flexibility needed by Executive
3 agencies to recruit and retain the highly competent and
4 qualified executives needed to provide more effective
5 management of Executive agencies and their functions,
6 and the more expeditious administration of the public
7 business;

8 (7) in appropriate instances, pay increases should
9 be based on quality of performance rather than length
10 of service;

11 (8) a research and demonstration program should
12 be authorized to permit Federal agencies to experiment
13 with new and different personnel management concepts
14 in controlled situations to achieve more efficient manage-
15 ment of the Government's human resources and greater
16 productivity in the delivery of service to the public;

17 (9) the training program of the Government should
18 include retraining of employees for positions in other
19 agencies to avoid separations during reductions in force
20 and the loss to the Government of the knowledge and
21 experience that these employees possess, and to maintain
22 the morale and productivity of employees; and

23 (10) the right of Federal employees to organize,
24 bargain collectively, and participate through labor orga-
25 nizations in decisions which affect them, with full regard

1 for the public interest and the effective conduct of public
2 business, should be specifically recognized in statute.

3 **TITLE I—MERIT SYSTEM PRINCIPLES**

4 **MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL**
5 **PRACTICES**

6 **SEC. 101.** (a) Title 5, United States Code, is amended
7 by inserting, after chapter 21, the following new chapter:

8 **“CHAPTER 23—MERIT SYSTEM PRINCIPLES**

“Sec.

“2301. Merit system principles.

“2303. Prohibited personnel practices.

“2303. Responsibility of the General Accounting Office.

9 **“§ 2301. Merit system principles**

10 **“(a) (1)** Except as provided in paragraph (2) of this
11 subsection, this chapter shall apply to—

12 **“(A)** an Executive agency;

13 **“(B)** the Administrative Office of the United States
14 Courts; and

15 **“(C)** the Government Printing Office.

16 **“(2)** This chapter shall not apply to—

17 **“(A)** a Government corporation;

18 **“(B)** the Federal Bureau of Investigation, the Cen-
19 tral Intelligence Agency, the Defense Intelligence
20 Agency, the National Security Agency, any positions
21 in the Drug Enforcement Administration which are ex-
22 cluded from the competitive service under section 201

1 colon at the end thereof and by inserting in lieu thereof
2 the following: “, except to the extent that the compen-
3 sation received from the State or local government is
4 less than the appropriate rate of pay which the duties
5 would warrant under the applicable pay provisions of
6 this title or other applicable authority;”; and

7 (3) by striking out the period at the end of sub-
8 section (c) and adding the following: “, or for the
9 contribution of the State or local government, or a part
10 thereof, to employee benefit systems.”.

11 (f) Section 3375 (a) of title 5, United States Code, is
12 amended by striking out “and” at the end of paragraph
13 (4), by redesignating paragraph (5) as paragraph (6),
14 and by inserting after paragraph (4) thereof the following:

15 “(5) section 5724a (b) of this title, to be used by
16 the employee for miscellaneous expenses related to
17 change of station where movement or storage of house-
18 hold goods is involved; and”.

19 TITLE VII—LABOR-MANAGEMENT RELATIONS

20 LABOR-MANAGEMENT RELATIONS

21 SEC. 701. (a) Subpart F of part III of title 5, United
22 States Code, is amended by adding after chapter 71 the fol-
23 lowing new chapter:

1 **“CHAPTER 72—FEDERAL SERVICE LABOR-**
 2 **MANAGEMENT RELATIONS**

“SUBCHAPTER I—GENERAL PROVISIONS

“Sec.

“7201. Findings and purpose.

“7202. Definitions; application.

“7203. Federal Labor Relations Authority; Office of General Counsel.

“7204. Powers and duties of the Authority and of the General Counsel.

**“SUBCHAPTER II—RIGHTS AND DUTIES OF EMPLOYEES,
 AGENCIES AND LABOR ORGANIZATIONS**

“7211. Employees' rights.

“7212. Recognition of labor organizations.

“7213. National consultation rights.

“7214. Exclusive recognition.

“7215. Representation rights and duties.

“7216. Unfair labor practices.

“7217. Standards of conduct for labor organizations.

“7218. Basic provisions of agreements.

“7219. Approval of agreements.

“SUBCHAPTER III—GRIEVANCES AND IMPASSES

“7221. Grievance procedures.

“7222. Federal Service Impasses Panel; negotiation impasses.

**“SUBCHAPTER IV—ADMINISTRATIVE AND OTHER
 PROVISIONS**

“7231. Allotments to representatives.

“7232. Use of official time.

“7233. Remedial action.

“7234. Subpenas.

“7235. Regulations.

3 **“SUBCHAPTER I—GENERAL PROVISIONS**

4 **“§ 7201. Findings and purpose**

5 “(a) The Congress finds that the public interest de-
 6 mands the highest standards of employee performance and
 7 the continued development and implementation of modern
 8 and progressive work practices to facilitate and improve
 9 employee performance and the efficient accomplishment of
 10 the operations of the Government.

1 “(b) The Congress also finds that, while significant
2 differences exist between Federal and private employment,
3 experience under Executive Order Numbered 11491 indicates
4 that the statutory protection of the right of employees to or-
5 ganize, to bargain collectively within prescribed limits, and
6 to participate through labor organizations of their own
7 choosing in decisions which affect them—

8 “(1) may be accomplished with full regard for the
9 public interest,

10 “(2) contributes to the effective conduct of public
11 business, and

12 “(3) facilitates and encourages the amicable settle-
13 ment between employees and their employers of disputes
14 involving personnel policies and practices and matters
15 affecting working conditions.

16 “(c) It is the purpose of this chapter to prescribe cer-
17 tain rights and obligations of the employees of the Federal
18 government subject to the paramount interest of the public
19 and to establish procedures which are designed to meet the
20 special requirements and needs of the Federal government
21 in matters relating to labor-management relations.

22 **“§ 7202. Definitions; application**

23 “(a) For purposes of this chapter—

24 “(1) ‘agency’ means an Executive agency other
25 than the General Accounting Office;

1 “(2) ‘employee’ means an individual who—

2 “(A) is employed in an agency;

3 “(B) is employed in a nonappropriated fund
4 instrumentality described in section 2105 (c) of this
5 title;

6 “(C) is employed in the Veterans’ Canteen
7 Service, Veterans’ Administration, and who is de-
8 scribed in section 5102 (c) (14) of this title; or

9 “(D) is an employee (within the meaning of
10 subparagraph (A), (B), or (C)) who was sepa-
11 rated from the service as a consequence of, or in con-
12 nection with, an unfair labor practice described in
13 section 7216 of this title;

14 but does not include—

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

17 “(ii) a member of the uniformed services
18 (within the meaning of section 2101 (3) of this
19 title);

20 “(iii) for purposes of exclusive recognition or
21 national consultation rights unless authorized under
22 the provisions of this chapter, a supervisor, a man-
23 agement official, or a confidential employee;

24 “(3) ‘labor organization’ means any lawful organi-
25 zation of employees which was established for the

1 purpose, in whole or in part, of dealing with agencies
2 in matters relating to grievances and personnel policies
3 and practices or in other matters affecting the working
4 conditions of the employees, but does not include an or-
5 ganization which—

6 “(A) except as authorized under this chapter,
7 consists of, or includes, management officials, con-
8 fidential employees, or supervisors;

9 “(B) assists, or participates, in the conduct of a
10 strike against the Government of the United States
11 or any agency thereof or imposes a duty or obliga-
12 tion to conduct, assist, or participate in such a strike;

13 “(C) advocates the overthrow of the constitu-
14 tional form of government of the United States; or

15 “(D) discriminates with regard to the terms or
16 conditions of membership because of race, color,
17 religion, national origin, sex, age, or handicapping
18 condition;

19 “(4) ‘agency management’ means the agency head
20 and all management officials, supervisors, and other rep-
21 resentatives of management having authority to act for
22 the agency on any matters relating to the implementa-
23 tion of the agency labor-management relations program
24 established under this chapter;

1 “(5) ‘Authority’ means the Federal Labor Rela-
2 tions Authority established under section 7203 of this
3 title;

4 “(6) ‘General Counsel’ means the General Counsel
5 of the Federal Labor Relations Authority;

6 “(7) ‘Panel’ means the Federal Service Impasses
7 Panel established under section 7222 of this title;

8 “(8) ‘Assistant Secretary’ means the Assistant Sec-
9 retary of Labor for Labor-Management Relations;

10 “(9) ‘confidential employee’ means an employee
11 who assists, and acts in a confidential capacity to, indi-
12 viduals who formulate and carry out management policies
13 in the field of labor relations;

14 “(10) ‘management official’ means an employee
15 having authority to make, or to influence effectively the
16 making of, policy with respect to personnel procedures
17 or programs which is necessary to an agency or an
18 activity;

19 “(11) ‘supervisor’ means an employee having au-
20 thority, in the interest of an agency, to hire, transfer,
21 suspend, lay off, recall, promote, discharge, assign, re-
22 ward, or discipline other employees or responsibly to di-
23 rect them, or to adjust their grievances, or effectively to
24 recommend such action, if in connection with the fore-
25 going the exercise of authority is not of a merely routine

1 or clerical nature, but requires the use of independent
2 judgment;

3 “(12) ‘professional employee’ means—

4 “(A) any employee engaged in the perform-
5 ance of work—

6 “(i) requiring knowledge of an advanced
7 type in a field of science or learning customarily
8 acquired by a prolonged course of specialized
9 intellectual instruction and study in an institu-
10 tion of higher learning or in a hospital, as
11 distinguished from work requiring knowledge
12 acquired from a general academic education,
13 an apprenticeship, or training in the perform-
14 ance of routine mental, manual, or physical
15 processes;

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

18 “(iii) which is predominantly intellectual
19 and varied in character and not routine mental,
20 manual, mechanical or physical work; and

21 “(iv) which is of such a character that the
22 measurement of the output produced, or of the
23 result accomplished, cannot be standardized by
24 relating it to a given period of time; or

1 “(B) any employee who has completed the
2 courses of specialized intellectual instruction and
3 study described in subparagraph (A) and who is
4 performing related work under the direction or
5 guidance of a professional employee to qualify the
6 employee to become a professional employee.

7 “(13) ‘agreement’ means an agreement entered into
8 as a result of collective bargaining pursuant to the pro-
9 visions of this chapter;

10 “(14) ‘collective bargaining’, ‘bargaining’, or
11 ‘negotiating’ means the performance of the mutual ob-
12 ligation of the representatives of the agency and the ex-
13 clusive representative as provided in section 7215 of
14 this title;

15 “(15) ‘exclusive representative’ includes any labor
16 organization which has been—

17 “(A) selected pursuant to the provisions of
18 section 7214 of this title as the representative of
19 the employees in an appropriate collective bargain-
20 ing unit; or

21 “(B) certified or recognized prior to the effec-
22 tive date of this chapter as the exclusive representa-
23 tive of the employees in an appropriate collective
24 bargaining unit;

25 “(16) ‘person’ means an individual, labor organi-

1 zation, or agency covered by this chapter; and

2 “(17) ‘grievance’ means any complaint by any
3 person concerning any matter which falls within the
4 coverage of a grievance procedure.

5 “(b) Except as provided in subsections (c), (d), and
6 (e) of this section, this chapter applies to all employees of
7 an agency.

8 “(c) This chapter shall not apply to—

9 “(1) the Federal Bureau of Investigation;

10 “(2) the Central Intelligence Agency;

11 “(3) the National Security Agency;

12 “(4) any agency not described in paragraph (1),
13 (2), or (3), or any unit within any agency, which has
14 as a primary function intelligence, investigative, or na-
15 tional security work, if the head of the agency deter-
16 mines, in the agency head’s sole judgment, that this
17 chapter cannot be applied in a manner consistent with
18 national security requirements and considerations;

19 “(5) any unit of an agency which has as a pri-
20 mary function investigation or audit of the conduct or
21 work of officers or employees of the agency for the
22 purpose of insuring honesty and integrity in the dis-
23 charge of official duties, if the head of the agency
24 determines, in the agency head’s sole judgment, that

1 this chapter cannot be applied in a manner consistent
2 with the internal security of the agency;

3 “(6) the United States Postal Service;

4 “(7) the Foreign Service of the United States;

5 “(8) the Tennessee Valley Authority; or

6 “(9) officers and employees of the Federal Labor
7 Relations Authority, including the Office of General
8 Counsel and the Federal Service Impasses Panel.

9 “(d) The head of an agency may, in the agency
10 head’s sole judgment and subject to such conditions as he may
11 prescribe, suspend any provision of this chapter with respect
12 to any agency, installation, or activity located outside the
13 United States if the agency head determines that such suspen-
14 sion is necessary for the national interest.

15 “(e) Employees engaged in administering a labor-man-
16 agement relations law who are otherwise authorized by this
17 chapter to be represented by a labor organization shall not
18 be represented by a labor organization which also represents
19 other employees covered by such law or which is affiliated
20 directly or indirectly with an organization which represents
21 such employees.

22 “§ 7203. Federal Labor Relations Authority; Office of Gen-
23 eral Counsel

24 “(a) There is established, as an independent establish-

1 ment of the executive branch of the Government, the Federal
2 Labor Relations Authority.

3 “(b) The Authority shall consist of three members, not
4 more than two of whom may be adherents of the same polit-
5 ical party and none of whom may hold another office or posi-
6 tion in the Government of the United States except as pro-
7 vided by law or by the President.

8 “(c) Members of the Authority shall be appointed by
9 the President, by and with the advice and consent of the
10 Senate, and shall be eligible for reappointment. The Presi-
11 dent shall designate one member to serve as Chairman of the
12 Authority. Any member of the Authority may be removed
13 by the President.

14 “(d) The term of office of each member of the Authority
15 is 5 years, except that a member may continue to serve
16 beyond the expiration of the term to which appointed until
17 the earlier of—

18 “(1) the date on which the member’s successor has
19 been appointed and has qualified, or

20 “(2) the last day of the session of the Congress be-
21 ginning after the date the member’s term of office would
22 (but for this sentence) expire.

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

1 of the Authority. An individual chosen to fill a vacancy shall
2 be appointed for the unexpired term of the member such
3 individual replaces.

4 “(f) The Authority shall make an annual report to the
5 President for transmittal to the Congress and shall include
6 in such report information as to the cases it has heard and
7 the decisions it has rendered under this chapter.

8 “(g) There is established within the Authority an Office
9 of General Counsel. The General Counsel shall be appointed
10 by the President, by and with the advice and consent of the
11 Senate, and shall be paid at an annual rate of basic pay
12 equal to the maximum annual rate of basic pay currently
13 paid, from time to time, under the General Schedule. The
14 General Counsel shall be appointed for a term of 5 years
15 and may be reappointed to any succeeding term. The Gen-
16 eral Counsel may be removed by the President. The Gen-
17 eral Counsel shall hold no other office or position in the Gov-
18 ernment of the United States except as provided by law or
19 by the President.

20 **“§ 7204. Powers and duties of the Authority and of the**
21 **General Counsel**

22 “(a) The Authority shall administer and interpret the
23 provisions of this chapter, decide major policy issues, pre-
24 scribe regulations, and disseminate information appropriate
25 to the needs of agencies, labor organizations, and the public.

1 “(b) The Authority shall, in accordance with regula-
2 tions prescribed by it—

3 “(1) decide questions submitted to it with respect
4 to the appropriate unit for the purpose of exclusive
5 recognition and with respect to any related issue;

6 “(2) supervise elections to determine whether a la-
7 bor organization has been selected by a majority of the
8 employees in an appropriate unit who cast valid ballots
9 in the election;

10 “(3) decide questions with respect to the eligibility
11 of labor organizations for national consultation rights;
12 and

13 “(4) decide unfair labor practice complaints.

14 “(c) The Authority may consider, in accordance with
15 regulations prescribed by it, any—

16 “(1) appeal from any decision on the negotiabil-
17 ity of any issue as provided in subsection (e) of section
18 7215 of this title;

19 “(2) exception to any arbitration award as provided
20 in section 7221 of this title;

21 “(3) appeal from any decision of the Assistant
22 Secretary issued pursuant to section 7217 of this title;

23 “(4) exception to any final decision and order of the
24 Panel issued pursuant to section 7222 of this title; and

1 “(5) other matters it deems appropriate in order
2 to assure it carries out the purposes of this chapter.

3 “(d) The Authority shall adopt an official seal which
4 shall be judicially noticed.

5 “(e) The Authority shall maintain its principal office
6 in or about the District of Columbia but it may meet and
7 exercise any or all of its powers at any time or place. Sub-
8 ject to subsection (g) of this section, the Authority may, by
9 one or more of its members or by such agents as it may desig-
10 nate, make any inquiry necessary to carry out its duties
11 wherever persons subject to this chapter are located. A mem-
12 ber who participates in such inquiry shall not be disqualified
13 from later participating in a decision of the Authority in the
14 same case.

15 “(f) The Authority shall appoint an Executive Direc-
16 tor, such attorneys, regional directors, administrative law
17 judges, and other officers and employees as it may from time
18 to time find necessary for the proper performance of its duties
19 and may delegate to such officers and employees authority to
20 perform such duties and make such expenditures as may be
21 necessary.

22 “(g) All of the expenses of the Authority, including all
23 necessary traveling and subsistence expenses outside the Dis-
24 trict of Columbia, incurred by members, employees, or agents
25 of the Authority under its orders, shall be allowed and paid

1 on the presentation of itemized vouchers therefor approved by
2 the Authority or by an individual it designates for that pur-
3 pose and in accordance with applicable law.

4 “(h) (1) The Authority is expressly empowered and di-
5 rected to prevent any person from engaging in conduct found
6 violative of this chapter. In order to carry out its functions
7 under this chapter, the Authority is authorized to hold hear-
8 ings, subpoena witnesses, administer oaths, and take the testi-
9 mony or deposition of any person under oath, and in connec-
10 tion therewith, to issue subpoenas requiring the production
11 and examination of evidence as provided in section 7234 of
12 this title relating to any matter pending before it and to take
13 such other action as may be necessary. In the exercise of the
14 functions of the Authority under this title, the Authority may
15 request from the Director of the Office of Personnel Manage-
16 ment an advisory opinion concerning the proper interpreta-
17 tion of regulations or other policy directives promulgated by
18 the Office of Personnel Management in connection with a
19 matter before the Authority for adjudication.

20 “(2) If a regulation or other policy directive issued by
21 the Office of Personnel Management is at issue in an appeal
22 before the Authority, the Authority shall timely notify the
23 Director, and the Director shall have standing to intervene
24 in the proceeding and shall have all the rights of a party to
25 the proceeding.

1 “(3) The Director may request that the Authority
2 reopen an appeal and reconsider its decision on the ground
3 that the decision was based on an erroneous interpretation of
4 law or of a controlling regulation or other policy directive
5 issued by the Office of Personnel Management.

6 “(i) In any matter arising under subsection (b) of this
7 section, the Authority may require an agency or a labor or-
8 ganization to cease and desist from violations of this chapter
9 and require it to take such remedial action as it considers
10 appropriate to carry out the policies of this chapter.

11 “(j) (1) The Authority shall maintain a record of its
12 proceedings and make public any decision made by it or any
13 action taken by the Panel under section 7222 of this title.

14 “(2) The provisions of section 552 of this title shall
15 apply with respect to any record maintained under para-
16 graph (1).

17 “(k) The General Counsel is authorized to—

18 “(1) investigate complaints of violations of section
19 7216 of this title;

20 “(2) make final decisions as to whether to issue
21 notices of hearing on unfair labor practice complaints
22 and to prosecute such complaints before the Authority;

23 “(3) direct and supervise all field employees of the
24 General Counsel in the field offices of the Authority; and

1 “(4) perform such other functions as the Authority
2 prescribes.

3 “(1) Notwithstanding any other provision of law, in-
4 cluding chapter 7 of this title, and except as provided in
5 section 7216 (f) of this title, the decision of the Authority
6 on any matter within its jurisdiction shall be final and con-
7 clusive, and no other official or any court of the United
8 States shall have power or jurisdiction to review any such
9 decision by an action in the nature of mandamus on appeal
10 of that decision or by any other means, except that nothing in
11 this section shall limit the right of persons to judicial review
12 of questions arising under the Constitution of the United
13 States.

14 “SUBCHAPTER II—RIGHTS AND DUTIES OF
15 EMPLOYEES, AGENCIES AND LABOR ORGANI-
16 ZATIONS

17 “§ 7211. Employees’ rights

18 “(a) Each employee shall have the right freely and
19 without fear of penalty or reprisal to form, join, or assist
20 any labor organization, or to refrain from such activity, and
21 each employee shall be protected in exercising such rights.
22 Except as otherwise provided under this chapter, such rights
23 include the right to—

24 “(1) participate in the management of a labor or-
25 ganization,

1 “(2) act for the organization in the capacity of a
2 representative,

3 “(3) present, in such representative capacity, the
4 views of the organization to agency heads and other
5 officials of the executive branch of the Government, the
6 Congress, or other appropriate authorities, and

7 “(4) bargain collectively, subject to the limits pre-
8 scribed in section 7215 (c) of this title, through repre-
9 sentatives of their own choosing.

10 “(b) This chapter does not authorize—

11 “(1) a management official, a confidential em-
12 ployee, or a supervisor to participate in the management
13 of a labor organization or to act as a representative of
14 such an organization, unless such participation or activi-
15 ty is specifically authorized by this chapter, or

16 “(2) any employee to so participate or act if such
17 participation or activity would result in any conflict of
18 interest, or appearance thereof, or would otherwise be
19 inconsistent with any law or the official duties of the
20 employee.

21 **“§ 7212. Recognition of labor organizations**

22 “(a) An agency shall accord exclusive recognition or
23 national consultation rights at the request of a labor orga-
24 nization which meets the requirements for such recognition
25 or consultation rights under this chapter.

1 “(b) Recognition of a labor organization, once accord-
2 ed, shall continue as long as the organization meets the
3 requirements of this chapter for recognition.

4 “(c) Recognition of a labor organization shall not—

5 “(1) preclude an employee, regardless of whether
6 the employee is in a unit of exclusive recognition, from
7 exercising grievance or appellate rights established by
8 law or regulation or from choosing the employee’s own
9 representative in a grievance or appellate action ex-
10 cept when the grievance or appeal is covered by and
11 pursued under a negotiated procedure as provided in
12 section 7221 of this title;

13 “(2) preclude or restrict consultations and dealings
14 between an agency and a veterans organization with re-
15 spect to matters of particular interest to employees in
16 connection with veterans preference; or

17 “(3) preclude an agency from consulting or deal-
18 ing with a religious, social, fraternal, professional, or
19 other lawful association not qualified as a labor orga-
20 nization with respect to matters or policies which involve
21 individual members of the association or are of particu-
22 lar applicability to it or its members.

23 Consultations and dealings under paragraph (3) shall not
24 assume the character of formal consultation on matters of
25 general employee-management policy covering employees in

1 that unit or extend to areas where recognition of the interests
2 of one employee group may result in discrimination against
3 or injury to the interest of other employees.

4 **“§ 7213. National consultation rights**

5 “(a) An agency shall accord national consultation
6 rights to a labor organization which qualifies under criteria
7 established by the Authority as the representative of a
8 substantial number of employees of the agency. National
9 consultation rights shall not be accorded for any unit if a
10 labor organization already holds exclusive recognition at the
11 national level for that unit. The granting of national consulta-
12 tion rights shall not preclude an agency from appropriate
13 dealings at the national level with other organizations on
14 matters affecting their members. An agency shall terminate
15 national consultation rights if the labor organization ceases to
16 qualify under the established criteria.

17 “(b) If a labor organization has been accorded national
18 consultation rights, the agency shall notify representatives of
19 such organization of proposed substantive changes in person-
20 nel policies that affect employees such organization represents
21 and provide an opportunity for such organization to comment
22 on the proposed changes. Such organization may suggest
23 changes in the agency’s personnel policies and have its views
24 carefully considered. Representatives of such organization
25 may consult, at reasonable times, with appropriate officials

1 on personnel policy matters and may, at all times, present in
2 writing the organization's views on such matters. An agency
3 is not required to consult with any such organization on any
4 matter on which it would not be required to negotiate if the
5 organization were entitled to exclusive recognition.

6 “(c) Any question with respect to the eligibility of a
7 labor organization for national consultation rights may be
8 referred to the Authority for decision.

9 “§ 7214. Exclusive recognition

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

15 “(b) A unit may be established on an agency, plant,
16 installation, craft, functional, or other basis which will as-
17 sure a clear and identifiable community of interest among
18 the employees concerned and will promote effective dealings
19 and efficiency in the agency's operations. A unit shall not
20 be established solely on the basis of the extent to which em-
21 ployees in the proposed unit have organized, nor shall a unit
22 be established if it includes—

23 “(1) except as provided in section 701 (b) (1) of
24 the Civil Service Reform Act of 1978, any manage-
25 ment official, confidential employee, or supervisor;

1 “(2) an employee engaged in Federal personnel
2 work in other than a purely clerical capacity; or

3 “(3) both professional and nonprofessional em-
4 ployees, unless a majority of the professional employees
5 vote for inclusion in the unit.

6 Any question with respect to the appropriate unit may be
7 referred to the Authority for decision.

8 “(c) All elections shall be conducted under the super-
9 vision of the Authority or persons designated by the Author-
10 ity and shall be by secret ballot. Employees eligible to vote
11 shall be provided the opportunity to choose the labor organi-
12 zation they wish to represent them from among those on the
13 ballot and, except in the case of an election described in para-
14 graph (4), the opportunity to choose not to be represented
15 by a labor organization. Elections may be held to determine
16 whether a labor organization should—

17 “(1) be recognized as the exclusive representative
18 of employees in a unit;

19 “(2) replace another labor organization as the ex-
20 clusive representative;

21 “(3) cease to be the exclusive representative;

22 “(4) be recognized as the exclusive representative
23 of employees in a unit composed of employees in units
24 currently represented by that labor organization or con-
25 tinue to be recognized in the existing separate units.

1 An election need not be held to determine whether an organi-
2 zation should become, or continue to be recognized as, the
3 exclusive representative of the employees in any unit, or
4 subdivision thereof, during the 12-month period after a valid
5 election has been held under this chapter with respect to such
6 unit.

7 **“§ 7215. Representation rights and duties**

8 “(a) If a labor organization has been accorded exclusive
9 recognition, such organization shall be—

10 “(1) the exclusive representative of employees in
11 the unit and is entitled to act for and negotiate agree-
12 ments covering all employees in the unit;

13 “(2) responsible for representing the interests of all
14 employees in the unit without discrimination and without
15 regard to labor organization membership; and

16 “(3) given the opportunity to be represented at for-
17 mal discussions between management and employees or
18 employee representatives concerning grievances, person-
19 nel policies and practices, or other matters affecting gen-
20 eral working conditions of employees in the unit.

21 “(b) An agency and an exclusive representative shall
22 have a duty to negotiate in good faith and in exercising such
23 duty shall—

24 “(1) approach the negotiations with a sincere re-
25 solve to reach an agreement;

1 “(2) be represented at the negotiations by appro-
2 priate representatives prepared to discuss and negotiate
3 on all negotiable matters;

4 “(3) meet at such reasonable times and places as
5 may be necessary; and

6 “(4) execute upon request of the agency or the
7 organization a written document embodying the terms of,
8 and take such steps as are necessary to implement, any
9 agreement which is reached.

10 “(c) An agency and an exclusive representative shall,
11 through appropriate representatives, negotiate in good faith
12 as prescribed under subsection (b) of this section with re-
13 spect to personnel policies and practices and matters affecting
14 working conditions but only to the extent appropriate under
15 laws and regulations, including policies which—

16 “(1) are set forth in the Federal Personnel Manual,

17 “(2) consist of published agency policies and regu-
18 lations for which a compelling need exists (as deter-
19 mined under criteria established by the Authority) and
20 which are issued at the agency headquarters level or at
21 the level of a primary national subdivision, or

22 “(3) are set forth in a national or other controlling
23 agreement entered into by a higher unit of the agency.

24 In addition, such organization and the agency may deter-

1 mine appropriate techniques, consistent with section 7222 of
2 this title, to assist in any negotiation.

3 “(d) In prescribing regulations relating to personnel
4 policies and practices and working conditions, an agency shall
5 give due regard to the obligation to negotiate imposed by this
6 section, except that such obligation does not include an obliga-
7 tion to negotiate with respect to matters concerning the num-
8 ber of employees in an agency, the numbers, types, and
9 grades of positions or employees assigned to an organiza-
10 tional unit, work project or tour of duty, or the technology
11 of performing the agency’s work. The preceding sentence
12 shall not preclude the parties from negotiating agreements
13 providing appropriate arrangements for employees adversely
14 affected by the impact of realignment of work forces or tech-
15 nological change.

16 “(e) (1) If, in connection with negotiations, an issue
17 develops as to whether a proposal is negotiable under this
18 chapter or any other applicable law, regulations, or control-
19 ling agreement, it shall be resolved as follows:

20 “(A) An issue which involves interpretation of a
21 controlling agreement at a higher agency level is re-
22 solved under the procedures of the controlling agreement,
23 or, if none, under regulations prescribed by the agency.

24 “(B) An issue not described in paragraph (1)

1 which arises at a local level may be referred by either
2 party to the head of the agency for determination.

3 “(2) An agency head’s determination under paragraph
4 (1) concerning the interpretation of the agency’s regulations
5 with respect to a proposal shall be final.

6 “(3) A labor organization may appeal to the Authority
7 from a decision under paragraph (1) if it—

8 “(A) disagrees with an agency head’s determina-
9 tion that a proposal is not negotiable under this chapter
10 or any other applicable law or regulation of appropriate
11 authority outside the agency, or

12 “(B) believes that an agency’s regulations, as inter-
13 preted by the agency head, are in violation of this chap-
14 ter or any other applicable law or regulation of appro-
15 priate authority outside the agency, or are not otherwise
16 applicable to bar negotiations under subsection (c) of
17 this section.

18 **“§ 7216. Unfair labor practices**

19 “(a) It shall be an unfair labor practice for an agency—

20 “(1) to interfere with, restrain, or coerce an em-
21 ployee in connection with the exercise of rights assured
22 by this chapter;

23 “(2) to encourage or discourage membership in any
24 labor organization by discrimination in regard to hiring,
25 tenure, promotion, or other conditions of employment;

1 “(3) to sponsor, control, or otherwise assist any
2 labor organization, unless such assistance consists of
3 furnishing customary and routine services and facilities—

4 “ (A) in a manner consistent with the best in-
5 terest of the agency, its employees, and the organiza-
6 tion, and

7 “ (B) on an impartial basis to organizations (if
8 any) having equivalent status;

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

13 “(5) to refuse to accord appropriate recognition to
14 a labor organization qualified for such recognition; or

15 “(6) to refuse to consult or negotiate in good faith
16 with a labor organization as required by this chapter:
17 *Provided*, That nothing in this chapter shall be construed
18 as requiring an agency to negotiate with any labor or-
19 ganization certified after the enactment of the Act until
20 such labor organization has been determined by means of
21 a secret ballot election conducted in accordance with the
22 provisions of this chapter. This proviso shall not be con-
23 strued to bar a consolidation of units without an election.

24 “(b) It shall be an unfair labor practice for a labor
25 organization—

1 “(1) to interfere with, restrain, or coerce an em-
2 ployee in connection with the exercise of the rights
3 assured by this chapter;

4 “(2) to cause or attempt to cause an agency to
5 coerce an employee in the exercise of rights under this
6 chapter;

7 “(3) to coerce or attempt to coerce an employee, or
8 to discipline, fine or take other economic sanction against
9 a member of the labor organization, as punishment or re-
10 prisal or for the purpose of hindering or impeding work
11 performance, productivity, or the discharge of duties of
12 such employee;

13 “(4) to—

14 “(A) call, or participate in, a strike, work
15 stoppage, slowdown, or picketing of an agency in
16 a labor-management dispute if such picketing inter-
17 feres or reasonably threatens to interfere with an
18 agency’s operations, or

19 “(B) condone any activity described in sub-
20 paragraph (A) by failing to take action to prevent
21 or stop it;

22 “(5) to discriminate against an employee with re-
23 gard to the terms or conditions of membership in the
24 organization because of race, color, religion, national ori-
25 gin, sex, age, or handicapping condition; or

1 “(6) to refuse to consult or negotiate in good faith
2 with an agency as required by this chapter.

3 “(c) It shall be an unfair labor practice for a labor or-
4 ganization which is accorded exclusive recognition to deny
5 membership to an employee in an appropriate unit unless
6 such denial is for failure to meet reasonable occupational
7 standards uniformly required for admission or for failure
8 to tender initiation fees and dues uniformly required as a
9 condition of acquiring and retaining membership. This sub-
10 section shall not preclude a labor organization from enforcing
11 discipline in accordance with procedures under its constitu-
12 tion or bylaws which conform to the requirements of this
13 chapter.

14 “(d) Issues which can properly be raised under an ap-
15 peals procedure may not be raised as unfair labor practices
16 prohibited under this section. Except for matters wherein,
17 under sections 7221 (e) and (f) of this title, an employee
18 has an option of using the negotiated grievance procedure or
19 an appeals procedure, issues which can be raised under a
20 grievance procedure may, in the discretion of the aggrieved
21 party, be raised under that procedure or as an unfair labor
22 practice under this section, but not under both procedures.
23 Appeals or grievance decisions shall not be construed as
24 unfair labor practice decisions under this chapter nor as a
25 precedent for such decisions. All complaints of unfair labor

1 practices prohibited under this section that cannot be resolved
2 by the parties shall be filed with the Authority.

3 “(e) Any question with respect to whether an issue can
4 properly be raised under an appeals procedure shall be
5 referred for resolution to the agency responsible for final
6 decisions relating to those issues.

7 “(f) (1) Any employee or agency adversely affected
8 or aggrieved by a final order or decision of the Authority
9 with respect to a matter raised as an unfair labor practice
10 under this section, or with respect to an exception filed to
11 any arbitrator’s award under section 7221 (j) of this title
12 which involves an unfair labor practice complaint, may ob-
13 tain judicial review of such an order or decision.

14 “(2) In review of a final decision or order under para-
15 graph (1), the agency or the labor organization involved
16 in the unfair labor practice complaint shall be the named re-
17 spondent, except that the Authority shall have the right to
18 appear in the court proceeding if it determines, in its sole
19 discretion, that the appeal may raise questions of substan-
20 tial interest to it. Except as provided in section 518 of title
21 28, relating to litigation before the Supreme Court, attorneys
22 designated by the Authority may appear for the Authority,
23 and represent the Authority in, any civil action brought in
24 connection with any function carried out by the Authority
25 pursuant to this title or as otherwise authorized by law.

1 “(3) A petition to review a final order or decision of
2 the Authority shall be filed in the Court of Claims or a
3 United States Court of Appeals as provided in chapters 91
4 and 158, respectively, of title 28 and shall be filed within
5 30 days after the date the petitioner received notice of the
6 final decision or order of the Board.

7 “(4) The court shall review the administrative record
8 for the purpose of determining whether the findings were
9 arbitrary or capricious, and not in accordance with law, and
10 whether the procedures required by statutes and regulations
11 were followed. The findings of the Authority are conclusive
12 if supported by substantial evidence in the administrative
13 record. If the court determines that further evidence is nec-
14 essary, it shall remand the case to the Authority which,
15 after such further proceedings as may be required, may
16 modify its findings, and shall file with the court the record
17 of such proceedings. The findings of the Authority are con-
18 clusive if supported by substantial evidence in the administra-
19 tive records as supplemented.

20 “(g) The expression of any personal views, argument,
21 opinion, or the making of any statement shall not (i) consti-
22 tute or be evidence of an unfair labor practice under any of
23 the provisions of this chapter, or (ii) constitute grounds for,
24 or evidence justifying, setting aside the results of any election
25 conducted under any provisions of this chapter, if such ex-

1 pression contains no threat of reprisal or force or promise of
2 benefit or undue coercive conditions.

3 **“§ 7217. Standards of conduct for labor organizations**

4 “(a) An agency shall only accord recognition to a labor
5 organization that is free from corrupt influences and influ-
6 ences opposed to basic democratic principles. Except as pro-
7 vided in subsection (b) of this section, an organization is not
8 required to prove that it is free from such influences if it is
9 subject to governing requirements adopted by the organiza-
10 tion or by a national or international labor organization or
11 federation of labor organizations with which it is affiliated,
12 or in which it participates, containing explicit and detailed
13 provisions to which it subscribes calling for—

14 “(1) the maintenance of democratic procedures and
15 practices, including provisions for periodic elections to be
16 conducted subject to recognized safeguards and provi-
17 sions defining and securing the right of individual mem-
18 bers to participate in the affairs of the organization, to
19 receive fair and equal treatment under the governing
20 rules of the organization, and to receive fair process in
21 disciplinary proceedings;

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

1 “(3) the prohibition of business or financial interests
2 on the part of organization officers and agents which con-
3 flict with their duty to the organization and its members;
4 and

5 “(4) the maintenance of fiscal integrity in the con-
6 duct of the affairs of the organization, including provi-
7 sions for accounting and financial controls and regular
8 financial reports or summaries to be made available to
9 members.

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

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

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

1 “(c) A labor organization which has or seeks recogni-
2 tion as a representative of employees under this chapter
3 shall file financial and other reports with the Assistant Sec-
4 retary, provide for bonding of officials and employees of the
5 organization, and comply with trusteeship and election
6 standards.

7 “(d) The Assistant Secretary shall prescribe such regu-
8 lations as are necessary to carry out the purposes of this
9 section. Such regulations shall conform generally to the
10 principles applied to labor organizations in the private sec-
11 tor. Complaints of violations of this section shall be filed
12 with the Assistant Secretary. In any matter arising under
13 this section, the Assistant Secretary may require a labor
14 organization to cease and desist from violations of this section
15 and require it to take such action as he considers appropri-
16 ate to carry out the policies of this section.

17 “(e) Any labor organization which by omission or
18 commission has willfully and intentionally violated section
19 7216 (b) (4) (B) shall upon an appropriate finding by the
20 Authority, of such violation, have its exclusive recognition
21 status revoked and it shall cease immediately to be legally
22 entitled and obligated to represent employees in the unit.

23 “§ 7218. Basic provisions of agreements

24 “(a) Each agreement between an agency and a labor
25 organization shall provide the following:

1 “(1) In the administration of all matters covered
2 by the agreement, officials and employees shall be gov-
3 erned by—

4 “(A) existing or future laws and the regula-
5 tions of appropriate authorities, including policies
6 which are set forth in the Federal Personnel
7 Manual,

8 “(B) published agency policies and regula-
9 tions in existence at the time the agreement was
10 approved, and

11 “(C) subsequently published agency policies
12 and regulations required by law or by the regula-
13 tions of appropriate authorities, or authorized by
14 the terms of a controlling agreement at a higher
15 agency level.

16 “(2) Management officials of the agency shall re-
17 tain the right to determine the mission, budget, organi-
18 zation, and internal security practices of the agency,
19 and the right, in accordance with applicable laws and
20 regulations, to—

21 “(A) direct employees of the agency;

22 “(B) hire, promote, transfer, assign, and re-
23 tain employees in positions within the agency, and
24 to suspend, demote, discharge, or take other dis-
25 ciplinary action against employees;

1 “(C) relieve employees from duties because of
2 lack of work or for other legitimate reasons;

3 “(D) maintain the efficiency of the Government
4 operations entrusted to such officials;

5 “(E) determine the methods, means, and per-
6 sonnel by which such operations are to be conducted;
7 and

8 “(F) take such actions as may be necessary
9 to carry out the mission of the agency in situations
10 of emergency.

11 “(b) Nothing in subsection (a) of this section shall
12 preclude the parties from negotiating—

13 “(1) procedures which management will observe in
14 exercising its authority to decide or act in matters re-
15 served under such subsection; or

16 “(2) appropriate arrangements for employees ad-
17 versely affected by the impact of management’s exercis-
18 ing its authority to decide or act in matters reserved un-
19 der such subsection,

20 except that such negotiations shall not unreasonably delay
21 the exercise by management of its authority to decide or act,
22 and such procedures and arrangements shall be consistent
23 with the provisions of any law or regulation described in
24 7215 (c) of this title, and shall not have the effect of negat-
25 ing the authority reserved under subsection (a).

1 “(c) Nothing in the agreement shall require an em-
2 ployee to become or to remain a member of a labor organiza-
3 tion or to pay money to the organization except pursuant to
4 a voluntary, written authorization by a member for the pay-
5 ment of dues through payroll deductions.

6 “(d) The requirements of this section shall be expressly
7 stated in the initial or basic agreement and apply to all sup-
8 plemental, implementing, subsidiary, or informal agreements
9 between the agency and the organization.

10 **“§ 7219. Approval of agreements**

11 “An agreement with a labor organization as the ex-
12 clusive representative of employees in a unit is subject to the
13 approval of the head of the agency or his designee. An agree-
14 ment shall be approved within 45 days from the date of its
15 execution if it conforms to this chapter and other applicable
16 laws, existing published agency policies and regulations (un-
17 less the agency has granted an exception to a policy or reg-
18 ulation), and regulations of other appropriate authorities. An
19 agreement which has not been approved or disapproved
20 within 45 days from the date of its execution shall go into ef-
21 fect without the required approval of the agency head and
22 shall be binding on the parties subject to the provisions of
23 this chapter, other applicable laws, and the regulations of
24 appropriate authorities outside the agency. A local agreement
25 subject to a national or other controlling agreement at a

1 be invoked only by the agency or the exclusive representa-
2 tive. Except as provided in subsection (g) of this section, the
3 procedure must also provide that the arbitrator is empowered
4 to resolve questions as to whether or not any grievance is
5 on a matter subject to arbitration under the agreement.

6 “(d) A negotiated grievance procedure may cover any
7 matter within the authority of an agency if not inconsistent
8 with the provisions of this chapter, except that it may not
9 include matters involving examination, certification and ap-
10 pointment, suitability, classification, political activities, retire-
11 ment, life and health insurance, national security, or the Fair
12 Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

13 “(e) Matters covered under sections 4303 and 7512 of
14 this title which also fall within the coverage of the negotiated
15 grievance procedure may, in the discretion of the aggrieved
16 employee, be raised either under the appellate procedures of
17 section 7701 of this title or under the negotiated grievance
18 procedure, but not both. Similar matters which arise under
19 other personnel systems applicable to employees covered by
20 this chapter may, in the discretion of the aggrieved employee,
21 be raised either under the appellate procedures, if any, appli-
22 cable to those matters, or under the negotiated grievance pro-
23 cedure, but not both. An employee shall be deemed to have
24 exercised his option under this subsection to raise a matter
25 either under the applicable appellate procedures or under the

1 negotiated grievance procedure at such time as the employee
2 timely files a notice of appeal under the applicable appellate
3 procedures or timely files a grievance in writing in accord-
4 ance with the provisions of the parties' negotiated grievance
5 procedure, whichever event occurs first.

6 “(f) An aggrieved employee affected by a prohibited per-
7 sonnel practice under section 2302 (b) (1) of this title which
8 also falls under the coverage of the negotiated grievance pro-
9 cedure may raise the matter under a statutory procedure or
10 the negotiated procedure, but not both. An employee shall be
11 deemed to have exercised his option under this subsection to
12 raise the matter under either a statutory procedure or the
13 negotiated procedure at such time as the employee timely
14 initiates an action under the applicable statutory procedure or
15 timely files a grievance in writing, in accordance with the
16 provisions of the parties' negotiated procedure, whichever
17 event occurs first. Selection of the negotiated procedure in
18 no manner prejudices the right of an aggrieved employee to
19 request the Merit Systems Protection Board to review the
20 final decision pursuant to subsections (h) and (i) of sec-
21 tion 7701 of this title in the case of any personnel action
22 that could have been appealed to the Board, or, where ap-
23 plicable, to request the Equal Employment Opportunity
24 Commission to review a final decision in any other matter
25 involving a complaint of discrimination of the type prohibited

1 by any law administered by the Equal Employment Oppor-
2 tunity Commission.

3 “(g) Any question that cannot be resolved by the parties
4 as to whether or not a grievance is on a matter excepted by
5 subsection (d) of this section shall be referred for resolution
6 to the agency responsible for final decisions relating to those
7 matters.

8 “(h) In matters covered under sections 4303 and 7512
9 of this title which have been raised under the negotiated
10 grievance procedure in accordance with the provisions of
11 subsection (e) of this section, an arbitrator shall be governed
12 by the provisions of section 4303 (f) or 7701 (d) of this
13 title, as applicable.

14 “(i) Allocation of the costs of the arbitrator shall be
15 governed by the collective-bargaining agreement. The col-
16 lective-bargaining agreement may require payment by the
17 agency which is a losing party to a proceeding before the
18 arbitrator of reasonable attorney fees incurred by an em-
19 ployee who is the prevailing party if the arbitrator deter-
20 mines that payment is warranted on the grounds that the
21 agency’s action was taken in bad faith. If an employee is the
22 prevailing party and the arbitrator’s decision is based on a
23 finding of discrimination prohibited by any law referred to
24 in section 7701 (h) of this title, attorney fees also may be
25 awarded and shall be governed by the standards applicable

1 under the Civil Rights Act of 1964, as amended (42
2 U.S.C. 2000e-5 (k)).

3 “(j) Either party may file exceptions to any arbitrator’s
4 award with the Authority, except that no exceptions may be
5 filed to awards concerning matters covered under subsection
6 (e) of this section. The Authority shall sustain a challenge
7 to an arbitrator’s award only on grounds that the award
8 violates applicable law, appropriate regulation, or other
9 grounds similar to those applied by Federal courts in private
10 sector labor-management relations. Decisions of the Author-
11 ity on exceptions to arbitration awards shall be final, except
12 for the right of an aggrieved employee under subsection (f)
13 of this section and under section 7216(f) of the title. The
14 Authority may award attorney fees to an employee who is
15 the prevailing party to an exception filed under this subsec-
16 tion, but only if it determines that payment by the agency is
17 warranted on the grounds that the agency’s action was taken
18 in bad faith.

19 “(k) In matters covered under sections 4303 and 7512
20 of this title which have been raised under the provisions of
21 the negotiated grievance procedure in accordance with the
22 provisions of subsection (e) of this section, the provisions of
23 section 7702 of this title pertaining to judicial review shall
24 apply to the award of an arbitrator in the same manner and
25 under the same conditions as if the matter had been decided

1 by the Merit Systems Protection Board. In matters similar
2 to those covered under sections 4303 and 7512 which arise
3 under other personnel systems and which an aggrieved em-
4 ployee has raised under the negotiated grievance procedure,
5 judicial review of an arbitrator's award may be obtained in
6 the same manner and on the same basis as could be obtained
7 of a final decision in such matters raised under applicable
8 appellate procedures.

9 **“§ 7222. Federal Service Impasses Panel; negotiation im-**
10 **passes**

11 “(a) (1) There is established within the Authority, as
12 a distinct organizational entity, the Federal Service Impasses
13 Panel. The Panel is composed of the Chairman, and an even
14 number of other members, appointed by the President solely
15 on the basis of fitness to perform the duties and functions of
16 the Office, from among individuals who are familiar with
17 Government operations and knowledgeable in labor-manage-
18 ment relations. No employee (as defined under section 2105
19 of this title) shall be appointed to serve as a member of the
20 Panel.

21 “(2) At the time the members of the Panel (other than
22 the Chairman) are first appointed, half shall be appointed for
23 a term of 1 year and half for the term of 3 years. An individ-
24 ual appointed to serve as the Chairman shall serve for a term
25 of 5 years. A successor of any member shall be appointed for

1 terms of 5 years, except that an individual chosen to fill a
2 vacancy shall be appointed for the unexpired term of the
3 member whom such individual replaces. Any member of the
4 Panel may be removed by the President.

5 “(3) The Panel may appoint an executive secretary and
6 such other employees as it may from time to time find neces-
7 sary for the proper performance of its duties. Each member
8 of the Panel is entitled to pay at a rate equal to the daily
9 equivalent of the maximum annual rate of basic pay cur-
10 rently paid, from time to time, under the General Schedule
11 for each day the member is engaged in the performance of
12 official business on the work of the Panel, including travel-
13 time, and is entitled to travel expenses and a per diem allow-
14 ance under section 5703 of this title.

15 “(b) Upon request, the Federal Mediation and Concilia-
16 tion Service shall provide services and assistance to agencies
17 and labor organizations in the resolution of negotiation
18 impasses.

19 “(c) If voluntary arrangements, including the services
20 of the Federal Mediation and Conciliation Service or other
21 third-party mediation fail to resolve a negotiation impasse,
22 either party may request the Panel to consider the matter.

23 “(d) The Panel or its designee shall promptly investi-
24 gate any impasse presented to it under subsection (c) of this
25 section. The Panel shall consider the matter and shall either

1 recommend procedures to the parties for the resolution of the
2 impasse or assist the parties in arriving at a settlement
3 through such methods and procedures, including fact finding
4 and recommendations, as it may find appropriate to accom-
5 plish the purposes of this section. Arbitration, or third-party
6 fact finding with recommendations to assist in the resolution
7 of an impasse, may be used by the parties only when au-
8 thorized or directed by the Panel. If the parties do not arrive
9 at a settlement, the Panel may hold hearings, compel under
10 section 7234 of this title the attendance of witnesses and the
11 production of documents, and take whatever action is neces-
12 sary and not inconsistent with the provisions of this chapter
13 to resolve the impasse. Notice of any final action of the Panel
14 shall be promptly served upon the parties and such action
15 shall be binding upon them during the term of the agreement
16 unless the parties mutually agree otherwise.

17 "SUBCHAPTER IV—ADMINISTRATIVE AND

18 OTHER PROVISIONS

19 "§ 7231. Allotments to representatives

20 " (a) If, pursuant to an agreement negotiated in accord-
21 ance with the provisions of this chapter, an agency has re-
22 ceived from an employee in a unit of exclusive recognition a
23 written assignment which authorizes the agency to deduct
24 from the wages of such employee amounts for the payment of
25 regular and periodic dues of the exclusive representative for

1 such unit, such assignment shall be honored. Except as
2 required under subsection (b) of this section, any such as-
3 signment shall be revocable at stated intervals of not more
4 than 6 months.

5 “(b) An allotment for the deduction of labor organiza-
6 tion dues terminates when—

7 “(1) the dues withholding agreement between the
8 agency and the exclusive representative is terminated
9 or ceases to be applicable to the employee; or

10 “(2) the employee has been suspended or expelled
11 from the labor organization which is the exclusive
12 representative.

13 **“§ 7232. Use of official time**

14 “Solicitation of membership or dues and other internal
15 business of a labor organization shall be conducted during
16 the nonduty hours of the employees concerned. Employees
17 who represent a recognized labor organization shall not be
18 on official time when negotiating an agreement with agency
19 management, except that the negotiating parties may agree
20 to arrangements which provide that the agency will author-
21 ize a reasonable number of such employees (not normally
22 in excess of the number of management representatives) to
23 negotiate on official time for up to 40 hours, or up to one-half
24 the time spent in negotiations during regular working hours.

1 **“§ 7233. Remedial actions**

2 “If it is determined by appropriate authority, includ-
3 ing an arbitrator, that certain action will carry out the poli-
4 cies of this chapter, such action may be directed by the ap-
5 propriate authority if consistent with law, including section
6 5596 of this title.

7 **“§ 7234. Subpenas**

8 “(a) Any member of the Authority, including the Gen-
9 eral Counsel, any member of the Panel, and any employee
10 of the Authority designated by the Authority may—

11 “(1) issue subpenas requiring the attendance and
12 testimony of witnesses and the production of documen-
13 tary or other evidence from any place in the United
14 States or any territory or possession thereof, the Com-
15 monwealth of Puerto Rico, or the District of Columbia,
16 except that no subpoena shall be issued under this sec-
17 tion which requires the disclosure of intramanagement
18 guidance, advice, counsel, or training within an agency
19 or between an agency and the Office of Personnel Man-
20 agement; and

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

24 “(b) In the case of contumacy or failure to obey a sub-
25 pena issued under subsection (a) (1), the United States

1 district court for the judicial district in which the person to
2 whom the subpoena is addressed resides or is served may issue
3 an order requiring such person to appear at any designated
4 place to testify or to produce documentary or other evidence.
5 Any failure to obey the order of the court may be punished
6 by the court as a contempt thereof.

7 “(c) Witnesses (whether appearing voluntarily or un-
8 der subpoena) shall be paid the same fee and mileage allow-
9 ances which are paid subpoenaed witnesses in the courts of
10 the United States.

11 **“§ 7235. Regulations**

12 “The Authority, including the General Counsel and the
13 Panel, and the Federal Mediation and Conciliation Service
14 shall each prescribe rules and regulations to carry out the
15 provisions of this chapter applicable to them. Unless other-
16 wise specifically provided in this chapter, the provisions of
17 subchapter II of chapter 5 of this title shall be applicable to
18 the issuance, revision, or repeal of any such rule or regula-
19 tion.”.

20 (b) (1) The amendments made by subsection (a) shall
21 not preclude—

22 (A) the renewal or continuation of an exclusive
23 recognition, certification of a representative, or a lawful
24 agreement between an agency and a representative of its

1 employees entered into before the effective date of this
2 section; or

3 (B) the renewal, continuation, or initial according
4 of recognition for units of management officials or super-
5 visors represented by labor organizations which his-
6 torically or traditionally represent management officials
7 or supervisors in private industry and which hold ex-
8 clusive recognition for units of such officials or super-
9 visors in any agency on the effective date of this section.

10 (2) Policies, regulations, and procedures established, and
11 decisions issued, under Executive Order Numbered 11491,
12 or under the provision of any related Executive order in
13 effect on the effective date of this section, shall remain in
14 full force and effect until revised or revoked by Executive
15 order or statute, or unless superseded by appropriate deci-
16 sion or regulation of the Federal Labor Relations Authority.

17 (c) Any term of office of any member of the Federal
18 Labor Relations Authority and the General Counsel of the
19 Federal Labor Relations Authority serving on the effective
20 date of this section shall continue in effect until such time as
21 such term would expire under Reorganization Plan Num-
22 bered 2 of 1978, and upon expiration of such term, appoint-
23 ments to such office shall be made under section 7203 of title
24 5, United States Code. Any term of office of any member of
25 the Federal Service Impasses Panel serving on the effective

1 date of this section shall continue in effect until such time as
2 members of the Panel are appointed pursuant to section
3 7222 of title 5, United States Code.

4 (d) There are hereby authorized to be appropriated
5 such sums as may be necessary to carry out the functions and
6 purposes of this section.

7 (e) The table of chapters for subpart F of part III of
8 title 5, United States Code, is amended by adding after the
9 item relating to chapter 71 the following new item:

“72. Federal Service Labor-Management Relations..... 7201”.

10 (f) Section 5315 of title 5, United States Code, is
11 amended by adding at the end thereof the following new
12 paragraph:

13 “(124) Chairperson, Federal Labor Relations Au-
14 thority.”.

15 (g) Section 5316 of title 5, United States Code, is
16 amended by adding at the end thereof the following new
17 paragraph:

18 “(147) Members, Federal Labor Relations Au-
19 thority (2).”.

20 (h) Section 2342 of title 28, United States Code, as
21 amended by section 206 of this Act, is amended—

22 (1) by striking out “and” at the end of paragraph
23 (5),

24 (2) by striking out the period at the end of para-

1 graph (6) and inserting in lieu thereof “; and”; and
2 (3) by adding at the end thereof the following new
3 paragraph:

4 “(7) all final orders of the Federal Labor Relations
5 Authority made reviewable by section 7216 (f) of title
6 5.”.

7 REMEDIAL AUTHORITY

8 SEC. 702. Section 5596 of title 5, United States Code,
9 is amended by striking out subsections (b) and (c) and in-
10 serting in lieu thereof the following:

11 “(b) An employee of an agency who, on the basis of an
12 administrative determination or a timely appeal, is found by
13 appropriate authority to have suffered a withdrawal, reduc-
14 tion, or denial of all or part of the employee’s pay, allow-
15 ances, differentials, or other monetary or employment bene-
16 fits, or a denial of an increase in such pay, allowances, differ-
17 entials, or other monetary or employment benefits, which
18 would not have occurred but for unjustified or unwarranted
19 action taken by the agency—

20 “(1) is entitled, on correction of the action, to be
21 made whole for—

22 “(A) all losses suffered less, in applicable cir-
23 cumstances, interim earnings, and

24 “(B) if appropriate, to reinstatement or restor-

1 ation to the same or a substantially similar position.
2 or promotion to a higher level position; and

3 “(2) for all purposes is deemed to have performed
4 service for the agency during the period of the unjustified
5 or unwarranted action except that—

6 “(A) annual leave restored under this para-
7 graph which is in excess of the maximum leave ac-
8 cumulation permitted by law shall be credited to a
9 separate leave account for the employee and shall be
10 available for use by the employee within the time
11 limits prescribed by regulations of the Office of Per-
12 sonnel Management, and

13 “(B) annual leave credited under subpara-
14 graph (A) of this paragraph but unused and still
15 available to the employee under regulations pre-
16 scribed by the Office of Personal Management shall
17 be included in the lump-sum payment under sec-
18 tion 5551 or 5552 (1) of this title but may not be
19 retained to the credit of the employee under section
20 5552 (2) of this title.

21 “(c) For the purposes of this section—

22 “(1) ‘unjustified or unwarranted action’ includes—

23 “(A) any act of commission, either substan-
24 tive or procedural, which violates or improperly

1 applies a provision of law, Executive order, regu-
2 lation, or collective bargaining agreement; and

3 “(B) any act of omission, or failure to take
4 an action, or confer a benefit, which must be taken
5 or conferred under a nondiscretionary provision of
6 law, Executive order, regulation, or collective-bar-
7 gaining agreement;

8 “(2) ‘administrative determination’ includes, but is
9 not limited to, a decision, award, or order issued by—

10 “(A) a court having jurisdiction over the mat-
11 ter involved;

12 “(B) the Office of Personal Management;

13 “(C) the Merit Systems Protection Board;

14 “(D) the Federal Labor Relations Authority;

15 “(E) the Comptroller General of the United
16 States;

17 “(F) the head of the employing agency or an
18 agency official to whom corrective action authority
19 is delegated; or

20 “(G) an arbitrator under negotiated binding
21 arbitration agreement between a labor organization
22 and agency management;

23 “(3) ‘appropriate authority’ includes, but is not
24 limited to—

25 “(A) a court having jurisdiction;

1 “(B) the Office of Personnel Management;
2 “(C) the Merit Systems Protection Board;
3 “(D) the Federal Labor Relations Authority;
4 “(E) the Comptroller General of the United
5 States;

6 “(F) the head of the employing agency or
7 agency official to whom corrective action authority
8 is delegated; or

9 “(G) an arbitrator under a negotiated binding
10 arbitration agreement between a labor organization
11 and agency management.

12 “(d) The provisions of this section shall not apply to
13 reclassification actions nor shall they authorize the setting
14 aside of an otherwise proper promotion by a selecting official
15 from a group of properly ranked and certified candidates.

16 “(e) The Office of Personnel Management shall pre-
17 scribe regulations to carry out this section. However, the
18 regulations are not applicable to the Tennessee Valley Au-
19 thority and its employees.”.

20 TITLE VIII—MISCELLANEOUS

21 SAVINGS PROVISIONS

22 SEC. 801. (a) Except as provisions of this Act may
23 govern, all Executive orders, rules, and regulations affecting
24 the Federal service shall continue in effect, according to their

1 terms, until modified, terminated, superseded, or repealed by
2 the President, the Office of Personnel Management, the
3 Merit Systems Protection Board, the Equal Employment
4 Opportunity Commission, or the Federal Labor Relations
5 Authority as to matters within their respective jurisdictions.

6 (b) No provision of this Act shall affect any adminis-
7 trative proceedings pending at the time such provision takes
8 effect. Orders shall be issued in such proceedings and appeals
9 shall be taken therefrom as if this Act had not been enacted.

10 (c) No suit, action, or other proceeding lawfully com-
11 menced by or against the Director of the Office of Personnel
12 Management or the board members of the Merit Systems
13 Protection Board, or officers or employees thereof in their
14 official capacity or in relation to the discharge of their official
15 duties, as in effect immediately before the effective date of
16 this Act, shall abate by reason of enactment of this Act. Such
17 suits, actions, or other proceedings shall be determined as if
18 this Act had not been enacted.

19 AUTHORIZATION OF APPROPRIATIONS

20 SEC. 802. There are authorized to be appropriated, out
21 of any moneys in the Treasury not otherwise appropriated,
22 such sums as may be necessary to carry out the provisions of
23 this Act.



(6)

95TH CONGRESS
2^D SESSION

S. CON. RES. 110

IN THE SENATE OF THE UNITED STATES

OCTOBER 10 (legislative day, SEPTEMBER 28), 1978

Mr. ROBERT C. BYRD submitted the following concurrent resolution; which was considered and agreed to

CONCURRENT RESOLUTION

Directing the Secretary of the Senate to make corrections in the enrollment of S. 2640.

1 *Resolved by the Senate (the House of Representatives*
2 *concurring)*, That in the enrollment of the bill (S. 2640),
3 to reform the civil service laws, the Secretary of the Senate
4 shall make the following corrections:

5 (1) In section 101 (a), in the proposed section
6 2301 (b) (9) (A), insert "any" before "law,".

7 (2) In section 101 (a), in the proposed section
8 2301 (b) (9) (B), strike out "or" the first place it
9 appears.

10 (3) In section 101 (a), in the proposed section
11 2302 (a) (2) (C), insert a comma after "Courts".

1 (4) In section 101 (a), in the proposed section
2 2302 (b) (1) (C), strike out “by” and insert “under”.

3 (5) In section 101 (a), in the proposed section
4 2302 (b) (8) (A), strike out “law or” and insert “law
5 and”.

6 (6) In section 101 (a), in the proposed section
7 2303 (a), insert a comma after “such authority” and in-
8 sert “(A)” after section 2302 (a) (2)”.

9 (7) In section 101 (a), in the proposed section
10 2303 (b), insert “such” before “a personnel action”.

11 (8) In section 101 (a), in the proposed section
12 2305, strike out “(78 Stat.) .” and insert “(78 Stat.
13 168; 50 U.S.C. 831-835) .”

14 (9) In section 201 (a), in the proposed section
15 1101, insert a comma after “official seal” and after “judi-
16 cially noticed”.

17 (10) In section 201 (a), in the proposed section
18 1103 (b) (2) (A), insert “of this subsection” after “par-
19 agraph (1)”.

20 (11) In section 201 (b) (3), strike out “(122) of
21 such title is amended to read as follows:” and insert “of
22 such title is amended by inserting after paragraph (121)
23 the following:”.

24 (12) In section 202 (a), in the proposed section
25 1205 (e), strike out “its” in paragraph (1) thereof, and

1 strike out “paragraph” in paragraph (3) (B) thereof
2 and insert “subsection”.

3 (13) In section 202 (a), in the proposed section
4 1206 (b) (1), strike out “law or” and insert “law and”,
5 and strike out the comma after “information”.

6 (14) In section 202 (a), in the proposed section
7 1206 (b) (3) (A), strike out “section” and insert “sub-
8 section”.

9 (15) In section 202 (a), in the proposed section
10 1206 (b) (5) (A) and (7), strike out “subparagraph”
11 and insert “paragraph”, strike out the comma after
12 “been” in paragraph (7).

13 (16) In section 202 (a), in the proposed section
14 1207 (a) (5), insert a comma after “date”.

15 (17) In section 202 (a), in the proposed section
16 1208 (c), strike out “paragraph” and insert “sub-
17 section”.

18 (18) In section 202 (a), in the proposed section
19 1209 (b), strike out “action” and insert “actions”.

20 (19) In section 203 (a), in the proposed section
21 4303 (f) (1), insert “or manager” after “supervisor”.

22 (20) In section 205, in the proposed section 7701
23 (b), strike out “experienced appeals officer” and insert
24 “employee experienced in hearing appeals”.

25 (21) In section 205, in the proposed section 7701

1 (e) (2), strike out "regulations" and insert "regu-
2 lation".

3 (22) In section 205, in the proposed section 7701
4 (g) (1), insert "a" before "prohibited".

5 (23) In section 205, in the proposed section 7701
6 (g) (2), strike out "706k" and insert "706 (k)".

7 (24) In section 205, in the proposed section 7701
8 (i) (2), strike out "the prior" each place it appears and
9 insert "that".

10 (25) In section 205, in the proposed section 7702,
11 insert "or applicant" after "employee" each place it
12 appears (other than the first place it appears in subsec-
13 tion (a) (1) and each place it appears in subsection
14 (d) (4) and (5)).

15 (26) In section 205, in the proposed section 7702
16 (a) (2) (A), strike out "subsection (a) (1) (A) of this
17 section" and insert "paragraph (1) (A) of this sub-
18 section".

19 (27) In section 205, in the proposed section 7702
20 (a) (2) (B), strike out "an" and insert "any", and
21 strike out "subsection (a) (1) (B) of this section" and
22 insert "paragraph (1) (B) of this subsection".

23 (28) In section 205, in the proposed section 7702
24 (c), strike out "Commission" the fifth place it appears
25 and insert "Board".

1 (29) In section 205, in the proposed section 7702
2 (d) (1), strike out "section." and insert "subsection.",
3 and strike out "any Board" and insert "the Board".

4 (30) In section 205, in the proposed section 7702
5 (d) (3), strike out "(1)" and insert "(2)", and insert
6 "to the Board" after "subsection".

7 (31) In section 205, in the proposed section 7702
8 (d) (5), strike out "subsection" the third place it ap-
9 pears and insert "section".

10 (32) In section 205, in the proposed section 7702
11 (e) (1), strike out "an employee" and insert "the em-
12 ployee", insert "to the same extent and" after "civil
13 action", and insert "section" before "15 (c)".

14 (33) In section 205, in the proposed section 7702
15 (e) (2), insert a comma after "If".

16 (34) In section 308 (d), redesignate the proposed
17 subsection (d) as subsection (e).

18 (35) In section 308 (g) (3), strike out "service"
19 and insert "services", and strike out "paragraph (1)"
20 and insert "paragraph (2)".

21 (36) In section 402 (a), strike out "307 (a)" and
22 insert "307 (b)".

23 (37) In section 402 (a), in the proposed section
24 3131, strike out "(a)".

1 (38) In section 402 (a), in the proposed section
2 3131 (6) strike out "benefits".

3 (39) In section 402 (a), in the proposed section
4 3132 (a) (1) (B), strike out "any positions" and all that
5 follows down through "2425)".

6 (40) In section 402 (a), in the proposed section
7 3132 (a) (2), strike out "(other than" and all that fol-
8 lows down through "title)".

9 (41) In section 402 (a), in the proposed section
10 3132 (b) (3) (B), strike out the comma after "law".

11 (42) In section 402 (a), in the proposed section
12 3133 (a), strike out "odd" and insert "even".

13 (43) In section 402 (a), in the proposed section
14 3133 (c), strike out "subsection (b)" and insert "sub-
15 section (a)".

16 (44) In section 402 (a), in the proposed section
17 3135 (a) (8), strike out "appointees" and insert "re-
18 served positions".

19 (45) In section 404 (b), in the proposed section
20 3594 (c) (1) (B), strike out "higher" and insert "high-
21 est".

22 (46) In section 405 (a), in the proposed section
23 4313 (4), insert "performance" before "quality".

24 (47) In section 405 (a), in the proposed section
25 4314 (c) (3), strike out "(2)" and insert "(1)".

1 (48) In section 413 (d), strike out "section 3393
2 (c) and (d)" and insert "section 3393 (b)-(e)".

3 (49) In section 601 (a), in the proposed section
4 4703 (f) and (g), strike out "section 7111" and insert
5 "chapter 71", and strike out "subsection (b)" and
6 insert "subsection (a)".

7 (50) In section 701, add at the end of the proposed
8 section 7105 (d) the following new sentence: "The
9 Authority may delegate to officers and employees ap-
10 pointed under this subsection authority to perform such
11 duties and make such expenditures as may be neces-
12 sary.", and strike out the last sentence in the proposed
13 section 7105 (e) (2).

14 (51) In section 701, in the proposed section 7105
15 (g) (2), strike out "section 7133" and insert "section
16 7132".

17 (52) In section 701, in the proposed section 7111
18 (b), insert "supervise or" before "conduct".

19 (53) In section 701, in the proposed section 7114,
20 strike out "provisions negotiated by" in subsection (a)
21 (5) thereof and insert "procedures negotiated under",
22 and strike out "high" in subsection (c) (4) thereof and
23 insert "higher".

24 (54) In section 701, in the proposed section 7117
25 (b) (1), strike out "matters" and insert "matter".

1 (55) In section 701, in the proposed section 7119
2 (c) (5) (A) (ii), insert “the impasse” before
3 “through”.

4 (56) In section 701, in the proposed section 7119
5 (c) (5) (B) (ii), strike out “section 7133” and insert
6 “section 7182”.

7 (57) In section 701, in the proposed section 7121
8 (d), strike out “7701 of this title”.

9 (58) In section 701, in the proposed section 7121
10 (f), strike out “section 7702” and insert “section
11 7703”.

12 (59) In section 701, insert “or” at the end of the
13 proposed section 7122 (a) (1).

14 (60) In section 701, in the proposed section 7123
15 (d), strike out “or restraining order” and insert “(in-
16 cluding a restraining order)”.

17 (61) In section 703 (a) (1), strike out “section
18 312” and insert “section 310”.

19 (62) In section 703, redesignate paragraph (2)
20 of subsection (b) as subsection (c) (1), and redesignate
21 subsection (c) (1) as paragraph (2) of subsection
22 (c).

23 (63) In section 703 (a) (3), in the proposed sec-
24 tion 7211, strike out “individual” and insert “individ-
25 ually”.

9

1 (64) In section 906(c) (2) (A), strike out the
2 period and insert the following: “and inserting in lieu
3 thereof ‘chapter’.”

4 (65) In section 906(c) (4), insert a comma after
5 “Code”.

6 (66) In section 906(c) (5), strike out “chapter
7 34” and insert “chapter 33”.

ADMINISTRATION MESSAGES AND STATEMENTS

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CIVIL SERVICE REFORM

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A DRAFT OF PROPOSED LEGISLATION TO REFORM THE
CIVIL SERVICE LAWS



MARCH 3, 1978.—Message and accompanying papers referred to the
Committee on Post Office and Civil Service
and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

29-011 O

WASHINGTON : 1978

To the Congress of the United States:

I am transmitting to the Congress today a comprehensive program to reform the Federal Civil Service system. My proposals are intended to increase the government's efficiency by placing new emphasis on the quality of performance of Federal workers. At the same time, my recommendations will ensure that employees and the public are protected against political abuse of the system.

Nearly a century has passed since enactment of the first Civil Service Act—the Pendleton Act of 1883. That Act established the United States Civil Service Commission and the merit system it administers. These institutions have served our Nation well in fostering development of a Federal workforce which is basically honest, competent, and dedicated to constitutional ideals and the public interest.

But the system has serious defects. It has become a bureaucratic maze which neglects merit, tolerates poor performance, permits abuse of legitimate employee rights, and mires every personnel action in red tape, delay and confusion.

Civil Service reform will be the centerpiece of government reorganization during my term in office.

I have seen at first hand the frustration among those who work within the bureaucracy. No one is more concerned at the inability of government to deliver on its promises than the worker who is trying to do a good job.

Most Civil Service employees perform with spirit and integrity. Nevertheless, there is still widespread criticism of Federal government performance. The public suspects that there are too many government workers, that they are underworked, overpaid, and insulated from the consequences of incompetence.

Such sweeping criticisms are unfair to dedicated Federal workers who are conscientiously trying to do their best, but we have to recognize that the only way to restore public confidence in the vast majority who work well is to deal effectively and firmly with the few who do not.

For the past 7 months, a task force of more than 100 career civil servants has analyzed the Civil Service, explored its weaknesses and strengths and suggested how it can be improved.

The objectives of the Civil Service reform proposals I am transmitting today are:

- To strengthen the protection of legitimate employee rights;
- To provide incentives and opportunities for managers to improve the efficiency and responsiveness of the Federal Government;
- To reduce the red tape and costly delay in the present personnel system;
- To promote equal employment opportunity;
- To improve labor-management relations.

My specific proposals are these :

1. *Replacing the Civil Service Commission with an Office Of Personnel Management and a Merit Protection Board.*—Originally established to conduct Civil Service examinations, the Civil Service Commission has, over the years, assumed additional and inherently conflicting responsibilities. It serves simultaneously both as the protector of employee rights and as the promoter of efficient personnel management policy. It is a manager, rulemaker, prosecutor and judge. Consequently, none of these jobs are being done as effectively as they should be.

Acting under my existing reorganization authority, I propose to correct the inherent conflict of interest within the Civil Service Commission by abolishing the Commission and replacing it with a Merit Protection Board and Office of Personnel Management.

The Office of Personnel Management will be the center for personnel administration (including examination, training, and administration of pay and benefits) ; it will not have any prosecutorial or adjudicative powers against individuals. Its Director will be appointed by the President and confirmed by the Senate. The Director will be the government's management spokesman on Federal employee labor relations and will coordinate Federal personnel matters, except for Presidential appointments.

The Merit Protection Board will be the adjudicatory arm of the new personnel system. It will be headed by a bipartisan board of three members, appointed for 7 years, serving non-renewable overlapping terms, and removable only for cause. This structure will guarantee independent and impartial protection to employees. I also propose to create a Special Counsel to the Board, appointed by the President and confirmed by the Senate, who will investigate and prosecute political abuses and merit system violations. This will help safeguard the rights of Federal employees who "blow the whistle" on violations of laws or regulations by other employees, including their supervisors.

In addition, these proposals will write into law for the first time the fundamental principles of the merit system and enumerate prohibited personnel practices.

2. *A Senior Executive Service.*—A critical factor in determining whether Federal programs succeed or fail is the ability of the senior managers who run them. Throughout the Executive Branch, these 9200 top administrators carry responsibilities that are often more challenging than comparable work in private industry. But under the Civil Service system, they lack the incentives for first-rate performance that managers in private industry have. The Civil Service system treats top managers just like the 2.1 million employees whose activities they direct. They are equally insulated from the risks of poor performance, and equally deprived of tangible rewards for excellence.

To help solve these problems I am proposing legislation to create a Senior Executive Service affecting managers in grades GS-16 through non-Presidentially appointed Executive Level IV or its equivalent. It would allow :

- Transfer of executives among senior positions on the basis of government need ;
- Authority for agency heads to adjust salaries within a range set by law with the result that top managers would no longer receive automatic pay increases based on longevity ;

Annual performance reviews, with inadequate performance resulting in removal from the Senior Executive Service (back to GS-15) without any right of appeal to the Merit Protection Board.

Agency heads would be authorized to distribute bonuses for superior performance to not more than 50 per cent of the senior executives each year. These would be allocated according to criteria prescribed by the Office of Personnel Management, and should average less than five per cent of base salary per year. They would not constitute an increase in salary but rather a one-time payment. The Office of Personnel Management also would be empowered to award an additional stipend directly to a select group of senior executives, approximately five per cent of the total of the Senior Executive Service, who have especially distinguished themselves in their work. The total of base salary, bonus, and honorary stipend should in no case exceed 95 per cent of the salary level for an Executive Level II position.

No one now serving in the "supergrade" managerial positions would be required to join the Senior Executive Service. But all would have the opportunity to join. And the current percentage of non-career supergrade managers—approximately 10 per cent—would be written into law for the first time, so that the Office of Personnel Management would not retain the existing authority of the Civil Service Commission to expand the proportion of political appointees.

This new Senior Executive Service will provide a highly qualified corps of top managers with strong incentives and opportunities to improve the management of the Federal government.

3. *Incentive Pay for Lower Level Federal Managers and Supervisors.*—The current Federal pay system provides virtually automatic "step" pay increases as well as further increases to keep Federal salaries comparable to those in private business. This may be appropriate for most Federal employees, but performance—not merely endurance—should determine the compensation of Federal managers and supervisors. I am proposing legislation to let the Office of Personnel Management establish an incentive pay system for government managers, starting with those in grades GS-13 through GS-15. Approximately 72,000 managers and supervisors would be affected by such a system which could later be extended by Congress to other managers and supervisors.

These managers and supervisors would no longer receive automatic "step" increases in pay and would receive only 50 per cent of their annual comparability pay increase. They would, however, be eligible for "performance" pay increases of up to 12 per cent of their existing salary. Such a change would not increase payroll costs, and it should be insulated against improprieties through the use of strong audit and performance reviews by the Office of Personnel Management.

4. *A Fairer and Speedier Disciplinary System.*—The simple concept of a "merit system" has grown into a tangled web of complicated rules and regulations.

Managers are weakened in their ability to reward the best and most talented people—and to fire those few who are unwilling to work.

The sad fact is that it is easier to promote and transfer incompetent employees than to get rid of them.

It may take as long as three years merely to fire someone for just cause, and at the same time the protection of legitimate rights is a costly and time-consuming process for the employee.

A speedier and fairer disciplinary system will create a climate in which managers may discharge non-performing employees—using due process—with reasonable assurance that their judgment, if valid, will prevail.

At the same time, employees will receive a more rapid hearing for their grievances.

The procedures that exist to protect employee rights are absolutely essential.

But employee appeals must now go through the Civil Service Commission, which has a built-in conflict of interest by serving simultaneously as rule-maker, prosecutor, judge, and employee advocate.

The legislation I am proposing today would give all competitive employees a statutory right of appeal. It would spell out fair and sensible standards for the Merit Protection Board to apply in hearing appeals. Employees would be provided with attorneys' fees if they prevail and the agency's action were found to have been wholly without basis. Both employees and managers would have, for the first time, subpoena power to ensure witness participation and document submission. The subpoena power would expedite the appeals process, as would new provisions for prehearing discovery. One of the three existing appeal levels would be eliminated.

These changes would provide both employees and managers with speedier and fairer judgments on the appeal of disciplinary actions.

5. *Improved Labor-Management Relations.*—In 1962, President John F. Kennedy issued Executive Order 10988, establishing a labor-management relations program in the Executive Branch. The Executive Order has demonstrated its value through five Administrations. However, I believe that the time has come to increase its effectiveness by abolishing the Federal Labor Relations Council created by Executive Order 10988 and transferring its functions, along with related functions of the Assistant Secretary of Labor for Labor Relations, to a newly established Federal Labor Relations Authority. The Authority will be composed of three full-time members appointed by the President with the advice and consent of the Senate.

I have also directed members of my Administration to develop, as part of Civil Service Reform, a Labor-Management Relations legislative proposal by working with the appropriate Congressional Committees, Federal employees and their representatives. The goal of this legislation will be to make Executive Branch labor relations more comparable to those of private business, while recognizing the special requirements of the Federal government and the paramount public interest in the effective conduct of the public's business. This will facilitate Civil Service reform of the managerial and supervisory elements of the Executive Branch, free of union involvement, and, at the same time, improve the collective bargaining process as an integral part of the personnel system for Federal workers.

It will permit the establishment through collective bargaining of grievance and arbitration systems, the cost of which will be borne largely by the parties to the dispute. Such procedures will largely displace the multiple appeals systems which now exist and which are unanimously perceived as too costly, too cumbersome and ineffective.

6. *Decentralized Personnel Decisionmaking.*—Examining candidates for jobs in the career service is now done almost exclusively by the Civil Service Commission, which now may take as long as six or eight months to fill important agency positions.

In addition, many routine personnel management actions must be submitted to the Civil Service Commission for prior approval. Much red tape and delay are generated by these requirements; the public benefits little, if at all. My legislative proposals would authorize the Office of Personnel Management to delegate personnel authority to departments and agencies.

The risk of abuses would be minimized by performance agreements between agencies and the Office of Personnel Management, by requirements for reporting, and by followup evaluations.

7. *Changes in the Veterans Preference Law.*—Granting preference in Federal employment to veterans of military service has long been an important and worthwhile national policy. It will remain our policy because of the debt we owe those who have served our nation. It is especially essential for disabled veterans, and there should be no change in current law which would adversely affect them. But the Veterans Preference Act of 1944 also conferred a *lifetime benefit* upon the non-disabled veteran, far beyond anything provided by other veterans readjustment laws like the GI Bill, the benefits of which are limited to 10 years following discharge from the service. Current law also severely limits agency ability to consider qualified applicants by forbidding consideration of all except the three highest-scoring applicants—the so-called “rule of three.” As a result of the 5-point lifetime preference and the “rule of three”, women, minorities and other qualified non-veteran candidates often face insuperable obstacles in their quest for Federal jobs.

Similarly, where a manager believes a program would benefit from fewer employees, the veterans preference provides an absolute lifetime benefit to veterans. In any Reduction in Force, all veterans may “bump” all non-veterans, even those with far greater seniority. Thus women and minorities who have recently acquired middle management positions are more likely to lose their jobs in any cutback.

Therefore I propose:

- Limiting the 5-point veterans preference to the 10 year period following their discharge from the service, beginning 2 years after legislation is enacted;
- Expanding the number of applicants who may be considered by a hiring agency from three to seven, unless the Office of Personnel Management should determine that another number or category ranking is more appropriate;
- Eliminating the veterans preference for retired military officers of field grade rank or above and limiting its availability for other military personnel who have retired after at least 20 years in service to 3 years following their retirement;
- Restricting the absolute preference now accorded veterans in Reductions in Force to their first 3 years of Federal employment, after which time they would be granted 5 extra years of seniority for purposes of determining their rights when Reduction in Force occurs.

These changes would focus the veterans preference more sharply to help disabled veterans and veterans of the Viet Nam conflict. I have

already proposed a 2-year extension of the Veterans Readjustment Appointment Authority to give these veterans easier entry into the Federal workforce; I support amendments to waive the educational limitation for disabled veterans and to expand Federal job openings for certain veterans in grades GS-5 to GS-7 under this authority. I propose that veterans with 50% or higher disability be eligible for non-competitive appointments.

* * * * *

These changes are intended to let the Federal Government meet the needs of the American people more effectively. At the same time, they would make the Federal work place a better environment for Federal employees. I ask the Congress to act promptly on Civil Service Reform and the Reorganization Plan which I will shortly submit.

JIMMY CARTER.

THE WHITE HOUSE, *March 2, 1978.*

A BILL To reform the civil service laws

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Service Reform Act of 1978".

TABLE OF CONTENTS

SEC. 2. The table of contents is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Findings and statement of purpose.

TITLE I—MERIT SYSTEM PRINCIPLES

Sec. 101. Merit system principles; prohibited personnel practices.

TITLE II—CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

- Sec. 201. Office of Personnel Management.
- Sec. 202. Merit Systems Protection Board and Special Counsel.
- Sec. 203. Performance appraisals.
- Sec. 204. Adverse actions.
- Sec. 205. Appeals.
- Sec. 206. Technical and conforming amendments.

TITLE III—STAFFING

- Sec. 301. Volunteer services.
- Sec. 302. Definitions relating to preference eligibles.
- Sec. 303. Noncompetitive appointment of certain disabled veterans.
- Sec. 304. Examination, certification, and appointment of preference eligibles.
- Sec. 305. Retention preference.
- Sec. 306. Training.
- Sec. 307. Travel, transportation, and subsistence.
- Sec. 308. Retirement.
- Sec. 309. Extension of veterans readjustment appointment authority.
- Sec. 310. Effective date.

TITLE IV—SENIOR EXECUTIVE SERVICE

- Sec. 401. Coverage.
- Sec. 402. Authority for employment.
- Sec. 403. Examination, certification, and appointment.
- Sec. 404. Retention preference.
- Sec. 405. Performance rating.
- Sec. 406. Incentive awards and ranks.
- Sec. 407. Pay rates and systems.
- Sec. 408. Pay administration.
- Sec. 409. Travel, transportation, and subsistence.
- Sec. 410. Leave.
- Sec. 411. Disciplinary actions.
- Sec. 412. Retirement.
- Sec. 413. Conversion to the Senior Executive Service.
- Sec. 414. Repealer.
- Sec. 415. Savings provision.
- Sec. 416. Effective date.

TITLE V—MERIT PAY

- Sec. 501. Pay for performance.
- Sec. 502. Conforming and technical amendments.
- Sec. 503. Effective date.

TITLE VI—RESEARCH AND DEMONSTRATION AUTHORITY

- Sec. 601. Research and demonstration projects.
- Sec. 602. Intergovernmental Personnel Act amendments.
- Sec. 603. Amendments to the mobility program.

TITLE VII—MISCELLANEOUS

- Sec. 701. Savings provisions.
- Sec. 702. Authorization of appropriations.
- Sec. 703. Powers of President unaffected except by express provisions.
- Sec. 704. Technical and conforming amendments.
- Sec. 705. Effective dates.

FINDINGS AND STATEMENT OF PURPOSE

SEC. 3. It is the policy of the United States that :

(1) the merit system principles which shall govern in the competitive service and in the executive branch of the Federal Government should be expressly stated to furnish guidance to Federal agencies in carrying out their responsibilities in administering the public business and prohibited personnel practices should be statutorily defined to enable Government officers and employees to avoid conduct which undermines the merit system principles and the integrity of the merit system ;

(2) Federal employees should receive appropriate protection through increasing the authority and powers of the independent Merit Systems Protection Board in processing hearings and appeals affecting Federal employees ;

(3) the authority and power of the Special Counsel should be increased so that the Special Counsel may investigate allegations involving prohibited personnel practices and reprisals against government employees for the lawful disclosure of information concerning violation of law or regulations and to bring disciplinary charges against agency officials and employees who engage in such conduct ;

(4) the function of filling positions and other personnel functions in the competitive service and in the executive branch

REORGANIZATION PLAN NO. 2 OF 1978

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROPOSAL TO REFORM THE FEDERAL PERSONNEL MANAGEMENT SYSTEM THROUGH REORGANIZATION PLAN NO. 2 OF 1978



MAY 23, 1978.—Message and accompanying papers referred to the Committee on Government Operations and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

29-011

WASHINGTON : 1978

To the Congress of the United States:

On March 2nd I sent to Congress a Civil Service Reform proposal to enable the Federal government to improve its service to the American people.

Today I am submitting another part of my comprehensive proposal to reform the Federal personnel management system through Reorganization Plan No. 2 of 1978. The plan will reorganize the Civil Service Commission and thereby create new institutions to increase the effectiveness of management and strengthen the protection of employee rights.

The Civil Service Commission has acquired inherently conflicting responsibilities: to help manage the Federal Government and to protect the rights of Federal employees. It has done neither job well. The Plan would separate the two functions.

OFFICE OF PERSONNEL MANAGEMENT

The positive personnel management tasks of the government—such as training, productivity programs, examinations, and pay and benefits administration—would be the responsibility of an Office of Personnel Management. Its Director, appointed by the President and confirmed by the Senate, would be responsible for administering Federal personnel matters except for Presidential appointments. The Director would be the government's principal representative in Federal labor relations matters.

MERIT SYSTEMS PROTECTION BOARD

The adjudication and prosecution responsibilities of the Civil Service Commission will be performed by the Merit Systems Protection Board. The Board will be headed by a bipartisan panel of three members appointed to six-year, staggered terms. This Board would be the first independent and institutionally impartial Federal agency solely for the protection of Federal employees.

The Plan will create, within the Board, a Special Counsel to investigate and prosecute political abuses and merit system violations. Under the civil service reform legislation now being considered by the Congress, the Counsel would have power to investigate and prevent reprisals against employees who report illegal acts—the so-called “whistleblowers.” The Council would be appointed by the President and confirmed by the Senate.

FEDERAL LABOR RELATIONS AUTHORITY

An Executive Order now vests existing labor-management relations in a part-time Federal Labor-Relations Council, comprised of three top government managers; other important functions are assigned to

(1)

H.D. 95-341

the Assistant Secretary of Labor for Labor-Management Relations. This arrangement is defective because the Council members are part-time, they come exclusively from the ranks of management and their jurisdiction is fragmented.

The Plan I submit today would consolidate the central policy-making functions in labor-management relations now divided between the Council and the Assistant Secretary into one Federal Labor Relations Authority. The Authority would be composed of three full-time members appointed by the President with the advice and consent of the Senate. Its General Counsel, also appointed by the President and confirmed by the Senate, would present unfair labor practice complaints. The Plan also provides for the continuance of the Federal Service Impasses Panel within the Authority to resolve negotiating impasses between Federal employee unions and agencies.

The cost of replacing the Civil Service Commission can be paid by our present resources. The reorganization itself would neither increase nor decrease the costs of personnel management throughout the government. But taken together with the substantive reforms I have proposed, this Plan will greatly improve the government's ability to manage programs, speed the delivery of Federal services to the public, and aid in executing other reorganizations I will propose to the Congress, by improving Federal personnel management.

Each of the provisions of this proposed reorganization would accomplish one or more of the purposes set forth in 5 U.S.C. 901(a). No functions are abolished by the Plan, but the offices referred to in 5 U.S.C. 5109(b) and 5 U.S.C. 1103(d) are abolished. The portions of the Plan providing for the appointment and pay for the head and one or more officers of the Office of Personnel Management, the Merit Systems Protection Board, the Federal Labor Relations Authority and the Federal Service Impasses Panel, are necessary to carry out the reorganization. The rates of compensation are comparable to those for similar positions within the Executive Branch.

I am confident that this Plan and the companion civil service reform legislation will both lead to more effective protection of Federal employees' legitimate rights and a more rewarding workplace. At the same time the American people will benefit from a better managed, more productive and more efficient Federal Government.

JIMMY CARTER.

THE WHITE HOUSE, *May 23, 1978.*

REORGANIZATION PLAN No. 2 OF 1978

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 23, 1978, pursuant to the provisions of chapter 9 of title 5 of the United States Code.

PART I. OFFICE OF PERSONNEL MANAGEMENT

Section 101. Establishment of the Office of Personnel Management and its Director and other matters

There is hereby established as an independent establishment in the executive branch, the Office of Personnel Management (the "Office"). The head of the Office shall be the Director of the Office of Personnel Management (the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level II of the executive schedule. The position referred to in 5 U.S.C. 5109(b) is hereby abolished.

Section 102. Transfer of functions

Except as otherwise specified in this plan, all functions vested by statute in the U.S. Civil Service Commission, or the Chairman of said Commission, or the Boards of Examiners established by 5 U.S.C. 1105 are hereby transferred to the Director of the Office of Personnel Management.

Section 103. Deputy Director and Associate Directors

(a) There shall be within the Office a Deputy Director who shall be appointed by the President by and with the advice and consent of the Senate and who shall be compensated at the rate now or hereafter provided for level III of the executive schedule. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

(b) There shall be within the Office not more than five Associate Directors, who shall be appointed by the Director in the excepted service, shall have such titles as the Director shall from time to time determine, and shall receive compensation at the rate now or hereafter provided for level IV of the executive schedule.

Section 104. Functions of the Director

The functions of the Director shall include, but not be limited to, the following:

(a) Aiding the President, as the President may request, in preparing such rules as the President prescribes, for the administration of civilian employment now within the jurisdiction of the U.S. Civil Service Commission;

(b) Advising the President, as the President may request, on any matters pertaining to civilian employment now within the jurisdiction of the U.S. Civil Service Commission;

(c) Executing, administering and enforcing the Civil Service rules and regulations of the President and the Office of the statutes governing the same, and other activities of the Office including retirement

and classification activities except to the extent such functions remain vested in the Merit Systems Protection Board pursuant to section 202 of this plan, or are transferred to the special counsel pursuant to section 204 of this plan;

(d) Conducting or otherwise providing for studies and research for the purpose of assuring improvements in personnel management, and recommending to the President actions to promote an efficient Civil Service and a systematic application of the merit system principles, including measures relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separations of employees; and

(e) Performing the training responsibilities now performed by the U.S. Civil Service Commission as set forth in title 5, United States Code, chapter 41.

Section 105. Authority to delegate functions

The Director may delegate, from time to time, to the head of any agency employing persons in the competitive service, the performance of all or any part of those functions transferred under this plan to the Director which relate to employees, or applicants for employment, of such agency.

PART II. MERIT SYSTEMS PROTECTION BOARD

Section 201. Merit Systems Protection Board

(a) The U.S. Civil Service Commission is hereby redesignated the Merit Systems Protection Board. The Commissioners of the U.S. Civil Service Commission are hereby redesignated as members of the Merit Systems Protection Board (the "Board").

(b) The Chairman of the Board shall be its chief executive and administrative officer. The position of Executive Director, established by 5 U.S.C. 1103 (d), is hereby abolished.

Section 202. Functions of the Merit Systems Protection Board and related matters

(a) There shall remain with the Board the hearing, adjudication, and appeals functions of the U.S. Civil Service Commission specified in 5 U.S.C. 1104(b) (4) (except hearings, adjudications and appeals with respect to examination ratings), and also found in the following statutes:

- (i) 5 U.S.C. 1504-1507, 7325, 5335, 7521, 7701, and 8347 (d);
- (ii) 38 U.S.C. 2023.

(b) There shall remain with the Board the functions vested in the U.S. Civil Service Commission, or its Chairman, pursuant to 5 U.S.C. 1104 (a) (5) and (b) (4) to enforce decisions rendered pursuant to the authorities described in subsection (a) of this section.

(c) Any member of the Board may request from the Director, in connection with a matter then pending before the Board for adjudication, an advisory opinion concerning interpretation of rules, regulations, or other policy directives promulgated by the Office of Personnel Management.

(d) Whenever the interpretation or application of a rule, regulation, or policy directive of the Office of Personnel Management is at

issue in any hearing, adjudication, or appeal before the Board, the Board shall promptly notify the Director, and the Director shall have the right to intervene in such proceedings.

(e) The Board shall designate individuals to chair performance rating boards established pursuant to 5 U.S.C. 4305.

(f) The Chairman of the Board shall designate representatives to chair boards of review established pursuant to 5 U.S.C. 3383(b).

(g) The Board may from time to time conduct special studies relating to the Civil Service, and to other merit systems in the executive branch and report to the President and the Congress whether the public interest in a work force free of personnel practices prohibited by law or regulations is being adequately protected. In carrying out this function the Board shall make such inquiries as may be necessary, and, to the extent permitted by law, shall have access to personnel records or information collected by the Office of Personnel Management and may require additional reports from other agencies as needed. The Board shall make such recommendations to the President and the Congress as it deems appropriate.

(h) The Board may delegate the performance of any of its administrative functions to any officer or employee of the Board.

(i) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. The Board may issue rules and regulations, consistent with statutory requirements, defining its review procedures, including the time limits within which an appeal must be filed and the rights and responsibilities of the parties to an appeal. All regulations of the Board shall be published in the Federal Register.

Section 203. Savings provision

The Board shall accept appeals from agency actions effected prior to the effective date of this plan. On the effective date of part II of this plan, proceedings then before the Federal Employee Appeals Authority shall continue before the Board; proceedings then before the Appeals Review Board and proceedings then before the U.S. Civil Service Commission on appeal from decisions of the Appeals Review Board shall continue before the Board; other employee appeals before boards or other bodies pursuant to law or regulation shall continue to be processed pursuant to those laws or regulations. Nothing in this section shall affect the right of a Federal employee to judicial review under applicable law.

Section 204. The Special Counsel

(a) There shall be a Special Counsel to the Board appointed for a term of 4 years by the President by and with the advice and consent of the Senate, who shall be compensated as now or hereafter provided for level IV of the Executive Schedule.

(b) There are hereby transferred to the Special Counsel all functions with respect to investigations relating to violations of title 5, United States Code, chapter 15; title 5, United States Code, subchapter III of chapter 73 (political activities); and 5 U.S.C. 552(a)(4)(F) (public information).

(c) The Special Counsel may investigate, pursuant to 5 U.S.C. 1303, allegations of personnel practices which are prohibited by law or regulation.

(d) When in the judgment of the Special Counsel, such personnel practices exist, he shall report his findings and recommendations to the Chairman of the Merit Systems Protection Board, the agency affected, and to the Office of Personnel Management, and may report such findings to the President.

(e) When in the judgment of the Special Counsel, the results of an investigation would warrant the taking of disciplinary action against an employee who is within the jurisdiction of the Board, the Special Counsel shall prepare charges against such employee and present them with supporting documentation to the Board. Evidence supporting the need for disciplinary action against a Presidential appointee shall be submitted by the Special Counsel to the President.

(f) The Special Counsel may appoint personnel necessary to assist in the performance of his functions.

(g) The Special Counsel shall have the authority to prescribe rules and regulations relating to the receipt and investigation of matters under his jurisdiction. Such regulations shall be published in the Federal Register.

(h) The Special Counsel shall not issue advisory opinions.

PART III. FEDERAL LABOR RELATIONS AUTHORITY

Section 301. Establishment of the Federal Labor Relations Authority

(a) There is hereby established, as an independent establishment in the executive branch, the Federal Labor Relations Authority (the "Authority"). The Authority shall be composed of three members, one of whom shall be Chairman, not more than two of whom may be adherents of the same political party, and none of whom may hold another office or position in the Government of the United States except where provided by law or by the President.

(b) Members of the Authority shall be appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member to serve as Chairman of the Authority, who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule. The other members shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule.

(c) The initial members of the Authority shall be appointed as follows: one member for a term of 2 years; one member for a term of 3 years; and the Chairman for a term of 4 years. Thereafter, each member shall be appointed for a term of 4 years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) The Authority shall make an annual report on its activities to the President for transmittal to Congress.

Section 302. Establishment for the General Counsel of the Authority

There shall be a General Counsel of the Authority, who shall be appointed by the President, by and with the advice and consent of the Senate for a term of 4 years, and who shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule.

The General Counsel shall perform such duties as the Authority shall from time to time prescribe, including but not limited to the duty of determining and presenting facts required by the Authority in order to decide unfair labor practice complaints.

Section 303. The Federal Service Impasses Panel

The Federal Service Impasses Panel, established under Executive Order 11491, as amended, (the "Panel") shall continue, and shall be a distinct organizational entity within the Authority.

Section 304. Functions

(a) To the Authority—

(1) The functions of the Federal Labor Relations Council pursuant to Executive Order 11491, as amended;

(2) The functions of the Civil Service Commission under sections 4(a) and 6(e) of Executive Order 11491, as amended; and

(3) The functions of the Assistant Secretary of Labor for Labor-Management Relations, under Executive Order 11491, as amended, except for those functions related to alleged violations of the standards of conduct for labor organizations pursuant to section 6(a) (4) of said Executive Order.

(b) to the Panel—the functions and authorities of the Federal Service Impasses Panel, pursuant to Executive Order 11491, as amended.

Section 305. Authority decisions

The decisions of the Authority on any matter within its jurisdiction shall be final and not subject to judicial review.

Section 306. Other provisions

Unless and until modified, revised, or revoked, all policies, regulations, and procedures established, and decisions issued, under Executive Order 11491, as amended, shall remain in full force and effect. There is hereby expressly reserved to the President the power to modify the functions transferred to the Federal Labor Relations Authority and the Federal Service Impasses Panel pursuant to section 304 of this plan.

Section 307. Savings provision

All matters which relate to the functions transferred by section 304 of this plan, and which are pending on the effective date of the establishment of the Authority before the Federal Labor Relations Council, the Vice Chairman of the Civil Service Commission, or the Assistant Secretary of Labor for Labor-Management Relations shall continue before the Authority under such rules and procedures as the Authority shall prescribe. All such matters pending on the effective date of the establishment of the Authority before the Panel, shall continue before the Panel under such rules and procedures as the Panel shall prescribe.

PART IV. GENERAL PROVISIONS

Section 401. Incidental transfer

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used,

held, available, or to be made available in connection with the functions transferred under this plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this reorganization plan.

Section 402. Interim officers

(a) The President may authorize any persons who, immediately prior to the effective date of this plan, held positions in the executive branch of the Government, to act as Director of the Office of Personnel Management, the Deputy Director of the Office of Personnel Management, the Special Counsel, the Chairman and other members of the Federal Labor Relations Authority, the Chairman and other members of the Federal Service Impasses Panel, or the General Counsel of the Authority, until those offices are for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may authorize any such person to receive the compensation attached to the Office in respect of which that person so serves, in lieu of other compensation from the United States.

Section 403. Effective date

The provisions of this reorganization plan shall become effective at such time or times, on or before January 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under section 906 of title 5, United States Code.

Civil Service Reform Act of 1978

*Statement on Signing S. 2640 Into Law.
October 13, 1978*

History will regard the Civil Service Reform Act of 1978 as one of the most important laws enacted by this Congress.

Congress has done an extraordinary job in shaping this landmark legislation and enacting it in just over 7 months.

The ceremony today and the legislation it honors would not have been possible without the skilled, consistent leadership of Representative Morris Udall. I am also grateful for the bipartisan efforts of Representatives Edward Derwinski, and Chairmen Robert Nix and Jack Brooks on the House side, Chairman Abraham Ribicoff and Charles Percy on the Senate side, and the superb work done by Jim McIntyre and Scotty Campbell. We all owe a debt to these men.

In March, when I sent my proposals to Congress, I said that civil service reform and reorganization would be the centerpiece of my efforts to bring efficiency and accountability to the Federal Government. It will be the key to better performance in all Federal agencies.

In August, Congress approved Reorganization Plan No. 2 of 1978, which restructured the central institutions of Federal personnel management. This Civil Service Reform Act of 1978, which I sign today, adds the muscle to that structure.

This legislation will bring fundamental improvements to the Federal personnel system.

It puts merit principles into statute and defines prohibited personnel practices.

It establishes a Senior Executive Service and bases the pay of executives and senior managers on the quality of their performance.

It provides a more sensible method for evaluating individual performance.

It gives managers more flexibility and more authority to hire, motivate, reward, and discipline employees to ensure that the public's work gets done. At the same time, it provides better protection for employees against arbitrary actions and abuses and contains safeguards against political intrusion.

The act assures that whistleblowers will be heard, and that they will be protected from reprisal.

It moves Federal labor relations from Executive order to statute and provides a new agency, the Federal Labor Relations Authority, to monitor the system.

And it provides for systematic research and development in personnel management to encourage continuing improvements of the civil service system.

We know that legislation of this kind is possible only when highly respected men and women from outside government

Oct. 13

Administration of Jimmy Carter, 1978

come forward and declare their support to Congress and the Nation. In this instance, many did so, and I am grateful for their contributions.

I would particularly like to acknowledge the efforts of Stanton Williams of PPG Industries and his colleagues of the Business Roundtable; the pivotal role of Ken Blaylock of the American Federation of Government Employees, and of Tom Donahue of the AFL-CIO; David Cohen of Common Cause; and John Gardner; the former Cabinet officers and former Civil Service Commissioners; and the organizations of State and local government officials who came forward to support the legislation; and the many, many professional and academic organizations who expressed strong support.

Now this bill is law, but this is just the start of a continuing effort to improve the Federal Government's services to the people. By itself, the law will not ensure improvement in the system. It provides the tools; the will and determination must come from those who manage the Government.

Our aim is to build a new system of excellence and accountability.

I am asking every executive, every supervisor, and every Federal employee to take part in this renewal. I am expecting all members of the Cabinet and all agency heads to give continuing personal attention to the implementation of this legislation.

The changes we expect will not happen all at once. But I pledge to you today that this administration will move to implement the civil service reforms with efficiency and dispatch.

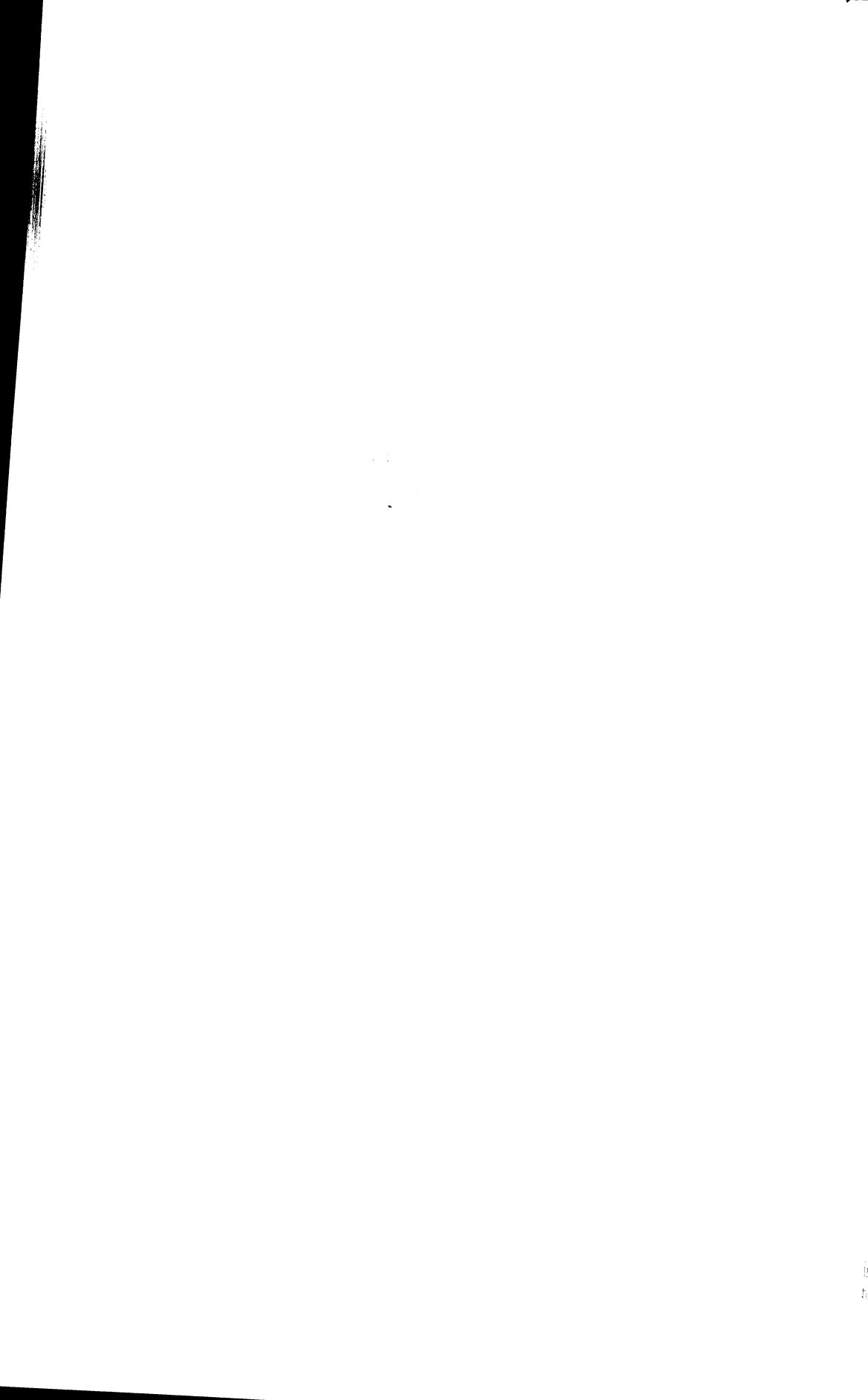
We have already called a conference of 400 line executives and managers, together with agency personnel directors, to give concrete advice on making the act work as intended. It will be held in less than 2 weeks.

This historic bill goes to the very heart of what the American people are asking for: a government and a civil service that work. That was my campaign promise to the American people and it gives me great personal pleasure to sign the bill that keeps that promise.

NOTE: As enacted, S. 2640 is Public Law 95-454, approved October 13.

HOUSE REPORTS

H. Rept. No. 95-920 on H.R. 3793, March 3, 1978 (Right to Representation Bill)-----	643
H. Rept. No. 95-1396 on Reorganization Plan No. 2, July 26, 1978 (Civil Service Commission)-----	659
H. Rept. No. 95-1403 on H.R. 11280, July 31, 1978 (Excerpts relevant to Title VII only)-----	675



RIGHT TO REPRESENTATION

MARCH 3, 1978.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CLAY, from the Committee on Post Office and Civil Service,
submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 3793]

[Including cost estimate of the Congressional Budget Office]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 3793) to amend title 5, United States Code, to provide Federal employees under investigation for misconduct the right to representation during questioning regarding such misconduct, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

AMENDMENTS

The amendments (stated in terms of page and line numbers of the introduced bill) are as follows:

On the first page, line 6, strike out "RIGHTS" and insert in lieu thereof "RIGHT TO REPRESENTATION".

On page 2, line 22, after "who" insert "is".

On page 3, line 10, strike out "executive" and insert in lieu thereof "Executive".

On page 4, line 8, strike out "7177" and insert in lieu thereof "7171".

Page 4, in the analysis immediately following line 18, strike out "RIGHTS" and insert in lieu thereof "RIGHT TO REPRESENTATION".

EXPLANATION OF AMENDMENTS

Each of the committee amendments is a technical amendment intended to correct errors in the introduced bill. No substantive changes result from the committee amendments.

PURPOSE

H.R. 3793 would extend to Federal employees who are under investigation for misconduct which could lead to suspension, removal, or reduction in rank or pay, the right to be advised in writing of the investigation and the right to have a representative present during any questioning regarding such misconduct.

COMMITTEE ACTION

H.R. 3793 was introduced on February 22, 1977 and referred to the Subcommittee on Civil Service. Public hearings were held on July 21, 1977 (Serial No. 95-33). H.R. 3793 was considered by the committee on October 26, 1977, and ordered to be reported on January 25, 1978 by a vote of 15 to 6.

STATEMENT

H.R. 3793 would entitle Federal employees to representation during the informal or preliminary stages of investigation of matters which could lead to charges of dismissal or other adverse action. Under existing practice, an employee is entitled to representation in connection with disciplinary proceedings only after formal charges have been lodged, but information secured during an informal stage of an investigation can make it difficult for the employee to exonerate himself. Enactment of H.R. 3793 would extend the right of representation to employees during the informal stages of this investigatory process.

During the 94th Congress, virtually identical legislation was considered by the committee, H.R. 6227, and passed the House on October 8, 1975.

H.R. 3793 extends to Federal employees the same protection already available to employees in the private sector under the National Labor Relations Act. The Supreme Court, in *National Labor Relations Board v. Weingarten* (420 U.S. 251 (1975)), held that the National Labor Relations Act requires that employees in the private sector be permitted representation during investigatory interviews when the employee can "reasonably fear" disciplinary action.

Writing for the Court, Justice Brennan said,

A single employee confronted by an employer investigating whether certain conduct deserves discipline may be too fearful or inarticulate to relate accurately the incident being investigated, or too ignorant to raise extenuating factors. A knowledgeable union representative could assist the employer by eliciting favorable facts, and save the employer production time by getting to the bottom of the incident occasioning the interview. Certainly his presence need not transform the interview into an adversary contest.

When the right to representation was presented to the Federal Labor Relations Council, as a major policy question, the Council refused to extend this right to Federal employees under Executive Order 11491. The Council issued a decision in December 1976 holding that,

* * * no substantial purpose would be served by an interpretation of [Executive Order 11491] to include the right

of an employee to union representation or assistance at an *** investigative interview or meeting to which he is called by management.

The Council, in effect, determined that there are two sets of standards for employee rights, one for the private sector and another, more restrictive standard, for public employees. The committee rejects this dual standard.

Employee representatives who testified before the Subcommittee on Civil Service provided ample and moving evidence on the imperative for enactment of H.R. 3793. One witness testified:

Typically, when an employee is summoned to appear before the IRS Inspection Service, for example, it is done without warning and seldom is the employee advised of the nature of the interview. He or she is merely told to report to a certain room at a specified time. Upon arriving, and with no opportunity to collect his or her thoughts, the employee is immediately sworn in and must answer all questions. Failure to report for the interview, be sworn in, or answer any questions is along the basis for disciplinary action.

Normally, there are two inspectors present to question a single employee. One conducts the interrogation, firing questions at the employee, while the other takes notes. There is no formal record or transcript of the interview. Though IRS regulations require that inspectors reveal to employees information within their possession concerning the incidents being investigated, this is seldom done.

With no one to advise them of their rights, few employees have the experience or presence of mind to deal with professionally trained criminal investigators who are supposed to be experts in the art of interrogation. Nervous and unaccustomed to such surroundings, employees are oftentimes questioned about matters which occurred years before. They may be subject to badgering or harassment, becoming so confused and flustered that they agree with answers suggested by the inspectors even though their responses do not truly reflect what transpired.

The Civil Service Commission does provide some safeguards which afford protection to employees during formal adverse action proceedings, but the right of representation is available to an employee only *after* he has been formally charged by management. The right to representation *after* formal charges have been filed, ignores the fact that preliminary questioning is a critical factor in determining whether or not disciplinary action will be taken by employers. A frightened, anxious, unsophisticated employee, faced with inquiries from the most warm and understanding supervisor, can, unless informed of his rights at the outset, make damaging statements.

The advantages held by management in conducting "informal inquiries" with employees was described to the subcommittee. The witness stated:

Section 10(c) of Executive Order 11491 sets out the right for employees to be represented at "formal discussions" con-

cerning grievances, personnel policies and practices, or other matters affecting general working conditions of the employees in the unit.

However, no such right is afforded Federal employees with regard to "informal discussions" with their supervisors. These "informal discussions" often provide the basis for commencing an adverse action against an employee, which could lead to their suspension, removal, or reduction in rank or pay.

The right to be represented at formal proceedings is negated for the agency has already compiled their case to the detriment of the beleaguered employee.

These "informal meetings" are normally held under the guise that the supervisor just wants to have a "heart-to-heart" talk with the employee. The tone is set, and the relaxed employee proceeds to divulge evidence concerning his misconduct which will eventually lead to his demise.

It is hypocritical to provide employees with elaborate protections during the grievance procedure while allowing managers to secure damaging evidence during the interrogations of such employees who are deprived of assistance.

Because the right to representation is available only in the case of serious misconduct, this bill will have minimal impact upon day-to-day supervisory-employee relationships. If the employer realizes that the misconduct is of a minor nature or that the misconduct will not result in suspension, removal, or reduction in rank or pay, the employee need not be notified of his right to representation. Neither, under these circumstances, could the employee base his refusal to answer questions on the provisions of this legislation.

H.R. 3793 contains sanctions for those who disregard the rights which the bill creates. In such a case, statements or evidence improperly obtained from an employee in the course of questioning for misconduct are inadmissible in any subsequent proceeding which could lead to suspension, removal, or reduction in rank or pay.

The bill provides a special arrangement for the selection of representatives by employees of the Central Intelligence Agency, the National Security Council, and the Federal Bureau of Investigation. The representative must be an employee approved by the agency head, and must have clearance for access to the information involved in the investigation. Any appeal by the employee from the agency is to the President, or his designee, for a final decision, thereby preventing disclosure of classified information to persons who may not have appropriate security clearances. While employees of these intelligence agencies are restricted in their choice of representatives and their avenues of appeal, the legislation balances employee protection and national security concerns.

SECTION ANALYSIS

The first section of the bill amends chapter 71 of title 5, United States Code, by adding a new subchapter III, consisting of three new sections (5 U.S.C. 7171-7173). The new subchapter III, as added by the bill, is discussed below by section.

Right to representation during questioning

Subsection (a) of the new section 7171 provides that an employee of an Executive agency who is under investigation for misconduct which could lead to suspension, removal, or reduction in rank or pay of that employee, shall not be required to answer questions relating to the misconduct under investigation unless the requirements of paragraphs (1) and (2) of section 7171(a), relating to the rights of the employee to representation, are met. It should be noted that the right to representation does not arise unless the misconduct under investigation could lead to one of the disciplinary actions expressly stated in section 7171(a), i.e., suspension, removal, or reduction in rank or pay. Under existing law an adverse action may be taken against a competitive service or preference eligible employee only for such cause as will promote the efficiency of the service (5 U.S.C. 7501, 7512). Thus, the right to representation does not arise when an employee is being questioned concerning misconduct which could only lead to some lesser form of disciplinary action such as an oral or written reprimand. Also, the right to representation does not arise in instances where the employee is being questioned or counseled with respect to his job performance or overall efficiency.

When the right to representation does arise, paragraphs (1) and (2) of section 7171(a) require that, prior to being questioned, an employee must be advised in writing of: (A) the fact that the employee is under investigation for misconduct; (B) the specific nature of the alleged misconduct; and (C) the right of the employee to have reasonable time, not to exceed 5 working days, to obtain a representative of his choice and the right to have that representative present, if he so elects, during the questioning.

Subsection (b) of section 7171 provides that for the purpose of section 7171(a)(2), relating to the right to representation, an employee of the Central Intelligence Agency, National Security Agency, or the Federal Bureau of Investigation may have a representative of his choice present during questioning, but that the representative must be an employee of the same agency and must be approved by that agency for access to the information involved in the investigation. For example, if an employee of the FBI is under investigation for misconduct, the representative of his choice must be another FBI employee, and if classified or other sensitive information is involved, the representative must be cleared by the FBI for access to that information.

Subsection (c) of section 7171 provides that statements or evidence obtained during the questioning of an employee may not be used as evidence in the course of any action for suspension, removal, or reduction in rank or pay subsequently taken against the employee, unless the requirements of paragraphs (1) and (2) of section 7171(a) were complied with during the questioning.

Subsection (c) is similar to the exclusionary rule in criminal law although certain differences should be noted. First, the phrase "statement made by or evidence obtained *during questioning*" (emphasis added) reflects the committee's intention that only evidence obtained (1) at the time of the questioning, and (2) from the employee, may not be used in a subsequent adverse action. Evidence obtained other

than through the questioning of the employee, even if such evidence was uncovered due to a lead developed during the questioning, could be used provided, of course, that it is otherwise competent.

Second, the phrase "in the course of any action" (emphasis added) means that not only may the evidence not be used in an adverse action based on the misconduct originally under investigation but, also, that it may not be used in another adverse action against the employee whether or not that subsequent action is related to the specific misconduct which led to the original questioning.

Right to appeal

Subsection (a) of section 7172 provides that an employee against whom any action is taken for suspension, removal, or reduction in rank or pay in violation of the new section 7171 of title 5, and who is not otherwise entitled to appeal the action to the Civil Service Commission, is entitled to appeal the adverse action to the Commission. It should be noted that an employee is entitled to appeal only after receiving notice of the agency decision to take adverse action or after the adverse action has been effected.

A competitive service or preference eligible employee is entitled under existing law to appeal an adverse action (5 U.S.C. 7701; E. O. 11491, as amended). The Commission has, by regulation, established procedures to be followed in such appeals (see 5 CFR pt. 772). If a violation of section 7171, relating to the right to representation, is alleged by such an employee, the committee intends that both the representation question and the adverse action will be adjudicated in one administrative proceeding. Section 7172(a) insures that those employees who presently are not entitled to appeal an adverse action, e.g., excepted service employees who are not preference eligibles, will be entitled to a determination by the Commission as to whether their right to representation, as provided by section 7171, has been violated.

An appeal under subsection (a) must be submitted in writing within a reasonable time after receipt of notice of the adverse action. Under regulations prescribed by the Commission, the employee is entitled to appear personally or through a representative. The Commission is required, after investigation and consideration of the evidence submitted, to submit its findings and recommendations to the administrative authority which ordered the adverse action, with copies to the appellant or his representative. The administrative authority is required to take the action that the Commission finally recommends.

It should be noted that the provisions for appeal under section 7172(a) parallel those in section 7701 of title 5, relating to appeals of preference eligibles. The committee believes it appropriate for the existing appeals system established by the Commission for appeals under section 7701 (see 5 CFR pt. 772) to be utilized for appeals under section 7172(a), as added by the bill.

Subsection (b) of section 7172 provides a separate appeals procedure for employees of the Central Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigation, against whom any action is taken for suspension, removal, or reduction in rank or pay in violation of section 7171. Under subsection (b), such an employee is entitled, under such regulations as the President may prescribe, to appeal the adverse action solely to the President, or his designee, whose findings and recommendations shall be final and con-

clusive. Such an employee is not entitled to appeal as provided under subsection (a) of section 7172

Regulations

Section 7173 requires the Civil Service Commission to prescribe regulations necessary to carry out the purpose of the new subchapter III, except with regard to section 7172(b), relating to appeals to the President or his designee.

Subsection (b) of the first section of the bill amends the analysis of chapter 71 of title 5, United States Code, to reflect the addition of the new subchapter III.

Effective date

Section 2 of the bill provides that the amendments made by the first section of the act shall take effect on the ninetieth day beginning after the date of the enactment of the act.

COSTS

The cost estimate prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act is set forth below :

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., March 2, 1978.

HON. ROBERT N. C. NIX,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 3793, a bill to amend title 5, United States Code, to provide Federal employees under investigation for misconduct the right to representation during questioning regarding such misconduct.

The bill expands the classification of employees entitled to appeal various personnel actions if the procedures specified in the bill are violated. It is assumed that in the majority of cases, agencies would comply with the new regulations. Based on financial data from the Federal Employees Appeal Authority (FEAA), it is estimated that the cost of implementing this legislation would be approximately \$100,000 in fiscal year 1978, and \$200,000 each year thereafter, through fiscal year 1982. These costs include the FEAA's costs for processing appeals and administrative costs required to implement the new procedures in each agency.

Should the committee so desire, we would be pleased to provide further details on this estimate. This estimate supersedes the previous CBO estimate, dated February 27, 1978.

Sincerely,

ROBERT A. LEVINE,
(For Alice M. Rivlin, Director).

NEW SPENDING AUTHORITY

H.R. 3793, as amended, does not provide "new spending authority" as that term is defined in section 401 of the Congressional Budget Act

of 1974. The costs of this bill, as estimated by the Congressional Budget Office, represent additional costs of processing appeals and administrative costs required to implement the new procedures in each agency.

OVERSIGHT

Under the rules of the Committee on Post Office and Civil Service, the Subcommittee on Civil Service is vested with legislative and oversight jurisdiction over the subject matter of this legislation. As a result of the hearings on this legislation, the subcommittee concluded that there was ample justification for enacting this legislation.

The committee received no report of oversight findings or recommendations from the Committee on Government Operations pursuant to clause 4(c) (2) of House Rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1) (4) of House Rule XI, the committee has concluded that the enactment of H.R. 3793 will have no inflationary impact on the national economy.

AGENCY VIEWS

Set forth below are the reports from the Director of the Office of Management and Budget, the Chairman of the Civil Service Commission, and the Director of the Central Intelligence Agency.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., July 19, 1977.

HON. ROBERT N. C. NIX,
*Chairman, Committee on Post Office and Civil Service, Cannon House
Office Building, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to the committee's request for the views of this office on H.R. 3793, to amend title 5, United States Code, to provide Federal employees under investigation for misconduct the right to representation during questioning regarding such misconduct.

The principal purpose of H.R. 3793 is to require the presence of counsel during any interrogation of an employee under investigation for misconduct which may lead to disciplinary action. The bill specifies that information or evidence obtained during such questioning cannot be used as the basis for suspension, removal or other disciplinary action unless the employee had prior written notice that he was under investigation, of the nature of his misconduct, and of his right to counsel during questioning including at least 5 days to obtain counsel.

In its report and testimony, the Civil Service Commission states a number of reasons for strongly opposing enactment of this bill.

We concur in the views expressed by the Civil Service Commission and, accordingly, strongly recommend against enactment of H.R. 3793.

Sincerely,

NAOMI R. SWEENEY,
Acting Assistant Director for Legislative Reference.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., July 20, 1977.

Hon. ROBERT N. C. NIX,
*Chairman, Committee on Post Office and Civil Service, U.S. House
of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the Civil Service Commission's views on H.R. 3793, a bill to amend title 5, United States Code, to provide Federal employees under investigation for misconduct the right to representation during questioning regarding such misconduct.

H.R. 3793 would provide that Federal civilian employees who were under investigation for misconduct which could lead to suspension, removal, or reduction in rank or pay would not be required to answer questions relating to the misconduct unless they were first advised in writing that they were under investigation for misconduct, the specific nature of the misconduct, and of their right to have a representative present during the questioning. The employees would have to be given a reasonable amount of time, not to exceed 5 working days, before questioning in order to obtain a representative. H.R. 3793 would prohibit the use of any employee admissions in subsequent actions for suspension, removal, or reduction in rank or pay unless the employees had been advised of their right to representation.

The second portion of the bill provides for an appeal to the Commission by employees disciplined on the basis of their admissions when they were not informed of the rights provided by the first portion of the bill.

The procedures provided in the bill are substantially the same as those required of the police in criminal investigations. The Civil Service Commission believes that ample protections are presently provided by statute, Executive order, and Commission regulations for employees formally charged with serious misconduct. The provisions of the Veterans Preference Act (now codified in section 7512 of title 5, United States Code) require 30-days' advance written notice of proposed adverse action against a Federal employee who is a veteran, with opportunity to respond personally and in writing, to the charges. These protections were extended to all employees in the competitive service by Executive Order 10988, the predecessor of Executive Order 11491, which now governs the Federal labor relations program. In addition, the Commission's regulations (part 772 of title 5, Code of Federal Regulations) insure such employee protections as advance written notice of adverse action, reasonable time to reply, written decision by a higher level agency official than the proposing officer, appeal of the agency decision to the Commission, full hearing by the Commission, and written decision.

The Commission is deeply concerned about the effect that passage of this bill would have on personnel management in the Federal service. H.R. 3793 would provide protections to Federal employees similar to, but in some ways more extensive than, those provided to private sector employees under the National Labor Relations Act as interpreted by the Supreme Court in the decision of *N.L.R.B. v. Weingarten Inc.*, 43 U.S.L.W. 4275 (February 19, 1975). In that decision, the Court recognized the right of an employee in private industry to have a representative present during investigatory interviews when

the employee reasonably believes that the interview might lead to disciplinary action and when the employee asserts his right to representation. H.R. 3793 goes further in requiring that specific notice be given to the employee of his right to representation. Extension of "Weingarten" type protections to the Federal sector is inappropriate because Federal employees already enjoy statutory and regulatory rights and protections against arbitrary and capricious disciplinary actions whereas private sector employees do not have such rights and protections. The bill also ignores the Supreme Court's suggestion in the Weingarten case that employees may find positive benefits in cooperative discussions with managers.

The bill does not define "under investigation" or establish any meaningful criteria for determining the circumstances under which the procedural protections of proposed section 7171 would apply. While we question whether the bill is really intended to provide formal procedures for all instances when employees are to be questioned on potentially disciplinary matters (however minor), the general language of the bill could well lead to this kind of interpretation and/or application. The Commission feels strongly that informal counseling of employees by supervisors concerning their work should never be subjected to adversary procedures. One of the most effective management tools is appropriate and timely informal counseling of employees concerning the less favorable aspects of their work performance or conduct. (Counseling obviously assists the employee as well.) Part 735 of the Commission's regulations (title 5 of the Code of Federal Regulations), issued pursuant to Executive Order 11222, requires agencies to provide employee counseling concerning employee responsibilities and conduct. We believe that the broad provisions of this bill could make it difficult for superiors to counsel employees informally. Allegations of "fruit of the poisoned tree" would become commonplace. The very existence of this legislation would have a "chilling" effect on the willingness of supervisors to employ informal preventive measures which primarily benefit the employee whose performance or conduct needs improvement.

It has been argued that because the provisions of this bill would give an employee the opportunity to secure representation at a pre-disciplinary stage, the employee would be able to avoid the stigma of a proposed adverse action. We believe the contrary—if the supervisor-employee relationship becomes an adversary one at an earlier stage more rather than fewer adverse actions are likely to be proposed. This is so because agency officials might well decide to omit preliminary informal questioning (which in many cases results in an understanding which makes an adverse action unnecessary) because the procedural requirements are substantially the same as those now required for a proposed adverse action.

H.R. 3793 would also provide that any civilian employee of an executive agency against whom an action is taken in violation of proposed section 7171, could appeal the violation to the Commission. We interpret the bill as extending appeal rights to cover probationary employees in the competitive service, all excepted service employees and temporary employees in both the competitive and excepted service. (The Commission currently has appellate jurisdiction over suspensions, removals, or reductions in rank or pay for competitive service

employees who have completed their probationary periods and preference eligible employees in the excepted service with one year of continuous service.) Obviously, an extension of appeal rights like the one contemplated by H.R. 3793 would impose a burden on the Commission's appeals system which would seriously affect expeditious resolution of the cases that affect employees most adversely. More importantly, H.R. 3793 would grant many employees who have been excluded from past extensions of appeal rights what would amount to a right to appeal adverse actions. This is so because failure of an agency to advise employees of their right to obtain representation before questioning would most likely result in reversal of any action to suspend, remove, or reduce an employee in rank or pay whenever the employee exercised the appeal right granted by the bill. The Commission believes that extension of appeal rights to probationers, excepted service employees, and all temporary employees must be carefully considered.

In summary, the bill is modeled on the Miranda rule which applies to sharply adversary situations where police have in custody individuals who have become "accused" persons. Such a process could well be applied to nonadversarial situations in which a manager who lacks sufficient information to decide whether it is worth charging anyone, is precluded from engaging in cooperative discussion to develop an informal judgment and must instead freeze the situation into adversarial form at high procedural cost and at the risk of being unable ever to solve what may prove to be a simple matter which merits no charges. We also feel that Federal employees already have ample protections against arbitrary and capricious agency actions. Accordingly, the Commission believes that the provisions of H.R. 3793 are extremely undesirable, unnecessary, and unwarranted, and strongly urges that the Committee not approve the bill.

The Office of Management and Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission :

Sincerely yours,

ALAN K. CAMPBELL,
Chairman.

THE DIRECTOR OF CENTRAL INTELLIGENCE,
Washington, D.C., August 25, 1977.

HON. ROBERT N. C. NIX,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN : I am writing to offer my views on H.R. 3793. Under this bill, an employee being investigated for "misconduct which could lead to suspension, removal, or reduction in rank or pay" can be questioned only after he has been advised in writing of the fact he is under investigation and has been given up to 5 days to obtain a representative of his choice to be present during questioning. This bill is virtually identical to H.R. 6227, introduced in the last Congress; and, for the reasons stated below, we continue to oppose this legislation.

We share the concerns raised already by other Government agencies regarding H.R. 3793. In addition, I would like to draw the committee's attention to considerations relating to the bill's potential impact on the national foreign intelligence program.

The administration of the Central Intelligence Agency is governed by the National Security Act of 1947 and the Central Intelligence Agency Act of 1949. The former imposes on the Director of Central Intelligence responsibility for protecting intelligence sources and methods from unauthorized disclosure (50 U.S.C. 403). It also grants the Director the discretion to terminate the employment of any officer or employee of the Agency "whenever he shall deem such termination necessary or advisable in the interests of the United States" (50 U.S.C. 403). The Director of the National Security Agency has similar termination authority and, in addition, is required by law to adhere to personnel security standards and procedures (50 U.S.C. 831-835). These statutory authorities and requirements are considered to be absolutely essential in the management of our foreign intelligence efforts. I believe the requirements of section 7171(b) of H.R. 3793, while affording certain safeguards for investigations of employees of the CIA, the National Security Agency and the FBI, conflict with these statutory authorities and would undermine important managerial programs which have as their purpose the protection of intelligence sources and methods.

In fulfilling their statutory responsibilities, the Central Intelligence Agency and the National Security Agency have developed personnel and security programs which are unique. These programs, which in the case of the National Security Agency are mandated by law, are designed to protect both the national security and the rights and privacy of employees. They also reflect the special responsibility upon these agencies to insure loyalty, security consciousness, and the personal integrity and stability of employees. This attitude of trust and confidence is imperative in identifying and attending to potential problems before serious injury to the national security occurs. The adversary setting encouraged by the requirements of H.R. 3793 would undermine this firm basis of understanding and cooperation which sustains the integrity of an intelligence organization.

Perhaps more than other institutions, intelligence organizations, if they are to be effective, must treat their personnel fairly. In most instances, the practices and regulations of the Central Intelligence Agency and the National Security Agency are fully consistent with the underlying purpose of H.R. 3793. However, there are circumstances in which applying such a blanket statutory requirement to the Government's intelligence agencies would be inappropriate and inadvisable. Even though sections 7171(b) and 7172(b), which provide for the employee's representative to be an employee of the same agency and for the action to be reviewable only by the President, meet some of the special considerations which must apply in the case of our foreign intelligence agencies. I believe it is essential that these agencies be fully exempted from H.R. 3793 in light of their unique missions and statutory authorities.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the administration's program.

Yours sincerely,

STANSFIELD TURNER.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

TITLE 5, UNITED STATES CODE

* * * * *

Subpart F—Employee Relations

CHAPTER 71—POLICIES

SUBCHAPTER I—EMPLOYEE ORGANIZATIONS

SEC.

7101. Right to organize; postal employees.

7102. Right to petition Congress; employees.

SUBCHAPTER II—ANTIDISCRIMINATION IN EMPLOYMENT

7151. Policy.

7152. Marital status.

7153. Physical handicap.

7154. Other prohibitions.

SUBCHAPTER III—EMPLOYEE RIGHT TO REPRESENTATION

7171. Right to representation during questioning.

7172. Right to appeal.

7173. Regulations.

* * * * *

SUBCHAPTER III—EMPLOYEE RIGHT TO REPRESENTATION

§ 7171. Right to representation during questioning

(a) Any employee of an Executive agency under investigation for misconduct which could lead to suspension, removal, or reduction in rank or pay of such employee shall not be required to answer questions relating to the misconduct under investigation unless—

(1) the employee is advised in writing of—

(A) the fact that such employee is under investigation for misconduct,

(B) the specific nature of such alleged misconduct, and

(C) the rights such employee has under paragraph (2) of this subsection, and

(2) the employee has been provided reasonable time, not to exceed 5 working days, to obtain a representative of his choice, and is allowed to have such representative present during such questioning, if he so elects.

(b) For the purpose of subsection (a)(2), an employee of the Central Intelligence Agency, National Security Agency, or the Federal Bureau of Investigation who is under investigation for miscon-

duct may have a representative of his choice present during such questioning, except that such representative shall be—

(1) an employee of the agency in which the employee who is under investigation for misconduct is employed, and

(2) approved by the agency for access to the information involved in the investigation.

(c) Any statement made by or evidence obtained during questioning of an employee of an Executive agency may not be used as evidence in the course of any action for suspension, removal, or reduction in rank or pay subsequently taken against the employee, unless the requirements of paragraphs (1) and (2) of subsection (a) of this section were complied with during such questioning.

§ 7172. Right to appeal

(a) Except as provided under subsection (b) of this section, an employee of an Executive agency against whom any action is taken for suspension, removal, or reduction in rank or pay in violation of section 7171 of this title, and who is not otherwise entitled to appeal such action to the Civil Service Commission, is entitled to appeal such action to the Commission if the employee submits the appeal in writing within a reasonable time after receipt of notice of such action. Under regulations prescribed by the Commission, the employee is entitled to appear personally or through a representative of his choice. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority and shall send copies of the findings and recommendations to the appellant or his representative. The administrative authority shall take the corrective action that the Commission finally recommends.

(b) Under such regulations as the President may prescribe, an employee of the Central Intelligence Agency, National Security Agency, or the Federal Bureau of Investigation against whom any action is taken for suspension, removal, or reduction in rank or pay in violation of section 7171 of this title is entitled to appeal such action solely to the President, or to an appropriate designee of the President, whose findings and recommendations shall be final and conclusive.

§ 7173. Regulations

The Civil Service Commission shall prescribe regulations necessary to carry out the purposes of this subchapter, except section 7172(b) of this title.

* * * * *

MINORITY VIEWS ON H.R. 3793—RIGHT TO COUNSEL LEGISLATION

While single-mindedness of purpose is a trait sometimes to be admired, we can only observe that by endorsing this legislation the committee Democrats have opposed Republican administrations so consistently they are fixed with the notion that the Civil Service Commission, under any banner, is an adversary not to be admitted to counsel.

This legislation is virtually identical to H.R. 6227 of the 94th Congress. Its purpose is to extend Miranda-type protections to Federal employees by providing that civilian employees who are under investigation for misconduct which could lead to dismissal or reduction in rank would not be required to answer questions relating to their misconduct unless they were first advised in writing that they were under investigation, the specific nature of the misconduct, and of their right to have a representative present during the questioning.

The Civil Service Commission, at the time of committee consideration of H.R. 6227, in 1975, opposed the legislation. In its report, the Commission questioned "whether the committee really intends to extend these formal procedures to all cases of questioning of employees in disciplinary matters, however slight."

The Commission went on to say:

In sum, the bill is modeled on (and actually surpasses) the Miranda rule which is used in the sharply adversary situation where police have in custody an individual who has become an "accused" person, and it is applied by its terms to non-adversarial situations in which a manager who lacks sufficient information to decide whether it is worth charging anyone, is precluded from engaging in cooperative discussion to develop an informal judgment, and must instead freeze the situation into adversarial form at high procedural cost and at the risk of being unable ever to solve what may prove to be a simple matter which merits no charges.

Understandably, the committee Democrats could have viewed this as an ultra-conservative position of the Ford administration, for they moved ahead with the bill which passed the House and fortunately died in the Senate.

Now we have the same basic bill under a new number (H.R. 3793) and again before a Democratic Congress. The difference this year is, of course, we have a Democratic administration and a Carter-appointed Civil Service Commission.

It should be interesting to the Members of the House, that the Carter-appointed Chairman of the Civil Service Commission argues against the bill in precisely the same manner as his predecessor.

In his report to the committee dated July 20, 1977, Commission Chairman Alan K. Campbell concludes:

We also feel that Federal employees already have ample protections against arbitrary and capricious agency action. Accordingly, the Commission believes that the provisions of H.R. 3793 are extremely undesirable, unnecessary, and unwarranted, and strongly urges the Committee not approve the bill.

We suggest this bill gives both Democrats and Republicans of the House a voting opportunity too good to pass up. Each Member can cast a "No" vote and in so doing rally round his own party banner. By rights, the bill should be overwhelmingly rejected.

EDWARD J. DERWINSKI.
JOHN H. ROUSSELOT.
GENE TAYLOR.
TRENT LOTT.
JIM LEACH.
TOM CORCORAN.
JAMES M. COLLINS.

REORGANIZATION PLAN NO. 2 OF 1978
(Civil Service Commission)

JULY 26, 1978.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BROOKS, from the Committee on Government Operations, sub-
mitted the following

REPORT

[To accompany H. Res. 1201]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Operations to whom was referred the resolution (H. Res. 1201) to disapprove Reorganization Plan No. 2 transmitted by the President on May 23, 1978, having considered the same, report unfavorably thereon without amendment and recommend that the resolution do not pass.

SUMMARY AND PURPOSE

Reorganization Plan No. 2 of 1978 is the structural portion of the civil service reform proposals submitted to Congress by President Carter. The plan will convert the U.S. Civil Service Commission into a Merit Systems Protection Board to handle adjudications and employee appeals from departmental and agency decisions. The Board will have a Special Counsel.

It will create an independent agency called the Office of Personnel Management to which will be transferred the current personnel management functions of the Civil Service Commission. The office will have a single head.

The Plan will also establish an independent agency entitled the Federal Labor Relations Authority to be composed of three Members to carry out the functions of the existing Federal Labor Relations Council. The Council was created by an Executive Order that deals with the relations between employees and management in the Federal Government.

The Reorganization Plan provides the organizational changes that are needed to implement the President's substantive civil service reform proposals considered by the House Post Office and Civil Service Committee.

The President said he was confident "that this Plan and the companion civil service reform legislation will both lead to more effective protection of Federal employees' legitimate rights and a more rewarding workplace. At the same time the American people will benefit from a better managed, more productive and more efficient Federal Government."

The reorganization plan makes the following changes:

1. *Establishes a new Office of Personnel Management*

The Office of Personnel Management will be the central personnel agency for the Federal Government. The Office will:

Aid the President in preparing rules for the administration of civilian employment;

Advise the President on any civilian employment matters;

Execute, administer and enforce the civil service laws, rules, and regulations (including retirement and job classification matters);

Coordinate research in improved personnel management; and

Recommend to the President actions to apply merit principles in such areas as selection, promotion, transfer, performance, pay, conditions of service, tenure, and separation of employees.

The Office will be headed by a director, appointed by the President and confirmed by the Senate.

2. *Redesignates the existing Civil Service Commission as the Merit Systems Protection Board*

The Merit Systems Protection Board will be the successor agency to the Civil Service Commission. The Board would be under the bipartisan leadership of three members, appointed by the President and confirmed by the Senate. Members will serve renewable 6-year terms. If the proposed Civil Service Reform Act is approved by the Congress, Board members would become more independent, serving nonrenewable 7-year terms, and subject to removal only for cause.

The Merit Systems Protection Board will exercise all of the adjudication and appellate functions now vested in the Civil Service Commission.

3. *Establish a Special Counsel to the Merit Systems Protection Board*

The reorganization plan establishes the position of Special Counsel to the Board to investigate prohibited personnel practices, prosecute officials who violate the Civil Service rules and regulations, and to enforce the Hatch Act. The Special Counsel would be appointed to a four-year term by the President and confirmed by the Senate. The Special Counsel would be independent of, and not subject to direction by, the Board.

Under the plan, the Special Counsel will:

Assume all functions of the Commission relating to investigations of prohibited political activity on the part of federal employees and of certain state and local employees;

Investigate, in certain situations, whether information that should have been disclosed under the Freedom of Information Act has been withheld by a federal official in a capricious or arbitrary manner; and

Investigate allegations of personnel practices which are prohibited by law or regulation.

4. *Establishes a Federal Labor Relations Authority*

The reorganization plan establishes a Federal Labor Relations Authority as a new agency responsible for administering the federal labor relations program. The Authority will integrate the "third-party" functions in the labor relations program under an independent and neutral body.

The Authority would assume functions now held by a Federal Labor Relations Council, which functions under an Executive Order, and certain duties now performed by the assistant secretary of labor for labor-management relations. These include:

Determining appropriate bargaining units, supervising elections and certifying exclusive bargaining agents;

Investigation and prosecuting unfair labor practice complaints; and

Deciding appeals from determinations of non-negotiability.

The existing Federal Service Impasses Panel would operate as a distinct organizational entity within the Authority.

The Federal Labor Relations Authority, which would be established as a bipartisan and independent agency, would have a chairman, two members, and a general counsel, all appointed by the President and confirmed by the Senate.

The general counsel will investigate alleged unfair labor practices, make final decisions as to whether to issue unfair labor practice complaints, and prosecute such complaints before the Authority. This process and the built-in review within the Authority will eliminate the need for judicial review of its final decisions, except on constitutional grounds.

The present staff of the Civil Service Commission and the Labor Relations Council is approximately 7,204. Of that total about 6,750 would be transferred to the new Office of Personnel Management, approximately 400 to the Merit Systems Protection Board and 54 to the Federal Labor Relations Authority. Expenditures of around \$225 million are made by the agencies subject to this reorganization. The only additional costs to present authorized expenditures will be those necessitated by the implementation of the Plan.

The committee believes the reorganization will improve the administration of the Federal Government and its personnel system, result in the achievement of higher standards of workmanship and, ultimately enhance the quality of delivery of services to the public.

COMMITTEE VOTE

House Resolution 1201 was reported to the House with a recommendation that it do not pass by a vote of 31 ayes with none voting in the negative. The committee, therefore, favors Reorganization Plan No. 2 of 1978.

AMENDMENT

On July 11, President Carter submitted an amendment to Reorganization Plan No. 2 which rewrites section 104(c) as follows:

(c) Executing, administering and enforcing the Civil Service rules and regulations of the President and the Office and the statutes governing the same, and other activities of the Office including retirement and classification activities except to the extent such functions remain vested in the Merit Systems Protection Board pursuant to Section 202 of the Plan, or are transferred to the Special Counsel pursuant to Section 204 of this Plan. The Director shall provide the public, where appropriate, a reasonable opportunity to comment and submit written views on the implementation and interpretation of such rules and regulations.

The effect of the amendment is to require the Director of the new Office of Personnel Management to provide a reasonable opportunity to comment on the implementation and interpretation of rules and regulations which the Director may execute, administer or enforce.

HEARINGS

Hearings were held by the Subcommittee on Legislation and National Security on June 6, 13 and 15 at which time Members of Congress, the Director of the Office of Management and Budget and the Chairman of the U.S. Civil Service Commission and other officials of the Administration were heard. Testimony was also received from representatives of the AFL-CIO and affiliated unions; the major independent organizations which represent Federal employees; the U.S. Chamber of Commerce; and university scholars. Other statements were submitted for the record by interested parties.

ACTION REQUIRED ON DISAPPROVAL RESOLUTION

As noted above Reorganization Plan No. 2 is an integral part of the overall reform of the Federal civil service now being undertaken by the Congress upon recommendations submitted by the President. The Plan, however, deals only with organizational aspects rather than substantive policies. Because of the division of labor between the Committees on Government Operations and Post Office and Civil Service, several members of the House appeared before the Government Operations Committee and suggested that we either defer action on the resolution of disapproval until our colleague committee had completed its work or urge the President to change the effective date of the Plan to coincide with Congressional enactment of the substantive legislation.

Chairman Brooks, at the outset of our consideration of the Plan stated that it would be preferable if the two committees could work in tandem on their respective aspects of the reorganization. He pointed out, however, that under the Reorganization Act we were limited by a time factor and at a specified time the committee could be automatically discharged of consideration of its disapproval resolution if it has not made its report to the House. Thus, this committee is compelled to act regardless of the progress made on the substantive legislation. Inasmuch as our committee strongly favors the Plan, we hereby submit our views.

We should note, however, that the Plan, as drafted, is not dependent upon enactment of the legislative proposal and, of itself, constitutes an effective change in the Federal civil service and personnel administration. If for some reason the substantive legislation is not enacted, the separate bodies created by this Plan can function under existing statutes and a major improvement would still have been achieved.

THE CIVIL SERVICE COMMISSION

As previously described, the reorganization plan will separate the Civil Service Commission into two separate agencies. The Commission was founded in 1883 in response to abuses in Federal appointments known then as the "spoils system." As time passed and Federal personnel grew in numbers it accumulated responsibilities which were at odds with each other and, in recent years, it has at times been charged with engaging in the same types of activities it was created to prevent.

During our hearings, the Director of the Office of Management and Budget stated:

The Civil Service Commission is now assigned responsibility for protecting the merit system. The Commission is expected to judge whether the actions which occur within the personnel system are within agreed-upon rules. At the same time, the Civil Service Commission is the developer and enforcer of many of these rules. The objectivity which employees expect in the application of rules to individual decisions directly affecting their job security and compensation has been questioned because the rule maker is also the prosecutor and the judge.

The separation of the Commission into the Office of Personnel Management to provide managerial leadership for the positive personnel management functions in the Executive Branch and the Merit Systems Protection Board to serve as a "watch dog" over the integrity of the merit system, protecting employee rights, and performing a variety of other adjudicatory functions, will resolve these conflicting duties and eliminate this confusion.

OFFICE OF PERSONNEL MANAGEMENT

The creation of the Office of Personnel Management will enable this office to function properly as an administrative arm of the President in carrying out Federal personnel responsibilities, to administer civil service rules and regulations and to oversee the performance of personnel management within the agencies.

Through the authority given the Director to delegate certain responsibilities to the departments and agencies, more flexibility will be obtained compared with the rigidity of the present system. The committee expects these delegations to be made cautiously and with oversight as needed. The delegations should be carried out with carefully prepared written performance agreements between the agency and the Office of Personnel Management. The OPM should specify required levels of agency performance; conditions for redelegation within the agency, with due regard for the impact on bargaining with employee organizations; reporting, review and other controls; and grounds for

revoking, suspending, or modifying the authority. These performance agreements and their oversight should provide adequate protection against misuse of authority. This committee will follow these delegations and monitor their results.

Some concern has been expressed over the fact that the Director of the Office of Personnel Management will be a single individual rather than a collegiate body. The committee considered these concerns and believes they are not well founded. Single administrators are the rule rather than the exception throughout the Executive Branch and with the adjudicatory functions removed from the OPM there is no reason to expect the single administrator to be handicapped by the absence of his peers. Even in most collegial-headed bodies the chairman is given nearly all of the administrative powers and the other commissioners or members contribute primarily to policy or adjudication. Some have argued that a single administrator is removed from the "sunshine" provisions of law which require meetings to be held in open session. But the advantages of such "openness" must be weighed against the delays in administration multi-headed bodies inevitably will produce. In any event, personnel administration may not lend itself well to collegiate responsibility and the record of the Civil Service Commission in recent years may be a good example of this truism.

MERIT SYSTEMS PROTECTION BOARD

The conversion of the Civil Service Commission into the Merit Systems Protection Board is an especially positive feature of the reorganization plan. The Board will handle adjudicatory and appellate functions now vested in the Commission and primarily carried out by its Federal Employee Appeals Authority and its Appeals Review Board. The Board will have jurisdiction over practically all of the matters that an employee may appeal, or determinations that an employee may ask to have reconsidered outside his or her agency. However, the Board will not adjudicate appeals from examination ratings or rejection of applications (other than those pertaining to administrative law judge positions), from position classification or job grading determinations (except when the employee's position is downgraded and this leads to an adverse action), or from decisions of insurance carriers denying claims of employees, annuitants, or family members. These are technical matters more suitable for administrative review to ensure accuracy and consistency with the intentions of governing law and administrative authority.

The committee is satisfied that the Board will have the independence needed to effectively and objectively perform its duties. The division of responsibilities between the Office of Personnel Management and the Merit Systems Protection Board as articulated in the Reorganization Plan provides evidence of the Board's independence. While the Office of Personnel Management regulates what actions may be appealed to the Board (beyond those specified by statute), the Board regulates the course of its own proceedings, such as time limits for filing appeals, its review procedures, and the rights and responsibilities of parties involved. The Board may also on its own motion conduct

special studies to monitor compliance with merit system principles and to focus public attention on conditions within agencies that run counter to merit principles.

In sum, the nature of the appointment to and conditions for continued service on the Board, the ability to seek enforcement of its orders through action by the Special Counsel, and the authority to regulate its own proceedings as established in the Reorganization plan No. 2 of 1978 and the proposed Civil Service Reform Act secures the independence of the Board. Establishment of the Special Counsel with investigative and prosecutorial authority will provide employees increased protection from improper managerial actions and increase the accountability of managers for the exercise of discretionary authorities.

THE FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority replaces the existing Federal Labor Relations Council. The latter was established by Executive Order 11491 and consists of the Chairman, Civil Service Commission, the Director, Office of Management and Budget, and the Secretary of Labor. The new Authority would have a Chairman, two members, and a General Counsel, all appointed by the President and confirmed by the Senate. Certain duties now performed by the Assistant Secretary of Labor for Labor-Management Relations would be performed by the Authority. The existing Federal Service Impasses Panel would operate as a distinct organizational entity within the Authority.

The Authority will integrate the third-party functions in the labor relations program under an independent and neutral body. Its General Counsel will investigate alleged unfair labor practices, make final decisions as to whether to issue unfair labor practices, make final decisions as to whether to issue unfair labor practice complaints, and prosecute such complaints before the Authority. This process and the build-in review within the Authority should eliminate the need for judicial review of its final decisions, except on constitutional grounds.

It has been said that it may be inappropriate to reorganize by Plan an activity that was created by executive order. This seems to be splitting hairs with phraseology and we see no objection to this procedure. We have observed that the substantive legislation ordered reported by the Post Office and Civil Service Committee contains a statutory basis for the Authority and its functions.

OVERSIGHT FINDINGS

No specific oversight findings have been issued by the Committee on this reorganization. However, a detailed study of the necessity for the Plan was made by the Subcommittee on Legislation and National Security and hearings were held.

COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

The cost estimate prepared by the Congressional Budget Office is contained in the following letter from its director:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., July 21, 1978.

Hon. JACK BROOKS,
*Chairman, Committee on Government Operations,
U.S. House of Representatives,
Washington, D.C. 20515*

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H. Res. 1201, as ordered reported by the House Committee on Government Operations, July 19, 1978. This resolution would disapprove the reorganization plan proposed by the President for the reorganization of the Civil Service Commission.

Based on this review, it is estimated that the cost of implementing this reorganization plan would be approximately \$3 million in the first year, fiscal year 1979. Thereafter, the cost would be about \$2.7 million in fiscal year 1980, increasing each year with inflation to \$3.2 million in fiscal year 1983.

These costs include the salaries and benefits of additional personnel in the Office of Personnel Management, the Merit Systems Protection Board, and the Federal Labor Relations Authority, as well as projected costs for research in personnel management. The estimate also includes approximately \$1 million in fiscal year 1979 for relocation of personnel.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin, *Director.*

SECTION-BY-SECTION ANALYSIS

This plan establishes the Office of Personnel Management to perform the policymaking and executive responsibilities currently assigned to the Civil Service Commission, redesignates the Commission as the Merit Systems Protection Board and enumerates its appellate, adjudicative, and merit oversight authorities and functions. It also establishes a Special Counsel as a separate office located within the Board. The plan further establishes the Federal Labor Relations Authority and transfers the Federal Service Impasses Panel to it, to be a distinct organizational entity within the Authority.

PART I. OFFICE OF PERSONNEL MANAGEMENT

Section 101. Establishment of the Office of Personnel Management and its Director and other matters

This section provides for an independent establishment in the Executive Branch to be called the Office of Personnel Management. It provides for the appointment by the President of a Director of the Office of Personnel Management, by and with the advice and consent of the Senate, and for his compensation at Level II of the Executive Schedule. It further abolishes the position referred to in 5 U.S.C. 5109(b), involving duties related to retirement, life insurance and health benefits.

Section 102. Transfer of Functions

This section transfers, except as otherwise specified in the Plan, all of the functions now vested by statute in the U.S. Civil Service Commission, its Chairman, or the Boards of Examiners established under 5 U.S.C. 1105, to the Director of the Office of Personnel Management. This transfer of functions effects essentially the transfer of the policy making, executive, and managerial functions (sometimes referred to as the "positive personnel management" functions) now assigned to the Commission to the Director of the Office of Personnel Management. This would include the function of prescribing regulations to implement various statutory provisions authorizing the Commission to issue regulations as may be necessary, including regulations for the administration of 5 U.S.C. 7154(b) pertaining to antidiscrimination in administering position classification, pay rates and systems, and supergrade appointments.

Section 103. Deputy Director and Associate Directors

This section provides for the appointment by the President of a Deputy Director of the Office of Personnel Management, by and with the advice and consent of the Senate, and for his compensation at Level III of the Executive Schedule. The duties of the Deputy are to be prescribed by the Director and the Deputy shall act for the Director during his absence or disability or during a vacancy in the Office of the Director.

This section further provides for the appointment within the expected service of as many as five Associate Directors who shall be compensated at Level IV of the Executive Schedule and whose position titles shall be determined by the Director. (Under the Reform legislation, these Associate Directors would be placed in the proposed Senior Executive Service.) The Associate Director positions are justified both on the basis of the role of the Office of Personnel Management in providing policy advice and assistance to the President on a wide range of personnel matters in the Executive branch, and on the need for forceful management of improved personnel programs.

Section 104. Functions of the Director

This section provides that the functions of the Director shall include, but not be limited to: as the President may request, aiding the President in preparing rules for the administration of civilian employment now within the jurisdiction of the Civil Service Commission; advising the President, at his request, on any civilian employment matters now within the jurisdiction of the Commission. This section also articulates the Director's responsibility, except to the extent that such functions remain vested in the Merit Systems Protection Board or are transferred to the Special Counsel, for executing, administering and enforcing the civil service rules and regulations of the President and of the Office and the statutes governing them, and other activities of the Office, including retirement and classification matters. The Director is to provide the public, where appropriate, a reasonable opportunity to comment and submit written views on the implementation and interpretation of such rules and regulations. This section authorizes the Director to conduct or otherwise provide for studies and research for the purpose of improving personnel management and recommending

to the President actions to further the efficiency of the Civil Service and the systematic application of merit systems principles in areas such as selection, promotion, transfer, performance, pay, conditions of service, tenure and separation. Finally, this section assigns the Director responsibility for performing the training responsibilities now performed by the Commission as set forth in 5 U.S.C., chapter 41.

Section 105. Authority to delegate functions

This section provides that the Director may delegate to the heads of agencies employing persons in the competitive service the performance of any function or portion thereof transferred under this Plan as it relates to employees or applicants for employment in such agencies.

PART II. MERIT SYSTEMS PROTECTION BOARD

Section 201. Merit Systems Protection Board

Subsection (a) changes the designation of the United States Civil Service Commission to the Merit Systems Protection Board and redesignates the Commissioners of the Civil Service Commission as members of the Board. Subsection (b) affirms that the Chairman of the Board will be its chief executive and administrative officer and abolishes the position of Executive Director currently established in section 1103(d) of title 5, United States Code. Since the Board will not have extensive administrative responsibilities, the position of Executive Director will not be needed.

By redesignating the Civil Service Commission the Merit Systems Protection Board rather than abolishing the Commission and creating a new entity by that name, the six-year terms of the Commissioners are preserved. (The Reorganization Act does not allow for the creation of an office with a term longer than four years.) Since the insulation of the Board from political pressure is essential to its proper functioning, legislation is being sought to lengthen the terms of members further, prohibit their appointment to more than one full term, and to provide that they may not be removed except for cause.

Section 202. Functions of the Merit Systems Protection Board and related matters

Subsection (a) sets forth the hearing, adjudicatory, and appeals authority of the Board. It authorizes the Board to hear and decide the following statutory appeals and matters currently adjudicated by the Commission:

- (1) Political activities of certain State, local, and Federal employees (Hatch Act violations) (5 USC 1504-1507 and 7325);
- (2) Withholding of within-grade salary increases (5 USC 5335);
- (3) Removal of an administrative law judge (5 USC 7521);
- (4) Adverse actions against preference eligibles (5 USC 7701);
- (5) Determinations by the Bureau of Retirement, Insurance, and Occupational Health concerning retirement applications and annuities (5 USC 8347(d)); and
- (6) Restoration to duty following military service (38 USC 2023).

In addition, based on an existing Executive order and on regulations, the following appealable matters will be placed under the jurisdiction of the Board:

1. Adverse actions against non-preference eligibles in the competitive service (EO 11491, as amended). (Under the proposed Civil Service Reform Act, the right of non-preference eligibles to appeal adverse actions would be provided by statute).
2. Employment practices administered or required by the Civil Service Commission (5 CFR 300.104(a)).
3. Restoration to duty following recovery or partial recovery from a compensable injury (5 CFR 302.501-03, 353.401).
4. Terminations during probationary periods (5 CFR 315.806).
5. Violations of reemployment priority rights (5 CFR 330.202).
6. Reduction in force (5 CFR 351.901).
7. Reemployment rights based on movement between Executive agencies during emergencies (5 CFR 352.209).
8. Reemployment rights following details or transfers to international organizations (5 CFR 352.313).
9. Reinstatement rights after service under the Foreign Assistance Act of 1961 (5 CFR 352.508).
10. Reemployment rights after service in the Economic Stabilization Program (5 CFR 352.607).
11. Reemployment rights after service under the Indian Self-Determination Act (5 CFR 352.707).
12. Retention of salaries of employees demoted to General Schedule positions without personal cause, not at their own request, and not in a reduction in force due to lack of funds or curtailment of work (5 CFR 531.517).
13. Disqualification of employees or applicants by the Commission based on suitability determinations (5 CFR 731.401 and 754.105).
14. Final decisions of the Bureau of Retirement, Insurance, and Occupational Health concerning employee coverage under the life insurance and health benefits programs (5 CFR 870.205(b), 871.206(b), and 890.103(b)).
15. Appeal from a decision of the Bureau of Retirement, Insurance and Occupational Health concerning collection of an overpayment of annuity (5 CFR 831.1302).
16. Determination by the Commission's Bureau of Retirement, Insurance, and Occupational Health that annuitants are not eligible to elect health benefits plans or to receive Government contributions related to such plans (5 CFR 891.105).
17. Appeals from an examination rating or the rejection of an application in connection with an administrative law judge position (CSC Minute Number 5 of April 29, 1974).

Subsection (b) provides that the Board shall retain the function now vested in the Commission or its Chairman of enforcing its adjudicative decisions in those matters covered in subsection (a) of this section pursuant to the provisions of 5 U.S.C. 1104 (a)(5) and (b)(4). This would include any applicable provisions of Civil Service Rule V, Section 5.4 (5 CFR 5.4).

Subsection (c) provides that a member of the Board may request an interpretation of regulations or policy directives issued by the Office of Personnel Management in connection with a matter before the Board. Subsection (d) provides that the Board must notify the Director of the Office of Personnel Management whenever the interpretation or application of a rule, regulation or policy directive issued by the Office

is at issue in any matter before the Board and give the Director standing to intervene in the proceedings.

Subsections (e) and (f) provide for the designation, by the Board, of chairmen of performance rating boards and, by the Chairman, of a Chairman of boards of review in connection with the removal of air traffic controllers from air traffic controller positions, respectively.

Subsection (g) accords the Board authority to conduct special studies relating to the Civil Service, and to other merit systems in the Executive Branch, and to report to the President and the Congress concerning whether the public interest in a workforce free of personnel practices prohibited by law (including Executive orders) or regulations is being protected. The Board will have access to personnel records and information collected by the Office of Personnel Management to the extent permitted by law, and will be authorized to require additional reports from other agencies as needed.

Subsection (h) authorizes the Board to delegate any of its administrative functions to its staff. Subsection (i) authorizes the Board to issue regulations governing its functions, including regulations defining its review procedures, the time limits for appealing, and the rights and responsibilities of parties to appeals. The regulations shall be published in the Federal Register. Subsection (i) also provides that the Board shall not issue advisory opinions.

Section 203. Savings provisions

This section provides that the Board shall accept appeals from agency actions effected prior to the effective date of the Plan. This section provides that: (1) proceedings before the Federal Employees Appeals Authority shall continue before the Board; (2) proceedings before the Appeals Review Board and before the Civil Service Commission on appeal from decisions of the Appeals Review Board shall continue before the Board. It is not intended, however, that matters continued before the Board must be heard by the Board *en banc*. It is expected that the Board will establish procedures for dealing with these matters essentially on the record and with the assistance of staff review and recommendations, but with due regard for preserving the substantive rights of the appellants and others affected. Additionally, this section provides that other employee appeals heard by boards or bodies pursuant to law or regulation shall continue to be processed pursuant to those laws or regulations. This provision does not affect the right of any employee to judicial review.

Section 204. The Special Counsel

Subsection (a) provides for the appointment by the President, with the advice and consent of the Senate, of a Special Counsel as the head of a separate Office located within the Board. Subsection (a) further provides that the Special Counsel's appointment shall be for a term of four years and that he shall be compensated at Level IV of the Executive Schedule. It is intended that the Special Counsel shall be independent of the Board and not subject to direction by the Board.

Subsection (b) of this section transfers to the Special Counsel all functions of the Commission relating to investigations of prohibited political activity on the part of Federal employees (Chapter 73 of title 5 U.S. Code) and of certain State and local employees (Chapter 15 of title 5, U.S. Code). Additionally, it authorizes the Special

Counsel to investigate to ascertain whether information that should have been disclosed under the Freedom of Information Act has been withheld by a Federal official in a capricious or arbitrary manner, under 5 U.S.C. 552(a)(4)(F).

Subsection (c) authorizes the Special Counsel to investigate, pursuant to 5 U.S.C. 1303, allegations of personnel practices which are prohibited by law or regulation. The initiation of such investigations would not be contingent on the receipt of a formal complaint. The Special Counsel could investigate on his own initiative based on information from any source.

Subsection (d) provides that when the Special Counsel determines that there are personnel practices prohibited by law or regulation which require corrective action, he shall report his findings and recommendations to the Chairman of the Merit Systems Protection Board, to the agency affected and to the Office of Personnel Management, and may report such findings to the President.

Subsection (e) provides that when he believes disciplinary action is warranted, the Special Counsel may prepare charges based on investigations carried out under this section against employees within the jurisdiction of the Board. (Employee coverage of matters within the Special Counsel's jurisdiction is determined by provisions of the pertinent statute or regulation.) Charges with supporting documentation are to be presented to the Board, which will determine whether the charges will be adjudicated by the Board itself, or by an administrative law judge designated by the Board. (In the case of a Presidential appointee, the Special Counsel would refer the results of the investigation to the President.)

Subsections (f) and (g) authorize the Special Counsel to appoint personnel needed to perform the functions of his office and to issue rules and regulations governing the receipt and investigation of matters under this section. The Special Counsel's regulations must be published in the Federal Register.

Subsection (h) provides that the Special Counsel shall issue no advisory opinions.

PART III. FEDERAL LABOR RELATIONS AUTHORITY

Section 301. Establishment of the Federal Labor Relations Authority

Subsection (a) of this section establishes the Federal Labor Relations Authority as an independent establishment in the Executive Branch; provides that the Authority be composed of three members, one of whom shall be the Chairman, and not more than two of whom shall be members of the same political party; provides that members of the Authority are to hold no other office or position, except where provided by law or by the President.

Subsection (b) of this section provides that members of the Authority be appointed by the President, by and with the advice and consent of the Senate; provides that members of the Authority be compensated at the rate for Level IV of the Executive Schedule; provides that the President designate one member of the Authority to serve as Chairman; and provides that the Chairman be compensated at the rate of Level III of the Executive Schedule.

Subsection (c) of this section provides for staggered terms of 4 years for members of the Authority, with the initial members being appointed for 2 and 3 years and the Chairman for 4 years, and provides that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member he replaces.

Subsection (d) of this section provides that the Authority shall make an annual report to the President for transmittal to the Congress.

Section 302. Establishment of the General Counsel of the Authority

This section establishes a General Counsel for the Authority. It provides that the General Counsel shall be appointed by the President by and with the advice and consent of the Senate for a term of four years and provides that he shall be compensated at the rate set for Level V of the Executive Schedule. This section provides further that the General Counsel shall perform duties as prescribed by the Authority, including but not limited to the duty of determining and presenting the facts required by the Authority to decide unfair labor practice complaints.

Section 303. The Federal Service Impasses Panel

This section transfers the existing Federal Service Impasses Panel to the Authority and provides for its continuance as a distinct organizational entity within the Authority.

Section 304. Functions

This section transfers, subject to the provisions of section 306, to the Authority: the functions of the Federal Labor Relations Council under Executive order 11491, as amended; the functions of the Civil Service Commission under sections 4(a) and 6(e) of Executive Order 11491, as amended; the functions of the Assistant Secretary of Labor for Labor Management Relations under Executive Order 11491, as amended, except for those functions related to alleged violations of the standards of conduct for labor organizations under section 6(a)(4) of that Executive Order; and to the Panel, the functions and authorities of the Federal Service Impasses Panel under Executive Order 11491, as amended.

Section 305. Authority Decisions

This section provides that the decisions of the Authority on any matter within its jurisdiction shall be final and not subject to judicial review.

Section 306. Other Provisions

This section provides that, unless and until they are modified, revised, or revoked, all policies, regulations, and procedures established, and decisions issued, under Executive Order 11491, as amended, shall remain in full force and effect. This section reserves to the President the power to modify the functions transferred to the Authority and the Impasses Panel pursuant to Section 304 of this Plan.

Section 307. Savings Provision

This section provides that all matters which relate to functions transferred by Section 304 to the Authority, which are pending on the effective date of the Plan before the Federal Labor Relations Council, the Vice Chairman of the Civil Service Commission, or the Assistant

Secretary for Labor-Management Relations shall continue before the Authority under its rules and procedures. All matters pending before the Federal Service Impasses Panel shall continue before the Panel under its rules and procedures.

PART IV. GENERAL PROVISIONS

Section 401. Incidental Transfers

Section 401 provides for the transfer of personnel, property, records, unexpended balances of appropriations, allocations and other funds employed, used, held, available or to be made available in connection with the functions transferred under this Plan to the appropriate agency or component thereof at such time as the Director of the Office of Management and Budget shall determine. No unexpended balances transferred may be used, however, for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget is authorized to terminate the affairs of any agency abolished by this Plan and to take such further measures as may be needed to effectuate the purposes of the Plan.

Section 402. Interim officers

Section 402 authorizes the President to appoint employees in the Executive Branch at the time of the reorganization to act as Director and Deputy Director of the Office of Personnel Management, as Special Counsel, as Chairman and members of the Federal Labor Relations Authority, as Chairman and members of the Federal Service Impasses Panel and as General Counsel of the Authority, until those offices are filled under the provisions of this Plan or by recess appointment. The intent is to carry over the existing Federal Service Impasses Panel into the new Federal Labor Relations Authority. In addition, the President would be entitled to authorize that these officials be compensated in accordance with the salaries specified for the offices mentioned above, in lieu of other compensation from the United States. The redesignation of the Civil Service Commission as the Merit Systems Protection Board in no way alters or interferes with the incumbency or term of office of the duly appointed Chairman, Vice-Chairman, or Member of the Civil Service Commission who becomes by virtue of this Plan, Chairman, Vice-Chairman, or Member of the Board.

Section 403. Effective date

This section provides that the Plan shall take effect at such time or times, on or before January 1, 1979, as the President shall specify, but not sooner than the earliest date allowable under section 906 of title 5, United States Code.

**CIVIL SERVICE REFORM ACT
OF 1978**

REPORT
OF THE
**COMMITTEE ON POST OFFICE AND
CIVIL SERVICE**
ON
H.R. 11280
TO REFORM THE CIVIL SERVICE LAWS



**JULY 31, 1978.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed**

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CIVIL SERVICE REFORM ACT OF 1978

JULY 31, 1978.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. Nix, from the Committee on Post Office and Civil Service,
submitted the following

REPORT

[Including cost estimate of the Congressional Budget Office]

[To accompany H.R. 11280]

together with

SEPARATE, SUPPLEMENTAL, ADDITIONAL, INDIVIDUAL, AND DISSENTING VIEWS

The Committee on Post Office and Civil Service, to which was referred the bill (H.R. 11280) to reform the civil service laws, having considered the same, reports favorably thereon, with amendments, and recommends that the bill as amended do pass.

AMENDMENTS

The committee has amended the bill as introduced by striking out all language after the enacting clause and inserting a new text which is printed in *italic* in the reported bill.

The committee has also amended the title.

EXPLANATION OF AMENDMENTS

The Committee amendments include a complete substitute for the text of H.R. 11280 as introduced and an amendment to the title.

The changes made by the committee amendments to the text of the bill are explained in the body of this report.

The committee has amended the title to reflect more accurately the content of the bill as amended.

PURPOSE

The purpose of this legislation is to reform the Civil Service of the Government of the United States.

COMMITTEE ACTION

On March 2, 1978, President Carter transmitted to Congress his message on civil service reform which included a draft of legislation. That legislation was introduced on March 3, 1978, by Mr. Nix and Mr. Derwinski (by request) as H.R. 11280.

The Committee on Post Office and Civil Service conducted 13 days of hearings (including hearings conducted by Representative Gladys Noon Spellman at four Federal agency locations) on March 14, 21; April 4, 5, 6, 11, 12, 28; and May 8, 12, 15, 22, and 23.

Testimony was given by 203 witnesses representing Federal employees, business organizations, women's groups, veterans, public interest groups, and the executive branch, which presented testimony by the Director of the Office of Management and Budget, the Chairman of the Civil Service Commission, the Secretary of Health, Education, and Welfare, and the Secretary of Defense. Additional written communications have been received from 36 organizations and individuals.

At the conclusion of the hearings, the committee met for 10 days (June 21, 22, 23, 28, 29, and July 11, 12, 13, 17, and 19) to mark up H.R. 11280. Seventy-seven separate amendments were considered by the committee, and extensive discussion occurred on all aspects of the bill. In an unusual procedure by the Committee on Post Office and Civil Service, direct testimony was heard during the course of markup sessions from administration officials so that the President's position on specific issues would be announced. Forty-two rollcall votes were taken during the committee's deliberations and on July 19, 1978, by a vote of 18 to 7, the committee ordered the bill reported to the House with one amendment striking all after the enacting clause and substituting an entirely new text incorporating all of the amendments adopted by the committee. The rollcall vote to report the bill was as follows:

Ayes—Mr. Nix, Mr. Udall, Mr. Hanley, Mr. Wilson, Mr. White, Mr. Ford, Mr. Clay, Mrs. Schroeder, Mr. Lehman, Mr. Solarz, Mr. Myers, Mr. Heftel, Mr. Garcia, Mr. Metcalfe, Mr. Ryan, Mr. Derwinski, Mr. Leach, and Mr. Corcoran.

Nays—Mrs. Spellman, Mr. Harris, Mr. Rousselot, Mr. Collins, Mr. Taylor, Mr. Gilman, and Mr. Lott.

INTRODUCTION

In his message to the Congress on March 2, 1978, President Jimmy Carter stated:

Nearly a century has passed since enactment of the first Civil Service Act—the Pendleton Act of 1883. That act established the U.S. Civil Service Commission and the merit system it administers. These institutions have served our Nation well in fostering development of a Federal work force which is basically honest, competent, and dedicated to constitutional ideals and the public interest.

But the system has serious defects. It has become a bureaucratic maze which neglects merit, tolerates poor performance, permits abuse of legitimate employee rights, and mires every personnel action in redtape, delay, and confusion.

Civil service reform will be the centerpiece of government reorganization during my term of office.

I have seen at first hand the frustration among those who work within the bureaucracy. No one is more concerned at the inability of Government to deliver on its promises than the worker who is trying to do a good job.

Most civil service employees perform with spirit and integrity. Nevertheless, there is still widespread criticism of Federal Government performance. The public suspects that there are too many Government workers, that they are underworked, overpaid, and insulated from the consequences of incompetence.

Such sweeping criticisms are unfair to dedicated Federal workers who are consistently trying to do their best, but we have to recognize that the only way to restore public confidence in the vast majority who work well is to deal effectively and firmly with the few who do not. * * *

The objectives of the civil service reform proposals I am transmitting today are:

To strengthen the protection of legitimate employee rights;

To provide incentives and opportunities for managers to improve the efficiency and responsiveness of the Federal Government;

To reduce the redtape and costly delay in the present personnel system;

To promote equal employment opportunity;

To improve labor-management relations.

H.R. 11280 embodies the President's proposals for civil service reform. As amended by the committee, it reflects changes in the original proposal and is designed to improve the civil service system, ensure adequate protection for employees against unlawful abuses by agency management, and provide a framework for labor-management relations in the Federal Government.

JUSTIFICATION

Civil servants administer almost all functions of Federal activities. Of 2.8 million civilian positions in the executive branch, more than 1.5 million are in the competitive service; that is, the positions are filled on the basis of competitive civil service examinations in which any qualified citizen is entitled to participate. Appointments are made by agencies from lists of qualified eligibles. In this process, the Civil Service Commission is responsible for examining applicants, establishing civil service registers, and referring registers to agencies for consideration.

The problems of any organization employing as many as work for the Federal Government would be staggering regardless of the effectiveness of the system, but it is evident that the Federal civil service does not serve the public interest satisfactorily in several specific areas:

The delay between the time an individual applies for a civil service position and the time he is actually appointed, even if the agency appointing him makes every possible effort to speed the appointment process.

The time necessary for an agency to dismiss an employee who has tenure but has proven to be an unsatisfactory worker. Although all employees who have tenure should be protected from arbitrary and capricious actions, neither the employee nor the Government benefits from a system in which unnecessary delay exists. The employee does not benefit because he may be removed from a pay status 30 days after a notice of dismissal is given and spends much of his time preparing his defense for a hearing on the appeal, thus losing time he could devote to other employment. The agency does not benefit because it has to devote costly time to the defense of its action.

The "bureaucracy" at the higher level of the civil service is sometimes considered to be not sufficiently responsive to an Administration's program. Career employees cannot be displaced, transferred or reduced to a lower level position for any reason without requiring a full-fledged adverse action procedure with its attendant appeals and, in some cases, judicial proceedings.

The opportunity to provide employment for many well-qualified individuals, particularly women, is severely limited because of veterans' preference, which requires that most former members of the armed services be given preference over applicants who do not have this statutory preference.

H.R. 11280 is designed to resolve these and other civil service problems.

SUMMARY OF MAJOR REFORMS

Title I establishes in law the general policies of the merit system principles applicable to the competitive civil service and throughout the executive branch. Under existing law, there is no clear statement embodying the merit principles, upon which the Civil Service Act of 1883 was based, and under which the civil service system has gradually evolved in the last century. The President's proposal and the committee's recommendations include a specific statement of principles to serve as guidelines for all Executive agencies to follow.

The bill also enumerates specific practices which may not be engaged in and for which an individual shall be disciplined if these prohibited activities occur. In particular, the bill prohibits reprisals against employees who divulge information to the press or the public (generally known as "whistleblowers") regarding violations of law, agency mismanagement, or dangers to the public's health and safety. Generally, title I provides protection for all employees against discrimination, political coercion or unfair, arbitrary, or illegal actions regarding appointments and advancements within the civil service.

Title II provides legislative authority for the division of the Civil Service Commission into two agencies: the Office of Personnel Management and the Merit Systems Protection Board. The Office of Personnel Management shall be headed by a Director and Deputy Director appointed by the President, with the advice and consent of the Senate, and will be the central personnel office of the executive branch. The Merit Systems Protection Board will be an independent agency exercising appellate authority now vested in the Civil Service Commission. The Board will have a Special Counsel, appointed by the President, with the advice and consent of the Senate, who will have

broad authority to investigate, particularly "whistleblower" cases. Title II also revises existing law for the appraisal of employee performance on the job, requires the establishment of specific performance standards, and establishes procedures for adverse actions and suspensions.

Title III includes changes in the law relating to the appointment and retention of former members of the armed services—commonly called veterans' preference.

Title IV establishes the Senior Executive Service, generally embodying those management positions which now comprise "supergrades"—positions in grades GS-16, GS-17, and GS-18 under the General Schedule in title 5, United States Code. The Senior Executive Service is designed to provide greater mobility in the highest level of political and nonpolitical positions in the civil service and help ensure a high quality of executives in agency management. Perhaps more than any other provision in this bill, the Senior Executive Service can provide the framework to meet the Government's management needs.

Title IV also authorizes performance awards for employees in upper level positions whose work is of a sustained and outstanding nature. Although bonuses are common in the private sector, there is almost no opportunity under existing law for a Federal employee, regardless of his achievements, to receive any financial reward for doing a superior job. Title IV establishes such a program for career employees in the Senior Executive Service.

Title V establishes a merit pay system for management employees in the levels below the Senior Executive Service—GS-13, GS-14, and GS-15. Under this program, automatic step increases will be eliminated and periodic adjustments, other than comparability increases, will be based solely upon performance.

Title VI authorizes research programs and demonstration projects in Executive agencies and improves the intergovernmental personnel relations program between the Federal and State governments.

Title VII establishes a new labor-management program applicable to most agencies in the executive branch. Under the existing system of labor-management relations in the executive branch, the President, by Executive order, has complete authority to establish the labor-management program. Title VII establishes a new program and provides for greater employee and employee organization participation. However, title VII does not authorize collective bargaining on substantive issues of pay and fringe benefits, as is currently permitted in some agencies, such as the Postal Service, the Tennessee Valley Authority, and the Bonneville Power Administration.

Title VIII provides a new system for the salary and grade protection of employees who are adversely affected by position reclassification decisions or downgradings resulting from reductions in force.

Title IX incorporates revisions in the so-called "Hatch Act," which places restrictions upon the political activity of certain Federal, State, and local government employees.

Title X revises the working hours of employees of the Federal Government engaged in firefighting.

Title XI includes miscellaneous provisions necessary to carry out the purpose of this legislation.

LABOR-MANAGEMENT RELATIONS

The committee has considered labor-management relations legislation for several years. Over a long period of time, the Subcommittee on Civil Service and its predecessor subcommittees have considered legislation. Last year, following additional hearings, Representatives William D. Ford and William (Bill) Clay, introduced H. R. 9094 representing what the sponsors considered to be a reasonable compromise between the Administration which favored continuation of labor-management relations under the Executive order and Federal employee organizations which generally favor collective bargaining for Federal employees.

Following the submission of his message to the Congress on civil service reform, President Carter proposed additional legislation to be incorporated in this bill establishing, by law, a system of labor-management relations for employees in the executive branch. The President's proposal was essentially the codification of the existing Executive Order No. 11491 originally established by President John F. Kennedy in 1962, and subsequently revised by President Richard Nixon in 1969.

The committee agrees that the time has come to establish by statute a labor-management relations system for Federal employees, but disagrees with the President's specific proposal. Employees in the private sector have been covered by the Wagner Act since 1935. Major employers in this Nation are subject to the collective-bargaining procedures of that law and other Federal statutes governing labor law. More than half a million postal employees gained the right of collective bargaining in the Postal Reorganization Act 8 years ago. In the case of postal workers, their collective-bargaining rights extend to all aspects of employment, including wages, fringe benefits, hours, and work conditions. Employees in several smaller agencies, including the Tennessee Valley Authority, have had collective bargaining for decades. But most Federal employees have been subject to congressional control of pay and fringe benefits or, in more recent years, congressional-Presidential control of pay and a very limited program of collective bargaining established by Executive order.

The committee recommends that a new broad program for labor-management relations be established by law and that employees, through their unions, be permitted to bargain with agency management throughout the executive branch on most issues, except that Federal pay will continue to be set in accordance with the pay provisions of title 5, and fringe benefits, including retirement, insurance, and leave, will continue to be set by Congress.

Title VII adopts some of the provisions of that bill but does not permit an agency shop or bargaining on wages and fringe benefits and does not go as far as H. R. 9094 in the scope of bargaining. The committee amendment also includes a specific broad statement of management rights.

A majority of the committee believes that this system strikes a proper balance between the public interest and the demands of citizens who are employees of the Federal Government who wish to have a greater voice in the employment policies applicable to them.

October 1, 1981, except the system may be commenced earlier as prescribed by the Director of the Office of Personnel Management.

TITLE VI

RESEARCH, DEMONSTRATION AND OTHER PROJECTS

Section 601 of the bill amends part III of title 5 to add a new chapter 47, relating to personnel research and demonstration projects.

The new section 4701 provides definitions.

The new section 4702 authorizes the Office of Personnel Management to establish research and development projects for the improvement of methods and technology in the Office of Personnel Management.

The new section 4703(a) authorizes the Office of Personnel Management to conduct and evaluate demonstration projects. Such projects may be undertaken notwithstanding any lack of specific authority and notwithstanding any other provision of law relating to personnel.

The new section 4703(b) requires that the Office of Personnel Management develop a specific plan for each demonstration project and enumerates the contents to be included in each plan. Any proposal to waive any provision of law, rule, or regulation shall be cited and the entire plan shall be published in the Federal Register and subject to public hearings.

The new section 4703(c) provides that each research or demonstration project may not be undertaken until a copy of the plan has been submitted to the Congress and the plan has not been disapproved by either House by the adoption of a resolution of disapproval within 60 calendar days of continuous session after the plan has been submitted.

The new section 4703(d) enumerates the provisions of law which may not be waived in research or demonstration projects.

The new section 4703(e) provides general limits on any demonstration project.

The new section 4703(f) authorizes the Office of Personnel Management or an agency to terminate demonstration projects.

The new section 4703(g)(1) provides that employees in a unit subject to a negotiated contract between an agency and a labor organization may not be included within a demonstration project if the project would violate the agreement unless there is a written agreement between the agency and the organization with respect to the project.

The new section 4703(g)(2) provides that a project which includes employees in a unit subject to a negotiated contract not covered by a labor-management agreement shall not become effective until consultation or negotiation has taken place between the agency and the labor organization.

The new section 4704 authorizes the use of appropriated funds for research and demonstration projects.

The new section 4705 provides for the inclusion of reports on research and demonstration projects in the annual report of the Office of Personnel Management.

benefits (health and life insurance, retirement, etc.) of employees on detail from such organizations.

Section 603(e) amends section 3375 of title 5, to authorize an executive agency to reimburse mobility assignees for certain miscellaneous relocation expenses related to a geographic move for purposes of mobility assignment on the same basis such payments are authorized on a permanent change of station (automobile registrations, drivers' license, etc.).

TITLE VII

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Title VII of the bill establishes a statutory basis for labor-management relations in the Federal service. Since 1962, Executive orders have governed the collective bargaining relationship in the Federal sector. Title VII would for the first time enact into law the rights and obligations of the parties to this relationship—employees, agencies, and labor organizations.

Title VII, in concert with the President's Reorganization Plan No. 2 of 1978, also constructs a new framework for the conduct of Federal labor-management relations. The Federal Labor Relations Authority, an independent establishment in the establishment, together with its Office of General Counsel, will be primarily responsible for the administration of the program and the enforcement of the policies reflected in Title VII. The Federal Service Impasses Panel (an entity within the Authority) and the independent Federal Mediation and Conciliation Service will be empowered to facilitate the collective bargaining process.

SECTION 701

Section 701 of the bill amends subpart F of part III of title 5, United States Code, by adding new language to chapter 71. The provisions are explained below by Code section references.

Findings and purpose

Section 7101(a) sets forth the finding that collective bargaining in the Federal Service is in the public interest, in that it safeguards employee rights and contributes to the effective conduct of public business by encouraging amicable resolution of employment related disputes. Statutory protection of Federal employees' right to organize and bargain collectively through labor organizations is in the public interest.

Section 7101(b) states the chapter's purpose: to prescribe the rights and obligations of employees and to establish procedures to meet the special needs of the Federal Government in the labor-management relationship.

Employees' rights

Section 7102 provides that each Federal employee shall have the right to form, join, or assist any labor organization—or to refrain from that activity—freely and without fear of penalty or reprisal, and that each employee shall be protected in the exercise of this right. Except as otherwise provided by the chapter, this basic right includes the rights: (1) To act for a labor organization as a representative and

to present the views of a labor organization to Executive branch officials, to the Congress, and to other authorities; (2) to engage in collective bargaining over conditions of employment through chosen representatives; and (3) to engage in other lawful activities for the purpose of establishing, maintaining, and improving conditions of employment.

Definitions; application

Section 7103 defines various terms used throughout the chapter. The definitions effectively set the coverage and exclusion from coverage for individuals, agencies, and labor organizations.

Section 7103 (a) (1) defines "person" to include an individual, labor organization, or agency. The definition is critical to the meaning and effect of later sections which vest "persons" with substantive and procedural rights (e.g., section 7123, Judicial Review). "Agency" and "labor organization" are defined terms in section 7103.

Subsection (a) (2) of section 7103 defines "employee" for the chapter's purposes as an individual who is employed in an agency (as defined by section 7103(a) (3)). Also to be deemed an "employee" is any individual whose work as an employee in an agency has ceased as the result of an unfair labor practice as described in section 7116, as added by this bill, and who has not obtained any other regular and substantially equivalent employment, as determined under regulations to be prescribed by the Federal Labor Relations Authority. Such an individual, for example, would be eligible to vote in a representation election under section 7111, as added by this bill.

Subparagraphs (i) through (iv) exclude certain individuals from the definition of "employee"; aliens or noncitizens occupying positions outside the United States; members of the uniformed services (as defined by section 2101(3) of title 5; the armed forces; commissioned corps of the Public Health Service and of the National Oceanic Atmospheric Administration); supervisors or management officials (as defined by section 7103; and individuals in the Foreign Service of the United States employed in the Department of State, Agency for International Development, or International Communication Agency.

Subsection (a) (3) defines "agency" as an Executive agency (including the Veterans' Canteen Service, the Veterans' Administration, and nonappropriated fund instrumentalities under section 2105(c) of title 5, such as the Army and Air Force Exchange Services, the Army and Air Force Motion Picture Service, and similar instrumentalities under the jurisdiction of the Armed Forces), the Library of Congress, and the Government Printing Office. Specifically excluded from coverage are GAO, the FBI, and CIA, NSA, the Foreign Service, TVA, the Federal Labor Relations Authority, and the Federal Service Impasses Panel. Section 7103(b) sets forth a procedure through which any other agency may apply for exclusion on national security grounds.

Subsection (a) (4) of section 7103 defines "labor organization" as 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. The committee intends that the latter criterion be deemed as met by an organization which has one of its basic purposes,

though not its only purpose, or its primary purpose, the representation of employees in a collective bargaining relationship. The term "labor organization" is thus intended to encompass professional associations (such as the American Nurses Association, the National Education Association, the National Association of Social Workers, the Physicians National Housestaff Association, and the National Economic Council of Scientists) which seek to avail themselves of representational rights under chapter 71. An organization which is not a "labor organization" under section 7103(a) (4) is one: (1) whose basic purpose is purely social, fraternal, or limited to special interest objectives only incidentally related to matters affecting conditions of employment; or, (2) which denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition; or, (3) which is sponsored by an agency.

Subsection (a) (5) of section 7103 defines "dues" to mean dues, fees, and assessments.

Subsection (a) (6) defines "Authority" to mean the Federal Labor Relations Authority.

Subsection (a) (7) defines "Panel" to mean the Federal Service Impasses Panel.

Subsection (a) (8) defines "collective bargaining agreement" as an agreement entered into as a result of collective bargaining pursuant to chapter 71. The term "collective bargaining" is defined in subsection (a) (12) of section 7103.

Subsection (a) (9) of section 7103 defines "grievance" to mean any complaint by any agency, labor organization, or employee concerning: (1) any matter relating to the employment of such person with an agency; or, (2) the effect or interpretation, or claim of breach, of a collective bargaining agreement; or, (3) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment. It should be noted that, although this subsection is virtually all-inclusive in defining "grievance", section 7121 excludes certain grievances from being processed under a negotiated grievance procedure, thereby limiting the net effect of the term.

Subsections (a) (10) and (a) (11) of section 7103 define the key terms "supervisor" and "management official". Any individual deemed a "supervisor" or a "management official" is generally excluded from inclusion in bargaining units and is ineligible to act as a representative of any labor organization. A "supervisor" or a "management official" is generally a representative of the agency in the collective bargaining relationship.

Subsection (a) (12) of section 7103 defines the terms "collective bargaining" and "bargaining" to mean the performance of the mutual obligation of management and labor to meet, confer, and consult in a good-faith effort to reach agreement on matters affecting conditions of employment. Any agreement reached must, upon the request of either party, be reduced to writing and executed. Neither party is compelled to agree to a proposal or to make a concession.

Subsection (a) (13) of section 7103 defines a "confidential employee" as one who acts in a confidential capacity to an individual who formulates or effectuates management policies in the field of labor-management relations. Confidential employees are generally excluded from bargaining units.

Subsection (a) (14) of section 7103 defines a critically important term "conditions of employment." Management and labor are obliged to bargain over all matters affecting "conditions of employment." The term is defined to mean personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions—except for policies, practices, and matters: (A) relating to employment discrimination on the basis of race, color, religion, sex, age, national origin or handicapping condition; or (B) relating to prohibited political activities; or (C) to the extent they are specifically provided for by Federal statute. Certain "conditions of employment" are removed from the obligation to bargain.

Subsection (a) (15) of section 7103 sets forth the criteria for determining whether an employee is a "professional employee." The term is relevant primarily to the determination of appropriate bargaining units under section 7112.

Subsection (a) (16) of section 7103 defines another key term, "exclusive representative," as any labor organization which has been: (1) is certified pursuant to section 7111, below, as the representative of employees in an appropriate bargaining unit; or, (2) was recognized as a unit's representative before effective date of this chapter and continues to be so recognized pursuant to this chapter (see section 7136, below). The committee intends that these pre-existing recognitions (granted or continued under the provisions of Executive Order 11491, as amended), in conformance with section 7136 continue until withdrawn or modified under the provisions of this chapter.

Subsections (a) (17) and (a) (18), and (a) (19) of section 7103 define the terms "firefighter," and "United States," and "dues," respectively, for the purposes of the chapter.

Subsection (b) of section 7103 sets forth the procedures and standards by which an agency (or any sub-unit) not specifically excluded by section 7103 may be granted an exclusion from coverage under this chapter on national security grounds.

Federal Labor Relations Authority

Section 7104, in concert with Reorganization Plan No. 2 of 1978, establishes and describes the Federal Labor Relations Authority, an independent establishment in the executive branch. The committee intends that the Authority's role in Federal sector labor-management relations be analogous to that of the National Labor Relations Board in the private sector. Functions which, under the Executive Order 11491 program, were distributed among various entities (such as the Civil Service Commission and the Department of Labor) are to be consolidated under the Authority.

Subsection (a) of section 7104 provides that the Authority be composed of three members. No more than two may be of the same political party. No member may engage in other business or employment, or hold another position in the Federal Government, except as otherwise provided by law. The committee intends that the position of member be a full-time position, just as is the position of member of the National Labor Relations Board.

Subsection (b) of section 7104 provides that Authority members be appointed by the President, subject to Senate confirmation. They may be removed by the President only for cause, and only upon notice

and hearing. This provision is intended to help ensure the independence of the Authority. The President may name any one of the members as Chairman. The committee intends that members be eligible for reappointment.

Subsection (c) of section 7104 provides for staggered terms for Authority members. A member shall serve until the member's successor takes office or until the last day of the Congress beginning after the member's term is scheduled to expire (whichever comes first). An individual appointed to fill a vacancy shall be appointed only to serve the unexpired term. It is intended that any sitting member be eligible for reappointment.

Subsection (d) of section 7104 provides that a vacancy shall not impair the functions of the Authority. The committee intends that neither one nor two vacancies impair the Authority's functions. It is also intended that the President promptly nominate successors to fill any vacancies.

Subsection (e) of section 7104 requires the Authority to submit an annual report of its activities to the President for transmittal to Congress.

Subsection (f) of section 7104 describes the Office of General Counsel of the Authority. The committee intends that the General Counsel be analogous in role and function to the General Counsel of the National Labor Relations Board. Subsections (f)(1) and (f)(2) provide that the General Counsel be appointed by the President (subject to Senate confirmation) for a 5-year term, and be removable by the President at will. The General Counsel may investigate alleged violations of this chapter, file and prosecute complaints, intervene in unfair labor practice proceedings, and exercise any other powers delegated by the Authority.

Subsection (f)(3) gives the General Counsel direct authority over, and responsibility for, all employees in the Office of General Counsel, including those in field offices of the Authority.

Subsection (f)(4) prescribes the procedure for filling any vacancy in the Office of General Counsel. The President is to promptly name an Acting General Counsel, and then submit a nomination for a new General Counsel within 40 days of the vacancy's occurrence. If the Congress adjourns sine die before the 40-day period expires, the nomination is to be submitted within 10 days after Congress reconvenes.

Powers and duties of the Authority

Section 7105 sets forth the powers and duties of the Authority.

Subsection (a) directs the Authority to provide leadership in establishing policy and giving guidance in labor-management relations matters under chapter 71, and, except as otherwise provided, be responsible for carrying out the purposes of chapter 71.

Subsections (b) through (d) are administrative provisions relating to the Authority. The Authority is required to adopt an official seal which shall be judicially noticed, establish its principal office in or about the District of Columbia, although it may meet and exercise any or all of its powers at any time or place, appoint an Executive Director, regional directors, administrative law judges, and other employees. It is intended that the Authority may establish and operate

any field offices it deems necessary. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by any agents it designates, make any inquiry necessary to carry out its duties wherever persons subject to chapter 71 are located. A member who participates in an inquiry is not disqualified from later participating in a decision of the Authority in any case.

Subsection (e) authorizes the Authority to delegate its functions relating to the determination of exclusive representation to its regional directors. The Authority may delegate to its administrative law judges its functions under section 7118 to determine whether any person has engaged, or is engaging in, an unfair labor practice.

Section 7105(f) provides that, upon the filing of an application by any interested person, the Authority may review and, upon review, may modify, affirm, or reverse any action taken by a regional director or administrative law judge in performing a delegated function under section 7105. The application must be filed within 60 days after the date of the action. The review itself does not operate as a stay of an action unless the Authority specifically so orders. If the Authority does not undertake to grant review within 60 days after the date of the action, or within 60 days after an application for review is filed, the action becomes the final action of the Authority.

Subsection (g) of section 7105 grants the Authority necessary power to hold hearings, administer oaths, take testimony and depositions, and subpoena witnesses and documents.

Management rights

Section 7106 sets forth rights which are reserved to management. The effect of this section is to place limits on the number of subjects about which agency management may bargain with a labor organization.

Subsection (a) (1) reserves to agency management the right (subject only to subsection (b) of section 7106) to determine the mission, budget, organization, number of employees, and internal security practices of the agency. Management may not bargain away its authority to make decisions in these areas.

Subsection (a) (2) sets forth the other areas of management authority which may not be subject to collective bargaining: (1) to direct employees; (2) to assign work, to make determinations with respect to contracting-out, and to determine the personnel by which agency operations shall be conducted; and (3) to take whatever actions may be necessary to carry out the agency's mission during national emergencies.

Subsection (b) of section 7106 provides that management and the union may bargain over the procedures management will use in exercising their authority to determine the mission, budget, organization, number of employees, and internal security practices of the agency. They may also negotiate appropriate arrangements for employees adversely affected by management's exercise of authority in these areas.

The committee's intention in section 7106 is to achieve a broadening of the scope of collective bargaining to an extent greater than the scope has been under the Executive Order program, but to preserve the es-

sential prerogatives and flexibility Federal managers must have. The “management rights” language of Executive Order 11491 has been a substantial barrier against negotiations. The committee intends that section 7106—which retains several of management’s rights under the Executive Order, but also eliminates several—be read to favor collective bargaining whenever there is doubt as to the negotiability of a subject or a proposal.

For example, in the controversial area of promotions, section 7106 does not contain the Executive Order’s “management right” to “promote.” The committee thereby intends that promotion standards and procedures be negotiable within the limits set by statute and applicable government-wide regulations.

Another troublesome area—overtime—is an example. Whether overtime is necessary and how much is necessary are non-bargainable management decisions. But procedures to be used in assigning overtime are negotiable. For example, management and the union could negotiate a rotation system for assignments. Rates of overtime pay are not bargainable, because they are specifically provided for by statute.

Exclusive recognition of labor organizations

Section 7111 sets forth the procedures for determining whether employees will be represented by a labor organization.

Subsection (a) states the general rule that exclusive recognition will be accorded to a labor organization selected by a majority of employees in an appropriate bargaining unit who participate in an election in conformity with this chapter’s requirements.

Subsection (b) (1) of section 7111 sets forth the procedures for initiating a representation proceeding. If any person (meaning an individual, labor organization, or agency) files a petition with the Authority alleging that 30 percent of the employees in an appropriate unit wish to be exclusively represented, or, where there currently is an exclusive representative, that 30 percent no longer wish to have that exclusive representative; or, seeking clarification of, or an amendment to, an existing certification or a matter relating to representation, the following procedures apply. (The committee intends that existing practice be continued in determining whether the requisite number of employees have satisfactorily indicated their desires, i.e., the “showing of interest.” Valid signatures on petitions or authorization cards should suffice.)

The Authority must investigate each petition and, if it has reasonable cause to believe there is a question of representation (i.e., whether the subject employees wish to have a labor organization as an exclusive representative), provide an opportunity for a hearing. Questions of appropriateness of unit, showing of interest sufficiency, and employee eligibility should be raised and, if possible, resolved during this phase of the proceedings. Except as provided by subsection (e), if the Authority finds on the compiled record that a question of representation does exist, it shall conduct a secret ballot election in accordance with procedures set forth. No election may be held in any unit or unit subdivision in which a valid representation election has been held during the previous 12 calendar months.

Subsection (b) (2) (A) of section 7111 requires the Authority to proceed with the election in the petitioned-for unit even if, 45 days after

the petition was filed, there are still unresolved issues about the unit, voter eligibility, or any other election-related matter. Subparagraph (B) requires the Authority, after the election, to expedite resolution of the issue or issues. If the Authority determines the disputed matter did not affect the election's outcome, the election results shall be certified. If the matter did affect the outcome, the election must be re-run. For example, if ten individuals the labor organization claimed to be in the unit were, after the election, found to be outside the unit (and therefore ineligible to vote), but the labor organization won the election by one hundred votes, then the election probably would not have to be re-run, because ten votes one way or the other would not have affected the outcome. If, however, the labor organization's margin of victory were only five votes, the election would probably have to be rerun.

Subparagraph (c) of section 7111 provides a right to intervene in a representation proceeding, and to be placed on the ballot in any election, to any labor organization which: (1) presents a "showing of interest" of 10 percent of unit employees; or (2) submits a valid copy of a current or recently expired collective bargaining agreement for the unit (in other words, the incumbent exclusive representative); or (3) presents any other evidence that it is the current exclusive representative of the employees involved.

Subsection (d) of section 7111 directs the Authority to determine eligibility and rules for elections. In every election, employees must be given the right to choose one labor organization from those on the ballot, or to choose to have no labor organization as exclusive representative. If no choice on the ballot receives a majority of the votes cast, the Authority must hold a run-off between the two choices receiving the most votes. A labor organization receiving the majority of votes cast in any election shall be certified by the Authority as exclusive representative of the employees in the unit.

Subsection (e) of section 7111 sets forth the conditions under which a petitioning labor organization may be certified as an exclusive representative without a secret ballot election. The Authority may so certify if, after investigation, it determines: (1) that agency conduct which is prohibited under section 7116 precludes the holding of a free election; or (2) that the labor organization represents a majority of employees in an appropriate unit based on the securing of the valid signatures on petitions or authorization cards of more than 50 percent of the employees. In the latter case, the majority status must have been achieved without benefit of an unfair labor practice by either the agency or the labor organization. Also, no other petition for recognition or request for intervention may be pending and no other question of representation may exist in the unit. This subsection necessarily entails a determination by the Authority of unit appropriateness.

Subsection (f) of section 7111 provides that any labor organization recognized by an agency before this chapter's effective date as the exclusive representative of employees in an appropriate unit may petition the Authority for an election to determine whether that organization is the exclusive representative of that unit, or of any appropriate unit.

Subsection (g) of section 7111 requires any labor organization seeking exclusive recognition to submit to the Authority and to the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

Subsection (h) sets forth three specific conditions under which a labor organization shall not be accorded exclusive recognition: (1) if the Authority determines the labor organization is subject to corrupt influences or influences opposed to democratic principles; (2) when, where a petition is necessary under section 7111(b)(1)(A), there is not credible evidence (i.e., valid signatures on petitions or cards) of a sufficient showing of interest; or (3) when there is in effect a lawful collective bargaining agreement between the involved agency and another labor organization covering any employees included in the petitioned for unit. The latter prohibition is commonly referred to as a "contract bar". The subsection provides, however, that there is no contract bar if: (A) the agreement has been in effect for more than three years; or, (B) the petition for exclusive recognition is filed during the 4-month period which begins on the 180th day before the expiration date of the agreement (commonly known as the "open season"). The "contract bar" provision lends stability to collective bargaining relationships by precluding continuous challenges to an exclusive representative's status, while at the same time giving employees the opportunity at reasonable intervals to choose, if they so desire, a new representative. Subparagraph (4) prohibits the acceding of exclusive recognition if the Authority has conducted during the previous 12 calendar months a secret ballot election involving any of the employees in the unit.

Subsection (i) of section 7111 permits the waiving of a hearing by stipulation where the parties consent to proceed to an election without further proceedings.

Determination of appropriate units for labor organization representation

Section 7112 sets forth standards for determining the units of employees which are appropriate for purposes of collective bargaining.

Subsection (a)(1) states that the Authority shall make the determinations of appropriateness. The goal for the Authority for determining in each case whether the appropriate unit should be established on an agency, plant, installation, functional, or other basis shall be to ensure employees the fullest freedom in exercising the rights guaranteed them under this chapter. Notwithstanding, a unit is to be determined "appropriate" only if the determination will ensure community of interest among the employees concerned, and promote effective dealings with, and efficiency of the operations of, the agency involved.

Subsection (b) of section 7112 states that the extent to which employees have been organized shall not be the sole criterion of appropriateness. The subsection then lists those employees who shall not be part of any appropriate unit: (1) management officials and supervisors (as defined by section 7103—except where a preexisting and continuing unit under section 7136(a) contains those individuals or where a majority of the unit is composed of firefighters or nurses; (2) confidential employees (as defined in section 7103); (3) employees

engaged in personnel work (other than in a purely clerical capacity); (4) employees engaged in administering the provisions of this chapter; (5) professional employees (as defined in section 7103) when mixed in a unit with nonprofessionals, unless the professionals vote for inclusion in that unit; (6) employees of any agency who are engaged in intelligence, investigative, and security functions which directly affect national security; or, (7) employees engaged primarily in an agency's audit or investigative functions relating to that agency's internal security.

Subsection (c) of section 7112 provides that the Authority shall consolidate two or more units in an agency for which a labor organization holds exclusive recognition by reason of elections in each of the units, if the Authority deems the larger unit to be appropriate (using the criteria in section 7112 applicable to all determinations of appropriateness). The Authority shall then certify the labor organization as the exclusive representative of the larger unit. The committee intends that this consolidation procedure be initiated by petition of the labor organization involved, or by petition of the agency.

Subsection (d) of section 7112 provides that in the case of an agency reorganization affecting one or more exclusively represented units, the certified exclusive representative, or exclusive representatives, shall continue in that status for the unit or units until new elections are held (with new appropriate unit determinations), or until 45 days elapse from the effective date of the reorganization, whichever comes first.

National consultation rights

Section 7113 provides for the granting of "national consultation rights."

Subsection (a) requires that an agency grant national consultation rights, when there is no exclusive recognition on an agency-wide basis, to any labor organization which exclusively represents a substantial number of that agency's employees. The Authority shall prescribe the standards and procedures for granting national consultation rights. Exclusive representation of 10 percent of the total number of employees in an agency should satisfy the "substantial number" criterion. Consultation rights terminate when the labor organization no longer meets the Authority's criteria. Questions of a labor organization's initial or continuing eligibility shall be resolved by the Authority.

Subsection (b) of section 7113 requires that any labor organization having national consultation rights in an agency be informed in advance of any change in conditions of employment proposed by that agency and be given a reasonable time to present its views and recommendations regarding the change. The agency must consider any views and recommendations so submitted, and give the labor organization a written statement of the reasons for its final decision on the matter.

Subsection (c) states that collective bargaining rights are not affected in any way by national consultation rights.

Representation rights and duties

Section 7114 sets forth the rights and obligations of agency management and a labor organization once the latter has been accorded exclusive recognition.

Subsection (a) states that a labor organization accorded exclusive recognition is the exclusive representative of all employees in the unit, and is entitled to act for and negotiate agreements with management covering those employees. It must represent the interests of all employees in the unit without discrimination and regardless of membership or nonmembership in the organization. It has the right to be given the opportunity to be represented at: (1) any discussion between one or more agency representatives and one or more employees (or their representatives) concerning any grievance, personnel policy or practice or other condition of employment; or, (2) any discussion between an employee and an agency representative if the employee reasonably believes he may be the subject of a disciplinary action (when an employee is interviewed by a supervisor concerning alleged abuse of leave or interrogated by the agency's internal security division concerning alleged irregularities in a travel voucher). The agency and the exclusively-recognized labor organization are obligated to meet and negotiate in good faith, through appropriate representatives, for the purpose of arriving at a collective bargaining agreement. Nothing in this subsection, however, is to be construed so as to preclude an employee's being represented by an attorney or other representative of his own choosing in procedures other than those negotiated by the exclusive representative and the agency pursuant to this chapter.

Subsection (b) specifies that the mutual obligation to negotiate in good faith includes the obligation to: (1) resolve to reach an agreement; (2) be represented by duly authorized and prepared representatives; and (3) meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays. Subsection (b) (4) requires an agency to provide to the exclusive representative, upon request and within the limits of Federal law, any normally maintained and reasonably available data necessary for the negotiations. Subsection (b) (5) requires that if an agreement is reached, it must, upon request of either party, be reduced to writing and executed. All steps necessary for implementation must be taken by both parties.

Allotments to representatives

Section 7115 provides for the withholding of labor organization dues through payroll deductions. The section reflects a compromise between two sharply contrasting positions which the committee considered: no guarantee of withholding for any unit employee and mandatory payment by all unit employees ("agency shop"). The committee believes section 7115 to be a fair resolution for agencies, labor organizations, and employees.

Subsection (a) provides that if an employee in an exclusively represented unit presents to the agency a written assignment authorizing the agency to deduct the labor organization's dues from the employee's pay each pay period, the agency must honor the assignment and must deduct the dues. The decision to pay, or not to pay is solely the employee's. If the employee decides to have dues withheld, the agency must honor that decision. The allotments are to be made at no cost to the employees or to the labor organization. Assignments normally are to be irrevocable for one year.

Subsection (b), however, requires that an allotment terminate when: (1) the existing collective bargaining agreement between the agency and labor organization ceases to be applicable to the employee (the employee is promoted to a management position or leaves the employ of the agency); or (2) the employee is suspended or expelled from the labor organization.

Subsection (c) of section 7115 provides for the negotiation of dues withholding agreements in units in which there is no exclusive representative. Any person may file a petition with the Authority alleging a labor organization has as members at least 10 percent of the employees in a nonrepresented unit. If, after investigation, the Authority certifies that there is, in fact, 10-percent membership, the agency is obligated to negotiate with the labor organization solely concerning a voluntary dues withholding agreement. This procedure necessarily entails a determination by the Authority as to the appropriateness of the unit. Any withholding agreement reached pursuant to this subsection shall automatically terminate upon certification of an exclusive representative.

Unfair labor practices

Section 7116 sets forth actions by agencies and by labor organizations which constitute "unfair labor practices".

Subsection (a) provides that it shall be an unfair labor practice for an agency: (1) to interfere with, restrain, or coerce employees in the exercise of the rights assured by chapter 71; (2) to encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment; (3) to sponsor, control, or otherwise assist any labor organization, except that the agency may furnish customary and routine services and facilities when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status (e.g., providing equal bulletin board space to two labor organizations which will be on the ballot in an exclusive representation election); (4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, petition, or has given any information or testimony under chapter 71; (5) to refuse to consult, confer, or negotiate in good faith with a labor organization as required by chapter 71; (6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by chapter 71; (7) to fail or refuse to comply with any provision of chapter 71; or, (8) to prescribe any rule or regulation which restricts the scope of collective bargaining permitted by chapter 71 or which is in conflict with any applicable agreement negotiated under chapter 71.

Subsection (b) provides that it shall be an unfair labor practice for a labor organization to: (1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by chapter 71; (2) cause or attempt to cause an agency to discriminate against an employee in the exercise of his rights under chapter 71; (3) coerce or attempt to coerce, discipline, or fine a member of the labor organization as punishment or reprisal for the purpose of hindering or impeding his work performance, productivity, or the discharge of his duties as an employee of an agency; (4) discriminate against an employee with regard to the terms or conditions of membership because of race, color, creed,

national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition; (5) refuse to consult, confer, or negotiate in good faith with an agency as required by chapter 71; (6) fail or refuse to cooperate in impasse procedures and impasse decisions as required by chapter 71; (7) call or engage in a strike, work stoppage, or slowdown, or to condone any such activity by failing to take action to prevent or stop it; or (8) fail or refuse to comply with any provision of chapter 71.

The language "fail or refuse to comply with any provision of this chapter" used in section 7116(a)(7) and section 7116(b)(8) is intended to include the failure or refusal on the part of an agency or a labor organization to comply with any order or decision issued in accordance with chapter 71 such as the final order of the Authority in an unfair labor practice proceeding. This does not in any way affect the rights of the Authority or any person under section 7123, below (Judicial Review; Enforcement).

The committee intends that disputes concerning the negotiability of proposals and matters affecting working conditions, except for questions of "compelling need" under section 7117, be resolved through the filing and processing of unfair labor practice charges under section 7116 and section 7118. Under the Executive order program, a separate procedure for resolving negotiability disputes was provided. The method of resolution provided here is analogous to that in the private sector under the National Labor Relations Act.

Subsection (c) provides that in addition to those actions enumerated in section 7116(b), it shall be an unfair labor practice for a labor organization which is accorded exclusive recognition to deny membership to an employee in the appropriate unit except for reasons specifically set forth in that subsection. Those reasons include: (1) the failure to meet reasonable occupational standards uniformly required for admission; or (2) failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. The last sentence of subsection (c) provides that the subsection does not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws, provided that the procedures conform to the requirements of chapter 71.

Subsection (d) of section 7116 is directed to those situations in which an alleged improper action may (but for subsection (d)) appropriately be considered under more than one administrative procedure. For example, if an employee is removed from his position, he may have the right to appeal that action under statutory appeals procedures relating to adverse actions. In addition, the removal could constitute an unfair labor practice under section 7116(a)(1), thereby permitting the employee to utilize the unfair labor practice procedures under section 7118. The removal might also appropriately be considered in a grievance proceeding, under the terms of a collective bargaining agreement negotiated pursuant to this chapter.

Subsection (d) provides that, in such instances, the aggrieved party may choose which form of proceeding he wishes to follow. Specifically, it provides that issues which properly can be raised under (1) an appeals procedure prescribed by or pursuant to law, or (2) a grievance procedure negotiated pursuant to section 7121 of chapter 71 may, in

the discretion of the aggrieved party, be raised under either the appropriate appeals or grievance procedure, or if applicable, under the unfair labor practice proceedings under section 7118 of chapter 71, but not both. The Authority is required to issue regulations prescribing the procedure and time frame for the election. In the event an issue is decided pursuant to an appeal or grievance procedure, and that issue could also have been properly raised in an unfair labor practice proceeding, the last sentence of subsection (d) expressly provides that the appeal or grievance decision shall not be construed as an unfair labor practice decision nor as precedent for any such decision.

Duty to bargain in good faith; compelling need

Section 7117 sets forth a procedure for determining whether matters affecting conditions of employment which are the subject of any Government-wide rule or regulation shall be negotiable.

Subsection (a) (1) states the general rule that an agency's and a labor organization's duty to bargain in good faith under this chapter includes, to the extent not inconsistent with Federal law, the duty to bargain over matters which are the subject of any rule or regulation which, subject to paragraph (2), is not a Government-wide rule or regulation. However, agency-wide rules, regulations, and policies are not a bar to negotiations over matters which would otherwise be negotiable under this chapter. For example, if an agency were to have a regulation stating that each male employee in the agency must wear a necktie while on duty, and a labor organization holding exclusive recognition for a unit within the agency were to make a proposal that male employees be permitted not to wear neckties during the summer months, the agency could not invoke its regulation as a bar to negotiations on the proposal. Similarly, an agency regulation restricting the area of consideration for promotion eligibility could not be invoked as a bar to a proposal for a wider area of consideration.

Subsection (a) (2) of section 7117 provides that the duty to bargain in good faith, to the extent not inconsistent with Federal law, also extends to matters which are the subject of any Government-wide rule or regulation—for which the Authority determines that there is no "compelling need" for the Government-wide rule or regulation. The Authority is to prescribe by regulation the criteria for determining "compelling need." The committee intends that the criteria be similar to those promulgated by the Federal Labor Relations Council to determine "compelling need" for agency-wide regulations under the Executive order program, with the Authority's determination to be based primarily on whether there is a demonstrated, and justified, and overriding need for Government-wide uniformity in the matter covered by the rule or regulation.

The term "Government-wide" shall be construed literally; only those regulations which affect the Federal civilian work force as a whole are "Government-wide" regulations. No other regulations may bar negotiations.

Subsection (b) (1) of section 7117 requires the Authority to hold a hearing (in accordance with regulations it shall prescribe) whenever an exclusively recognized labor organization alleges that no

compelling need exists for a Government-wide rule or regulation which an agency has invoked as a bar to negotiations on a matter.

Subsection (b) (2) requires expedition of the proceeding to the extent practicable, so as not to delay unduly the completion of ongoing negotiations. The Authority's General Counsel may not be a party to the proceeding (as the General Counsel would be in an unfair labor practice case). The committee's intent is that the parties before the Authority will be the involved agency and labor organization, and the agency which issued the regulation. The burden shall be on the issuing agency to demonstrate "compelling need".

Subsection (b) (3) provides that the Authority shall determine that a "compelling need" does not exist (thereby making the matter negotiable) only if: (A) the agency which issued the rule or regulation informs the Authority in writing that there is no compelling need; or, (B) the Authority itself determines, after a hearing that there is no compelling need.

Subsection (b) (4) requires that the agency issuing the subject Government-wide rule or regulation be a necessary party to the proceedings. Typically, it is anticipated, the issuing agency will be the Office of Personnel Management or the General Services Administration.

The committee intends that nothing in section 7117 be construed as preventing agencies from issuing Government-wide regulations. Nor should section 7117 be read as voiding any Government-wide regulation for which a finding of "no compelling need" is made. Such a regulation would remain in full force and effect for all purposes except that it would not bar negotiations over the subject matter in the particular appropriate bargaining unit involved. Any collective bargaining agreement provision then negotiated which conflicts with the Government-wide regulation would take precedence for purposes of that bargaining unit.

Prevention of unfair labor practices

Section 7118 sets forth the procedures to be followed in processing unfair labor practice cases.

The committee intends that the process begin with the filing of an unfair labor practice charge by the aggrieved party.

Under subsection (a) (1) the sole responsibility for investigating a charge rests with the General Counsel of the Authority. If, after investigation, the General Counsel determines that a complaint should issue, he is required to cause the complaint to be served upon the charged agency or labor organization. The General Counsel's decision as to whether a complaint should issue shall not be subject to review: If a complaint is issued, it is required to contain a notice: (1) of the charges; (2) that a hearing will be held before the Authority or a member thereof, or before an individual employed by the Authority and designated for that purpose; and (3) of the time and place fixed for the hearing.

Subsection (a) (3) gives the charged party the right to answer and to be a party to the hearing.

Subsection (a) (4) prohibits the issuance of a complaint based upon an unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority unless the person aggrieved

was prevented from filing the charge because the agency or labor organization against whom the charge is made failed to perform a duty owed to the aggrieved person, or due to concealment. In addition, the concealment or failure to perform a duty must have prevented the discovery of the unfair labor practice within 6 months of its occurrence. In such a case, the 6-month period during which a charge may be filed is computed from the day of the discovery of the occurrence.

Subsection (a) (5) of section 7118, provides that, if a complaint is filed by the General Counsel, the Authority is required to hold a hearing, not earlier than 5 days after the complaint is served. (The Committee intends, however, that nothing preclude waiver of a hearing by stipulation.) The individual or individuals conducting the hearing may allow any person other than the involved labor organization or agency to intervene in the hearing and present testimony. The attendance of witnesses and the production of documents at the hearing may be compelled in accordance with section 7133, relating to subpoena power. To the extent practicable, the hearing shall be conducted in accordance with the applicable provisions of the Administrative Procedure Act. A transcript will be kept. If, after completion of the hearing, the Authority (or its designee), in its discretion, determines that further evidence or argument is necessary, it may, upon notice to the parties, receive or hear such further evidence or argument.

Subsection (a) (6) provides that a decision of the Authority or its designee, such as the administrative law judge or other individual who conducted the hearing shall be based upon the preponderance of the evidence received. If the Authority (or its designee) determines that an agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the Authority or its designee is required to state its findings of fact and to issue and cause an order to be served on the agency or labor organization. The order shall require the party to take such action to carry out the policies of chapter 71. The action ordered may include: ceasing and desisting from the unfair labor practice; directing retroactive amendment of a collective bargaining agreement; requiring an award of reasonable attorney's fees and reasonable costs and expenses of litigation; or requiring reinstatement of employees with backpay and interest.

Subsection (a) (7) requires that if, upon a preponderance of the evidence, the Authority or its designee determines that an unfair labor practice has not been committed, the Authority or its designee must state its findings of fact and issue an order dismissing the complaint.

It should be noted that under section 7105(e), the Authority is authorized to delegate its functions under section 7118 to its administrative law judges, with their decisions being subject to review by the Authority under section 7105(e).

Subsection (b) of section 7118 permits the Authority to request advisory opinions from the Director of the Office of Personnel Management concerning proper interpretation of OPM rules, regulations, and directives.

Negotiation Impasses; Federal Service Impasses Panel

Section 7119 provides for mediation and arbitration of negotiation impasses, and establishes within the Authority the Federal Services

Impasses Panel, to which parties may agree to refer such impasses for resolution.

Under subsection (a), the Federal Mediation and Conciliation Service is required to provide services and assistance to agencies and labor organizations in the resolution of negotiation disputes and impasses. The Service will determine under what circumstances and in what manner it will provide services and assistance.

Subsection (b) provides that when voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third party mediation fail to resolve a negotiation dispute or impasse, either party may request the Federal Service Impasses Panel to consider the matter, or the parties may agree to adopt a procedure for binding arbitration of the impasse.

Subsections (c) (1), (c) (2), (c) (3), and (c) (4) of section 7119 describe the Federal Service Impasses Panel, an entity within the Authority composed of a Chairman and at least six other members, appointed by the President, with the advice and consent of the Senate, on the basis of fitness to perform the duties and functions of the office, familiarity with Government operations, and knowledge in labor-management relations. The members are appointed for 5-year terms, staggered on a 2-year basis. An individual chosen to fill a vacancy is appointed for the unexpired term of the member replaced. A member may be removed by the President at will. Members are eligible for reappointment.

The Panel is authorized to appoint an Executive Director and other employees as it may from time to time find necessary for the proper performance of its duties. A member of the Panel who is not otherwise an employee (meaning an employee as defined in section 2105 of title 5) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay currently paid, from time to time, 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 and a per diem allowance under section 5703 of title 5. A member of the Panel who is a Government employee is not entitled to any additional pay, but is entitled to travel expenses and a per diem allowance.

Subsection (c) (5) requires the Panel (or its designee to investigate promptly any impasse presented to it under section 7119(b). Upon consideration of the impasse presented to it under section 7119(b). Upon consideration of the impasse, the Panel is required either to recommend procedures to the parties for the resolution of the impasse, or to assist the parties in arriving at a settlement through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate. If the parties do not arrive at a settlement, the Panel is authorized to hold hearings, compel the attendance of witnesses and production of documents (as provided in section 7133 relating to subpoenas), and take whatever action is necessary and not inconsistent with the provisions of chapter 71 to resolve the impasse. Notice of any final action of the Panel must be promptly served upon the parties, and the action is final and binding upon the parties during the term of the agreement, unless the parties agree otherwise. Final action of the Panel under this section is not subject to appeal, and failure to comply with any final action ordered by the Panel constitutes an unfair labor practice by an agency under section 7116(a)

(6) and (7) or a labor organization under section 7116(b) (6) and (8).

Standards of conduct for labor organizations

Section 7120(a) requires a labor organization representing or seeking to represent employees to adopt governing requirements containing explicit and detailed provisions to which it subscribes, providing 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 participation in the affairs of the labor organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings; (2) the prohibition of business or financial interests on the part of labor organization officers and agents which conflict with their duty to the organization and its members; and (3) the maintenance of fiscal integrity in the conduct of the affairs of the labor organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

Subsection (b) of section 7120 states the general rule (except as specifically provided by this chapter) barring management officials and supervisors, as defined in section 7103, from participating in the management of a labor organization or acting as a labor organization representative. Employees are so barred if there would be a resulting or apparent conflict of interest, or if the participation or activity would be incompatible in any way with law or with the employee's official duties.

Grievance procedures

Section 7121(a) provides that any collective bargaining agreement entered into by an agency and a labor organization must contain procedures for the settlement of grievances, including questions of arbitrability. An employee to whom the agreement applies is specifically afforded the choice to have his grievance processed under either a procedure negotiated in accordance with chapter 71 and set forth in the agreement reached pursuant to those negotiations or any applicable appeals procedure established by or pursuant to law. It should be noted that, in addition, if the subject matter of the grievance is such that it would come within the provisions of section 7116, relating to unfair labor practices, the employee may elect to pursue procedures in accordance with section 7118. An employee, then, could conceivably have a choice of three procedures.

Section 7121(b) further provides that a negotiated grievance procedure must be fair, simple, provide for expeditious processing, and shall include procedures that assure a labor organization the right (in its own behalf or on behalf of any employee in the unit) to present and process grievances; and assure an employee the right to present a grievance on the employee's own behalf, as well as assure the labor organization the right to be present when the grievance is adjusted. Only the exclusive representative is entitled to represent employees under the negotiated grievance procedure, but employees may represent themselves. The negotiated procedure shall provide that any grievance not satisfactorily settled in the grievance process be subject

to binding arbitration which may be invoked by either the labor organization or the agency.

Subsection (c) of section 7121 provides that either party to an agreement may seek to compel the other to proceed to arbitration by filing a complaint in the appropriate U.S. district court, or in any appropriate court of a State, territory, or possession of the United States. The court shall hear the matter without jury in an expedited manner and shall decide whether to issue an order directing that arbitration proceed under the terms of the agreement.

Subsection (d) of section 7121 provides that grievances over certain matters may not be processed through the negotiated grievance procedure. These matters include: (1) Hatch Act violations (prohibited political activities); (2) retirement, life insurance, or health insurance matters; or (3) suspensions or removals effected for reasons of national security. Grievances concerning all other matters—including other matters for which there are statutory appeals procedures, such as adverse action appeals and position classification appeals, shall be grievable and arbitrable under the negotiated procedure. A unit employee in such a case would have a choice between the statutory procedure or the negotiated procedure—or, if applicable, the unfair labor practice procedure provided by section 7118.

Subsection (e) of section 7121 sets forth the right of an employee who grieves through the negotiated procedure a matter which, in part, involves an allegation of discrimination prohibited by section 717 of the Civil Rights Act of 1964. The employee retains the right to request the Equal Employment Opportunity Commission to review the grievance decision and make the final determination on the allegation of discrimination. Reorganization Plan No. 1 of 1978 vests the function of making final determinations concerning Federal employees' allegations of discrimination in the Commission.

Exceptions to arbitral awards

Section 7122 sets forth the procedures under which a party may obtain review by the Authority of an arbitrator's award. The procedures apply in the case of either an award in an arbitration resulting from an impasse proceeding under section 7119(b), as added by the bill, or an award in a grievance proceeding under section 7121, as added by the bill. If an exception is filed by a party to an arbitral award the Authority must review the award. If upon review, the Authority finds that the award is deficient because: (1) it is contrary to any applicable law, rule, or regulation; (2) it was obtained by corruption, fraud, or other misconduct; (3) of partiality of the arbitrator; or (4) the arbitrator exceeded his powers; the Authority may take such action and make such recommendations as it considers necessary, consistent with applicable law or regulations and the provisions of chapter 71. If no exception is filed within the 60-day period beginning on the date of the award, the decision of the arbitrator is final and binding. A final decision of the Authority under section 7122 (an arbitration award which has been reviewed by the Authority or for which the time period for filing exception has run) is subject to the judicial review provisions of section 7123, as added by the bill. The Committee rejected a proposed amendment to give the Comptroller General authority to review arbitration awards to determine the le-

gality of the use of appropriated funds to pay arbitration awards. An agency must take the actions required by the final award of an arbitrator including, if ordered, payment of backpay, with interest.

Judicial review

Section 7123 provides for judicial review of certain final orders of the Authority by the circuit courts of appeal, enforcement of orders of the Authority by the same courts, and injunctive relief in appropriate cases.

Section 7123 (a) provides that (1) the final order of the Authority in an unfair labor practice proceeding under section 7118, as added by the bill; (2) the award by an arbitrator (which has been reviewed by the Authority in accordance with section 7122, as added by the bill); or (3) a determination of appropriate unit under section 7112; may, upon the filing of an appropriate pleading by an aggrieved party within 60 days from the issuance of the order or award, be reviewed by the appropriate United States court of appeals. Jurisdiction is within the circuit where the aggrieved person resides or transacts business, or, in any case, in the District of Columbia Circuit.

Subsection (b) of section 7123 provides that the Authority may petition any appropriate U.S. court of appeals for enforcement of any Authority order and for appropriate temporary relief or restraining order.

Subsection (c) of section 7123 requires the Authority, upon the filing of a petition for judicial review or for enforcement, to file with the court the administrative record of the proceeding. The court must then serve notice on the parties and take jurisdiction. The court may grant temporary relief or a restraining order, and may affirm and enforce the subject Authority order, or modify and enforce the order as modified, or set it aside in whole or in part. The court may stay an Authority order, but the mere filing with the court of a petition for review of an Authority order does not operate as a stay. Review of Authority orders is on the record and the scope of review by the court is governed by section 706 of title 5 (which governs judicial review of final administrative orders). Absent extraordinary circumstances, only those objections raised and urged before the Authority may be considered by the court.

Subsection (c) further provides that the Authority's findings of fact are conclusive for purposes of judicial review and enforcement if the findings are supported by substantial evidence on the record. However, any person may apply to the court for leave to adduce additional evidence. If the court is satisfied that there is additional material evidence, and that there were reasonable grounds for failing to adduce the evidence before the Authority, the court may order the Authority to take the additional evidence and make it part of the record. The Authority may then modify its original findings of fact, affirm them, or make new findings. Modified or new findings shall be filed with the court, along with any recommendation for modifying or setting aside its original order. The court will then make its final judgment and enters its decree. In all cases, courts of appeals' judgments and decrees are final, subject only to review by the Supreme Court.

Subsection (d) sets forth a procedure through which the Authority may seek temporary relief or a restraining order concerning the commission of alleged unfair labor practices prior to final administrative or judicial processing and decision on the matter involved. Under section 7118 as added by this bill, the General Counsel of the Authority makes the final decision as to the issuance of a complaint of an unfair labor practice. If a complaint is issued, the General Counsel acts as prosecutor of the complaint. Subsection (d) of section 7123 authorizes the General Counsel, upon the issuance of the complaint, to petition the U.S. district court (for the district in which the unfair labor practice is alleged to have occurred, or where the person complained of resides or transacts business) for temporary relief or a restraining order pending prosecution of the complaint and final determination by the Authority. The petitioned court must serve notice on the parties, take jurisdiction, and grant or deny relief.

Only those labor-management relations matters specifically referred to in section 7123 shall be judicially reviewable.

Reporting requirements for standards of conduct

Section 7131 makes applicable to labor organizations which have or are seeking to obtain exclusive recognition under chapter 71, the provisions of Labor-Management Reporting and Disclosure Act of 1959, as amended; popularly known as the Landrum-Griffin Act 29 U.S.C., chapter 12. The provisions of the Labor-Management Reporting and Disclosure Act of 1959, are also specifically made applicable to the officers, agents, shop stewards, other representatives, and members of a labor organization to the extent the provisions would be applicable if the agency were an employer under section 402 of title 29, United States Code. The section further authorizes the Secretary of Labor, under regulations issued with the concurrence of the Authority, to prescribe simplified reports for labor organizations, and to revoke the provisions for simplified reports for any labor organization if he determines, after investigation and after due notice and opportunity for hearing, that the purposes of chapter 71 of title 5 and chapter 11 of title 20 would be served thereby.

Official time

Section 7132 provides standards for determining when an individual may or may not be authorized official time (paid time) to engage in activities concerning labor-management relations.

Section 7132(a) provides that employees representing an exclusively recognized or certified labor organization in the negotiation of a collective bargaining agreement under chapter 71 (including attendance at impasse settlement proceedings) are authorized official time for that purpose during the time the employees would otherwise be in a duty status. The number of employees for whom official time is authorized may not exceed the number of persons designated by the agency as representing the agency in the subject negotiations.

Section 7132(b) provides that matters solely relating to the internal business of a labor organization must be performed when the subject employee is in a nonduty status.

Section 7132(c) empowers the Authority to make determinations as to whether employees participating in proceedings before the Au-

thority shall be authorized official time. However, official time specifically required under section 7132(a) must be authorized.

Section 7132(d) makes all other matters concerning official time for unit employees engaged in labor-management relations activity subject to negotiation between the agency and the exclusively recognized labor organization involved.

Subpenas

Section 7133(a) gives the Authority—for the purposes of all hearings and investigations which it, any of its members, its agents, the Panel, or its members deem necessary and proper—the right to see and copy any evidence which relates to the subject matter of the investigation or hearing.

The Authority, any member thereof, its designee, the Panel, or any member thereof (referred to hereinafter as the “issuer”) may, on application of any party to a proceeding or investigation, or on its own initiative, issue subpenas requiring the attendance and testimony of witnesses and the production of any relevant evidence applied for including books and papers of the Federal Government to the extent otherwise available under law.

Section 7133(a) further provides a procedure through which the individual or organization receiving a subpoena for production of evidence may seek its revocation. The issuer may be petitioned to revoke within 5 days after service of the subpoena. The subpoena shall be revoked if the issuer determines the evidence sought is irrelevant, or if the subpoena does not describe the evidence sought with sufficient particularity. The issuer or its designee may administer oaths and affirmations, examine witnesses, and receive evidence.

Subsection (b) of section 7133 provides that the issuer may seek enforcement of any of its subpoenas in the appropriate U.S. district court (i.e., the court for the district in which the person to whom the subpoena is addressed resides or is served). The court may order compliance with a subpoena, and treat any failure to obey its order as contempt of court, with appropriate punishment.

Subsection (c) provides that subpoenaed witnesses be paid the same fees and mileage as are paid subpoenaed witnesses in the Federal courts.

Subsection (d) of section 7133 provides that no claim of self-incrimination or resultant penalty or forfeiture shall excuse a person from obeying a subpoena. No person making such a claim, however, shall be prosecuted or subjected to any penalty or forfeiture because of compliance, but there is no exemption from prosecution and punishment for perjury committed in testifying in compliance with a subpoena.

Subsection (e) of section 7133 authorizes a fine of up to \$5,000 or imprisonment for up to one year, or both, for any person who will fully resists, prevents, impedes, or interferes with any member or agent of the Authority or the Panel in the performance of their duties under chapter 71.

Compilation and publication of data

Section 7134(a) requires the Authority to maintain a file of its proceedings and maintain copies of all available collective bargaining

agreements and arbitration decisions. It must also publish the texts of its decisions and of all actions taken by the Panel.

Section 7134(b) requires that the Authority's files be open to inspection and reproduction, subject to the provisions of the Freedom of Information Act and the Privacy Act.

Issuance of regulation

Section 7135 authorizes and requires the Authority, the Federal Mediation and Conciliation Service, and the Panel each to prescribe rules and regulations to carry out the provisions of chapter 71 which are applicable to each of them, respectively. Unless otherwise specifically provided in this chapter, the applicable portion of the administrative procedures provisions of title 5 shall govern the issuance, revision, or repeal of these rules and regulations.

Continuation of existing laws, recognitions, agreements, and procedures

Section 7136(a) (1) provides for the continuation of existing exclusive recognitions (including appropriate unit determinations) and collective bargaining agreements granted or entered into before the effective date of this chapter. These recognitions and unit determinations continue until terminated or modified under the provisions of this chapter, and all agreements continue in effect in accordance with their own terms and the applicable provisions of this chapter.

Section 7136(a) (2) provides for 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 amended chapter. Otherwise, no management official or supervisor as defined under section 7103 of this chapter may be a member of an appropriate unit.

Section 7136(b) provides basically that provisions of the labor-management relations program established by and under the Executive order which conflict with the provisions of this chapter, or with regulations issued hereunder, are superseded by the provisions of this Act. Other provisions and Executive orders remain effective until revised or revoked by the President.

SECTION 702

Section 702 of the bill makes certain amendments to section 5596 of title 5 United States Code (commonly referred to as the Backpay Act).

Section 702(a) makes several revisions in the present section 5596(b) of title 5. First, the parenthetical "(including an unfair labor practice or a grievance decision)" is added immediately after "administrative determination" to insure that such decisions will be considered administrative determinations for purposes of section 5596 of title 5.

Second, paragraph (1) of the present section 5596(b) of title 5, is revised to specify the items which are recoverable on correction of an unwarranted personnel action. As revised by the bill, section 5596(b) (1) of title 5 entitles the employee to the recovery of an amount equal to all or any part of the pay, allowances, or differentials, as applicable that the employee normally would have earned or received

if the personnel action had not occurred, less any amounts earned by him through other employment during that period plus interest on the amount payable. The employee is also entitled to reasonable attorneys' fees and reasonable costs and expenses of litigation related to the personnel action.

Section 702(a) of the bill also amends section 5596(b) (2) of title 5, United States Code. Under the existing provisions of section 5596, an employee who is restored to duty following a period of separation resulting from an unjustified or unwarranted personnel action is deemed for all purposes to have performed service for the agency during the period of separation except that he may not be credited with annual leave in excess of the maximum amount of leave that is authorized for the employee by law or regulation.

Section 702(a) of the bill amends section 5592(b) (2) so as to permit restoration of all of the annual leave that an employee would have earned during the period of separation. However, any annual leave which is in excess of the employee's annual leave ceiling shall be credited to a separate leave account. The restored leave then will be available for use by the employee within reasonable time limits to be prescribed by regulations of the Office of Personnel Management. The amendment further provides that in the case of an employee who leaves the service or who enters on active duty in the armed services any leave credited under this provision which is unused and still available to the employee under the time limits prescribed by the Office shall be included in the lump-sum payment authorized under section 5551 or 5552(1), as applicable, of title 5.

With respect to employees who enter on active duty in the armed services, the annual leave credited under the provision may not be retained to the credit of the employee under section 5552(2) of title 5. The employee will be required to take a lump-sum payment.

Finally, section 702(a) of the bill adds a new sentence at the end of section 5596(b) of title 5, which defines certain terms for purposes of section 5596(b). "Unfair labor practice", "grievance", and "agreement" are given the meanings as set forth in chapter 71 of title 5 as amended by the bill (see section 7136 above), and "personnel action" is defined to include the omission or failure to take an action or confer a benefit.

SECTION 703

Section 703 of the bill contains technical amendments. Among other sections which are redesignated, the existing section 7102, concerning employees' right to petition Congress, is redesignated as section 7211.

SECTION 704

Section 704(a) of the bill states that, except as provided in subsection (b), the amendments made by title VII of this bill shall take effect on the first day of the first calendar month beginning more than 90 days after the date of enactment. Subsection (b) provides that sections 7104 and 7105 (relating to the establishment of the Authority) and section 7136 (the "grandfather" provision) be effective upon enactment.

Section 704(c) is intended to preserve the existing right of certain Federal prevailing rate employees to negotiate terms and conditions

of employment. The committee intends that this subsection preserve unchanged the scope and substance of the existing collective bargaining relationship between the employees' representatives and the agencies involved. The subsection excludes these employees from the restrictions on the scope of collective bargaining under chapter 71, and grants them authority to negotiate pay and pay practices without regard to any provision of chapters 51, 53, and 55 of title 5, or other provisions relating to rates of pay or pay practices with respect to Federal employees.

TITLE VIII

GRADE AND PAY RETENTION

Section 801(a)(1) of the bill amends chapter 53 of title 5, United States Code, by inserting a new subchapter VI entitled "Grade and Pay Retention." The provisions of the new subchapter VI are explained below by United States Code section references.

Definitions

Section 5361, consisting of seven numbered paragraphs, defines various terms for purposes of the new subchapter VI.

Paragraph (1) defines the term "employee" as meaning an employee to whom the classification provisions of chapter 51 of title 5 apply and a prevailing rate employee, as defined by section 5342(a)(2) of title 5. However, the definition specifically excludes those employees whose employment is on a temporary or term basis. Under section 5342(a)(2) of title 5, the term "prevailing rate employee" includes certain employees of nonappropriated fund instrumentalities and certain employees of the Veterans' Canteen Service.

Paragraph (2) provides that the term "agency" has the meaning given it by section 5102 of title 5.

Paragraph (3) defines the term "retained grade" as meaning the grade used for determining benefits to which an employee who is covered by the subchapter is entitled. Generally, the retained grade of an employee is the grade held by the employee immediately before the reclassification of his position to a lower grade or immediately before a reduction in force.

Paragraph (4) defines the term "rate of basic pay." Although the term "rate of basic pay" appears frequently throughout title 5 of the United States Code, the term is not now defined in the code. However, with respect to the General Schedule pay system, the term "rate of basic pay" uniformly is understood to mean the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of any kind of additional pay (see 5 CFR 531.202). With respect to prevailing rate employees, the term "scheduled rate of pay," as used in section 5343 of title 5, is synonymous with the term "rate of basic pay" as discussed above in connection with General Schedule employees.

It is the committee's intent that for purposes of subchapter VI, the term "rate of basic pay" shall mean, with respect to all employees, the rate of pay fixed by law or administrative action for the position held by the employee. Thus, as so defined, the term excludes night dif-

which the application of all or part of the provisions of subchapter VI can be fully justified. Under the authority of subsection (b) the Office may provide for the application of all or any portion of the provisions of subchapter VI—

1. To individuals who are reduced to a grade of the General Schedule or a prevailing rate schedule from a position under another pay system;
2. To individuals who are not otherwise covered under the provisions of subchapter VI; and
3. To situations where such application is justified for purposes of carrying out the mission of the agency or agencies involved.

Movements of employees or positions between different pay systems are not uncommon. For example, an employee in a position under the Foreign Service pay system could be reduced to a grade under the General Schedule as a result of a reclassification action or reduction in force. The application of the grade or pay retention provisions of subchapter VI to such an employee may be fully justified. It is the purpose of section 5366(b) to authorize the application of the provisions of subchapter VI, including the provisions of section 5365, to employees and situations not otherwise specifically covered by the subchapter whenever such action is deemed justified by the Office of Personnel Management.

Appeals

Subsection (a) of section 5367 provides for an appeal to the Office of Personnel Management when benefits available to an employee under subchapter VI are terminated on the grounds the employee declined a reasonable offer of a position the grade or pay of which was equal to or greater than his retained grade or pay. The declination of a reasonable offer will result in termination of the employee's retained grade under sections 5362 and 5363 and termination of retained pay under section 5364. The term "reasonable offer" is not subject to definition and reasonable men may differ as to what constitutes a reasonable offer in a particular case. Therefore, the committee concluded that the termination of benefits on such grounds should be reviewable by the Office of Personnel Management. The Office is authorized to prescribe the appeal procedures.

Paragraph (2) of subsection (a) of section 5367 provides that nothing in subchapter VI shall be construed to affect the right of any employee to file a classification appeal under section 5112(b) or 5346(c) of title 5, or under any other comparable provision, or a reduction-in-force appeal under procedures prescribed by the Office of Personnel Management (such as part 351 of the current regulations of the Civil Service Commission).

Subsection (b) of section 5367 provides that any action which is the basis of an individual's entitlement to benefits under subchapter VI or any termination of such benefits shall not be treated as an appealable action for purposes of any appeal procedure other than the appeal procedures described in paragraph (2) of subsection (a). Under subsection (b), the following actions would not be appealable (except as provided in paragraph (2) of subsection (a)):

1. Reduction of employee to lower grade as a result of reclassification of position;

2. Reduction of employee to lower grade as a result of reduction-in-force action;

3. Termination of retained grade or pay because of break in service;

4. Termination of retained grade or pay because of placement in position equal in grade or pay to employee's retained grade or pay;

5. Termination of retained grade or pay because of demotion for personal cause (demotion would constitute an appealable action);

6. Termination of retained grade because of expiration of 2-year period of entitlement under section 5362;

7. Termination of retained grade under section 5363 because of change in position; and

8. Receipt of only one-half of general pay increases under section 5364(a).

As noted above, the termination of any benefits under subchapter VI on the grounds the employee declined a reasonable offer is appealable to the Office under the provisions of subsection (a).

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TITLE XI

MISCELLANEOUS

Decentralization of Government study

Section 1101 provides that the Director of Personnel Management shall, as soon as practicable after the enactment of this legislation, undertake a study of the decentralization of Government functions.

The study shall include a review of geographical distribution of Government functions and a review of the possibility of redistribution of functions now concentrated in the District of Columbia.

The report of the Director shall be presented to the President and the Congress within 1 year.

Savings provisions

Section 1102(a) provides that all Executive orders, rules, and regulations affecting the Federal service shall continue in effect until modified, terminated, or superceded in accordance with the terms of this legislation and other lawful authority.

Section 1102(b) preserves any administrative proceeding pending at the time the provisions of this legislation take effect.

Section 1102(c) preserves the status of any lawsuit in progress at the time of the effective date of the provisions of this legislation.

employees. I ask the Congress to act promptly on Civil Service Reform and the Reorganization Plan which I will shortly submit.

JIMMY CARTER.

THE WHITE HOUSE, *March 2, 1978.*

VIEWS OF THE COMPTROLLER GENERAL

Set forth below is the report of the Comptroller General of the United States on H.R. 11280.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 19, 1978.

B-40342.

FPC-78-85.

Hon. ROBERT N. C. NIX,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives.*

DEAR MR. CHAIRMAN: We are pleased to respond to your request for our comments on H.R. 11280, the Civil Service Reform Act of 1978.

As a preface to our comments, I believe you will agree that it is appropriate to recognize that as the role of the Federal government increases and affects more and more the lives of all citizens, it is inevitable that attention will be drawn to the level of competency of Federal employees, their compensation, incentives, and other conditions of their employment. Discussion of these issues has gone on for many years and intensified since the growth of the Federal government in the depression days of the 1930's and World War II. Civil Service reforms are necessary but that issue should not cloud the essential point that most civil service employees are able, highly motivated, and dedicated to their work.

We believe that the Civil Service system can be improved. During the past several years we have studied many of the issues with which H.R. 11280 is concerned. We have made a number of specific recommendations and have highlighted conflicting policies and objectives that needed to be addressed. These have included:

The conflicting roles of the Civil Service Commission as policy-maker, prosecutor, judge and employee protector; (June, 1977);

The need for simplifying the appeals systems; (February, 1977);

The adverse impact of veterans' preference on equal employment objectives; (September, 1977);

The need to improve performance appraisals and ratings; (March, 1978);

The need for more flexible hiring procedures; (July, 1974);

The need for a new salary system for federal executives; (February, 1977);

The need to relate pay to performance; (October 1975; March 1978); and

The need for an overall Federal retirement policy. (August, 1977)

H.R. 11280 attempts to deal with the above issues as well as others and we strongly support those objectives.

H.R. 11280 should be considered in conjunction with the proposed Reorganization Plan No. 2 of 1978. The Civil Service Commission (CSC) now serves simultaneously as the protector of employee rights and the promoter of efficient personnel management policy. The reorganization plan divides those two roles between two separate agencies, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM). H.R. 11280 would provide additional legislative authority for those two agencies.

The Reorganization Plan would also create a Federal Labor Relations Authority which would consolidate the third-party function in the Federal labor-management relations program by assuming the functions of the Federal Labor Relations Council and certain responsibilities of the Assistant Secretary of Labor for Labor-Management Relations. In addition, Reorganization Plan No. 1 of 1978, would transfer CSC's current equal employment opportunity and discrimination complaint authority to the Equal Employment Opportunity Commission (EEOC).

Office of Personnel Management

The Office of Personnel Management would be the primary agent advising the President and helping him carry out his responsibilities to manage the Federal work force. It would develop personnel policies, provide personnel leadership to agencies, and administer central personnel programs. It would be headed by a director and a deputy director, both appointed by the President and confirmed by the Senate.

We are aware of the concern which has been expressed that a single director of personnel, serving at the pleasure of the President and replacing a bipartisan commission, could be accused of partisan political motivations in actions which, by their very nature, are controversial. The argument is made that the Merit System Protection Board, important as its role would be, would not be in a position to influence substantially policies, rules and regulations, including positions on legislative matters, in the same manner as a bipartisan commission. On the other hand, a commission form of organization tends to be cumbersome and divides responsibility and accountability. It is of some interest to note that President Roosevelt's Committee on Administrative Management recommended in 1937 a single-headed director of personnel for the Federal Government. While this proposal was not adopted, the idea of a strong Director of Personnel Management has continued to be discussed and proposed and, in fact, has been extensively adopted at the State and local level. On balance, we favor the President's proposal and believe that this part of the reorganization plan should be adopted.

It should be pointed out, however, that under the plan and H.R. 11280 the Director of OPM would be concerned entirely with the civil service and would not have advisory or other responsibilities with respect to other personnel systems within the Federal Government. GAO has repeatedly pointed to the need for a stronger focal point within the executive branch to concern itself with consistent and common policies and procedures which are relevant to all or several of the personnel systems within the Government. This responsibility today is clouded by the lack of certainty with respect to the roles of the Civil Service Commission and the Office of Management and Budget.

To remedy this situation and to strengthen the case for the proposed pay level for the Director of OPM, we believe that the Director should have responsibility for advising, assisting and coordinating with the President with respect to common policies and practices in the personnel management area throughout the executive branch of the Federal Government. He could share the responsibility for pay systems with the Director of the OMB but it seems to us that the President and the Congress need a focal point which can address itself to the common problems and concerns. This responsibility could be dealt with in the legislation, either by developing a specific statutory charter for the Director of the OPM, or a strong statement of intent of the Congress could be developed, leaving to the President the development of a more detailed charter.

Merit Systems Protection Board (MSPB)

The MSPB would have three members appointed by the President for 7-year terms removable only for misconduct, inefficiency, neglect of duty, or malfeasance in office. Not more than two of the members could be from the same political party. One member would be designated Chairman and one member Vice-Chairman. A special Counsel would also be appointed for a 7-year term. The independence and authority of MSPB and its ability to protect the legitimate concerns of employees is the overriding factor on how much flexibility can be provided to managers.

We believe it would be desirable for MSPB to provide both the agencies and employees information on matters that have been resolved by MSPB. We also believe that the special studies to be conducted by MSPB and reported to the President and the Congress should be made available to the public.

Federal Labor Relations Authority

The reorganization plan would establish an independent Federal Labor Relations Authority to assume the third party functions currently fragmented among the Federal Labor Relations Council and Assistant Secretary of Labor for Labor Management Relations. The establishment of the Authority is intended to overcome the criticism of the structure and administration for the existing Federal labor relations program.

The Authority and the labor relations provisions are not now incorporated in the Reform bill. We understand that on April 25, 1978, the Administration informed the cognizant committees of Congress of the decision to incorporate further improvements in the labor relations program as part of the Civil Service reform legislative package.

The concept of an independent labor relations authority or board has been included in proposed legislation, introduced in recent sessions of Congress, to provide a statutory basis for the Federal labor management relations program. In commenting on these legislative proposals on May 24, 1977, GAO supported the establishment of a central labor relations body to consolidate the third party functions in the Federal labor management relations program. We believed then, as we do now, that such a central body is needed and would be perceived by both labor organizations and agency management as a credible and viable third party mechanism.

The proposed reorganization plan provides that decisions of the Authority on any matter within its jurisdiction shall be final and not subject to judicial review. We believe a provision should be added to the legislation to make it clear that the existing right of agency heads and certifying officers to obtain a decision from the Comptroller General of the United States on the propriety of payments from appropriated funds are not modified. Also, we question whether the right to judicial review of the Authority's decision should be prohibited.

Equal Employment Opportunity Commission

EEOC's role is not discussed in either Reorganization Plan No. 2 or H.R. 11280. However, we believe we should address the relationship between EEOC and MSPB in view of the proposed transfer of EEO enforcement and discrimination appeals authority from CSC to EEOC under Reorganization Plan No. 1 of 1978.

Under the Plan all discrimination appeals relating solely to discrimination will be filed directly with EEOC, and processed by it. Under delegation from EEOC, all appeals involving both title V and title VII matters will be filed with and acted upon by MSPB. The decision of MSPB will be final unless the employee requests EEOC to review the elements of the case involving title VII. EEOC may examine the matter on the record, grant a de novo hearing or remand the case to MSPB for further hearings at its option.

A clear distinction between an equal employment and merit principle complaint is difficult, if not impossible, and employees frequently perceive their problems to be both. We believe that placing the adjudication of these complaints in different organizations will invite duplicate or two track appeals on the same issues simultaneously, or sequentially, to EEOC and MSPB. In addition to wasting time, effort and money, this situation poses a very real potential for differing definitions of issues, inconsistent interpretations of laws, regulations and irreconcilable decisions.

An additional problem in having EEOC responsible for receipt and processing appeals is that it establishes the same kind of role conflict that the Civil Service reform proposals seek to correct. EEOC would in effect be the enforcement as well as the adjudicative agency. We are inclined to favor the approach taken in H.R. 11280 which provides:

"Notwithstanding any other provision of law, an employee who has been affected by an action appealable to the Board (Merit System Protection Board) and who alleges that discrimination prohibited by Section 2302(b)(1) of this title was a basis for the action should have both the issue of discrimination and the appealable action decided by the Board in the appeal decision under the Board's appellate procedures."

Additionally, we believe EEOC should be given the authority to intervene, on title VII matters, with all the rights of a party in all the adjudicatory proceedings of MSPB and in any subsequent appeals to the courts. This alternative would avoid many of the problems we have mentioned and save considerable time by having all issues of a complaint decided by the same adjudicative body.

H.R. 11280 proposes changes to: performance appraisals, adverse action appeals, veterans preference, retirement, selection methods, man-

agement and compensation of senior executives, merit pay, and personnel research. We have made recommendations to the Congress and to the executive branch concerning the need for improvement in most of these areas. H.R. 11280 provides the vehicle for making necessary changes and we support that objective. We do have concerns about the specifics of some of the proposals and believe they can be improved upon.

Performance appraisals

We believe the current system of performance appraisals should be improved. We recommended that performance appraisal systems should include four basic principles.

First that work objectives be clearly spelled out at the beginning of the appraisal period so that employees will know what is expected of them.

Second, that employees participate in the process of establishing work objectives thereby taking advantage of their job knowledge as well as re-enforcing the understanding of what is expected, and

Third that there be clear feed back on employee performance against the preset objectives.

Fourth that the results of performance appraisals be linked to such personnel actions as promotion, assignment, reassignment, and to discipline.

The proposed legislation generally conforms to our recommendations.

Adverse actions and employee appeals

One of the major purposes of H.R. 11280 is to make it easier to remove employees for misconduct, inefficiency, and incompetence. It provides for new procedures based on unacceptable performance. In so doing, the bill proposes major changes in the rights now afforded Federal employees. We believe the bill contains many provisions which would improve the present processes by which Federal employees are removed, demoted, and disciplined. However, we have concerns that certain of the proposed changes in adverse action and appellate procedures would not provide a proper balance between the interest of the Federal Government and the rights and protection of Federal employees.

For example, in an appeal, the decision of the agency must be sustained by MSPB unless the employee shows an error in procedure which substantially impairs his or her rights, discrimination, or an arbitrary or capricious decision. We suggest a fourth basis, that is, the absence of substantial evidence in the administrative record to support the decision of the agency.

Veterans' preference

We believe that changes can be made to veterans' preference legislation so that the system for examining and selecting for Federal employment can be improved and employment assistance can be better provided to those veterans who most need it. We believe the administration's proposals are designed to balance the Government's obligation to its veterans for their sacrifices, its obligation to provide equal

employment opportunity, and its commitment to improve Federal staffing operations.

We favor amending the rule-of-three selection requirement of the Veterans' Preference Act of 1944. Examinations are not precise enough to judge the potential job success of persons with identical or nearly the same scores. As a result, the rule-of-three unfairly denies to many applicants who have equal qualifications the opportunity to be considered for Federal employment. We have previously recommended that the Congress amend the rule-of-three requirement similar to the way in which the proposed legislation authorizes OPM to prescribe alternate referral and selection methods.

The present statutory prohibition against passing over a veteran on a list of eligibles to select a nonveteran would be retained under the proposed legislation. In our opinion, the flexibility to be gained by eliminating the rule-of-three and using alternate examining and selection methods will be seriously diminished by retaining this pass-over prohibition.

The bill authorizes agencies to make non-competitive appointments of certain compensably disabled veterans—those with service connected disabilities of 50 percent or more and those who take job-related training prescribed by the Veterans Administration. We believe employment assistance to those veterans with special employment problems—such as disabled and Vietnam-era veterans—is appropriate.

Retention preference

The bill proposes changes to the preference given veterans in retention rights in a reduction-in-force. Only a disabled veteran (or certain relatives of a veteran) would retain permanent retention preference. Other veterans would retain absolute retention preference for a 3 year period. Once the 3-year period has been completed, non-disabled veterans will be entitled to 5 years service credit in computing length of service for retention determinations.

As a general rule, veterans have retention rights over nonveterans regardless of length of service. Since veterans are predominantly male and non-minority, absolute preference works to the disadvantage of women and minorities. The proposed changes should help to remedy this situation.

Retirement

The bill would greatly expand the provisions allowing employees to retire before reaching normal retirement eligibility. Presently, the civil service retirement system generally allows employees to retire at age 55 with 30 years of service. Employees who are separated involuntarily, except for reasons of misconduct or delinquency, may receive an immediate annuity if they are 50 with 20 years of service or at any age with 25 years. Current law allows employees to volunteer for early retirement when their employing agency is undergoing a major reduction-in-force, even if they are not directly affected by the reduction. Under H.R. 11280, the early retirement option would also be made available to employees if their agency is undergoing a major reorganization or a major transfer of function.

We cannot support the liberalization of the early retirement provisions proposed by H.R. 11280. As you are undoubtedly aware, GAO

has long been concerned about the civil service and other Federal retirement systems. As we disclosed in an August 3, 1977, report on retirement matters, the civil service system already costs much more than is being recognized and covered by agency and employee contributions. As of June 30, 1976, the system's unfunded liability was \$107 billion and is estimated to grow to \$169 billion by 1986. Any additional early retirements resulting from H.R. 11280 would add to this tremendous liability.

Senior Executive Service

Some excellent Government managers have been provided by the present system. However, we think that more managers of this calibre would result from a Senior Executive Service.

We agree with the objectives of H.R. 11280 to establish a Senior Executive Service which would cover about 9,000 positions above General Schedule 15 and below Executive Level III. The proposed Senior Executive Service would establish at least five executive salary levels, from the sixth step of GS-15 (\$42,200) to an Executive Level IV salary level \$50,000). Under the proposal executives could increase their compensation through performance awards, to 95 percent of a level II salary, or \$54,625 at the present pay levels.

There is a problem of compression at the senior levels of the General Schedule. Because the salary rate for Level V of the Executive Schedule is the ceiling for salary rates of most other Federal pay systems, all GS-18s and 17s, and some GS-16s now receive the same salary—\$47,500. This creates a situation where many levels of responsibility receive the same pay and is not consistent with basic Federal pay principles of:

Comparability with private enterprise, and

Distinctions in keeping with work and performance levels.

Such a situation creates inequities and can have adverse effects on the recruitment, retention, and incentives for advancement to senior positions throughout the Federal service.

We believe that changes are needed to give management greater flexibility in assigning pay and establishing responsibility levels. In February 1975, we reported on the need for a better system for adjusting salaries on top Federal officials. One of our main concerns at that time, and which still exists, was the compression of salary rates which result in distorted pay relationships in the Federal pay systems. Our recommendation was for the Congress to insure that executive salaries are adjusted annually—either based on the annual change in the cost-of-living index or the average percentage increase in GS salaries. The law now provides for automatic adjustment of Executive Schedule pay rates equal to the average General Schedule increase.

We believe there is a need to establish a new salary system for Federal executives. We do have some concerns, however, that the provisions of the proposed Senior Executive Service do not go far enough in this regard. We are not sure, for example, that the proposed salary range including performance awards—\$42,200 to \$54,625—provides sufficient flexibility. Most of the employees that will be covered are already at the \$47,500 ceiling, and could reach the proposed \$54,625 ceiling by receiving less than the maximum 20 percent pay increase for

performance allowed by the Bill. Therefore, there may not be enough of a pay differential to provide an incentive for executives to join the new Service or for the Service to be successful.

We also question the advisability of limiting incentive awards and ranks, as well as performance pay, to an arbitrarily selected percentage of employees.

Proposals have been made by GAO and others to provide more flexibility in the pay-setting processes for top Federal officials. We favor a salary system with a broad salary band; compensating within this broad band, on the basis of an individual's capability or contributions to the job, with congressional control over the average salary level for the Service, by agency.

In summary, we question whether there is enough pay incentive to make the Senior Executive Service a success. We believe it would be more acceptable to senior executives if the salary ranges were substantially increased or if performance awards were not subject to the proposed \$54,625 ceiling. To do this, however, would require breaking the linkage between executive and congressional salaries. In its December 1975 report, the President's Panel on Federal Compensation pointed out that the "existing linkage between level II of the Executive Schedule and Congressional salaries should not be permitted to continue to distort or improperly depress executive salaries."

Two features of the proposed Service affect the civil service retirement system. An executive who is separated for less than fully successful performance would be entitled to an immediate annuity if he or she is at least 50 years of age with 20 years of service or at any age with 25 years. In addition, each year of service in which an executive receives a performance award will include a retirement factor of 2.5 percent in lieu of the lesser percentage (1.5, 1.75, or 2 percent) that would otherwise be applied. We cannot support either of these provisions. They would add to the system's unfunded liability, and, in our opinion, would be inappropriate uses of the Retirement Program.

Merit Pay

The concept of basing pay increases on employee performance is not new. GAO and other groups have recognized that a need exists to recognize employee performance rather than longevity in awarding within-grade salary increases. In October 1975, we recommended that the Chairman, CSC, in coordination with the Director of OMB develop a method of granting within-grade salary increases which is integrated with a performance appraisal system.

In December 1975, the President's Panel on Federal Compensation, chaired by the Vice President, reviewed within-grade increases as part of its study of Federal compensation issues. The Panel concluded that for employees in occupations which provide significant opportunity for individual initiative and impact on the job, a new procedure was needed to provide a connection between performance and within-grade advancement. The Panel recommended a method of within-grade advancement for these employees that would be based on performance. The Panel noted, however, that the system should take into consideration the experience of the private sector with such plans and that the system should be thoroughly tested prior to implementation. In

its December 1977 final staff report the Personnel Management Project similarly recommended using merit pay to improve and reward performance of managers below the levels included in the Senior Executive Service. That report also noted that the new approach should be carefully tested and evaluated before full scale application.

While we endorse the principle of performance pay incentives, we have some concern over the equity of the proposed system. We believe it would be more equitable if it were limited to within-grade increases, covered employees in other GS grades, and included all employees in affected grades rather than just managers and supervisors.

Personnel Research and Demonstration Projects

The cost of personnel resources in the Federal Government is enormous. In fiscal year 1978, the Government will pay an estimated \$75 billion in direct compensation and personnel benefits to its civilian employees and active-duty military personnel. In view of these expenditures, it is vital that we develop and use the most effective methods and techniques to manage personnel resources. An aggressive personnel research and demonstration program is a key link in doing this. Further, if Government is to effectively deal with the recent decline in productivity growth, it must support a research base directed toward developing and applying new techniques and ways to better manage its human resources.

With this in mind, we support the need for an aggressive personnel research and development program. We do not believe, however, that adequate controls and safeguards are provided in H.R. 11280 to protect the employees affected by the demonstration projects and to assure that the most effective and efficient use is made of research funds. As a minimum, we recommend that Congress be informed of projects which may be inconsistent with existing laws or regulations before they are begun. Congress should have an opportunity to satisfy itself as to the seriousness of such infractions. We also believe that Congress should be informed of research and development actual accomplishments for which it has provided authorization and funding.

Responsibility of the General Accounting Office

One other matter of concern to us is the proposed language concerning GAO's role in auditing personnel practices and policies. The proposed new section 2303 of title 5, U.S.C. may be susceptible of misinterpretation in its present form which is as follows:

"If requested by either House of the Congress (or any Member or committee thereof), or if deemed necessary by the Comptroller General, the General Accounting Office shall conduct, on a continuing basis, audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the Executive Branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management."

It should be made clear that the function of GAO is to assist in congressional oversight and that the Executive Branch is not in any way relieved of its responsibility for reviewing, evaluating, and improving personnel management or for investigating and correcting deficiencies therein. As elsewhere, GAO's role is more properly one of

overseeing the working of the program rather than intervening on a case-by-case basis. We suggest that the language be amended to conform, in substance, to that used in the Legislative Reorganization Act of 1970 (84 Stat. 140, 1168), as follows:

“When ordered, by either House of Congress or upon his own initiative, or when requested by any committee of the House of Representatives or the Senate, or any joint committee of the two Houses having jurisdiction over Federal personnel programs and activities, the Comptroller General shall conduct audits and reviews to determine compliance with the laws, rules, and regulations governing employment in the Executive Branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.”

I trust that this letter and enclosure recommending technical amendments will meet your needs.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

Enclosure.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman) :

TITLE 5, UNITED STATES CODE

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PART I—THE AGENCIES GENERALLY

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CHAPTER 5—ADMINISTRATIVE PROCEDURE

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SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

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§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the

SUPPLEMENTAL VIEWS TO H.R. 11280

As members who have worked to improve both the Federal civil service system in general, and the Federal labor-management relations program in particular, we want to make it clear that, although we support title VIII—the labor-management section of H.R. 11280—that title is deficient in some important areas.

Our record of service on the Committee on Post Office and Civil Service is ample evidence that we share the President's belief that the Federal personnel system is in serious need of reform. We share the President's belief that the Federal personnel system has become overly bureaucratized, inefficient, and complex in the resolution of disputes.

Indeed, it was for these very reasons that we actively supported the provisions of this bill which provide for greater flexibility and responsiveness in the Federal personnel management system—the creation of the Office of Personnel Management, the modifications in the merit pay system, the establishment of a Senior Executive Service, and the authorization to conduct new and innovative demonstration projects.

However, simple justice and equity require the new managerial initiatives which have been introduced in H.R. 11280 must be balanced by affording reasonable protections for the rights of employees. Regrettably, title VII of H.R. 11280 does not fully meet this challenge.

Those of our colleagues who are concerned that this bill will significantly expand the collective bargaining rights of Federal employees need not worry. It does not. Enactment of the committee approved labor-management title will continue to deny to Federal employees most of the collective bargaining rights which their counterparts in the private sector have enjoyed for over 40 years. Among the collective bargaining rights not included in the bill are:

- (1) The right to engage in strikes, work stoppages and slowdowns;
- (2) The right to bargain collectively over pay and money-related fringe benefits such as retirement benefits and life and health insurance; and,
- (3) The right to negotiate an agency shop or to require federal employees to pay membership dues or representational fees to any labor union.

In addition, H.R. 11280 contains an unusually strong management rights clause which removes from the negotiation process terms and conditions of employment which, in the private sector, would be subject to collective bargaining.

Given these constraints upon employee representatives, one might wonder why we support this legislation. Our support is based on the improvements that, notwithstanding its deficiencies, this bill makes in the Federal labor relations program.

These improvements would, first, authorize the negotiations of a grievance procedure, including binding arbitration, for the resolution

of personnel disputes. These procedures will provide for a fairer and more expeditious means for the resolution of personnel disputes than at present.

Second, broaden the scope of bargaining beyond existing practice. Governmentwide regulations are no longer automatically excluded from collective bargaining. Under title VII, only those issues in which the Government has demonstrated a "compelling need" for uniformity are excluded from collective bargaining.

Third, provide for the creation of a truly independent, neutral and full-time Federal Labor Relations Authority (FLRA) to administer the federal labor-management program and subject the decisions and actions of the FLRA to judicial review. Currently, the Federal labor-management program is administered by the part-time, management-oriented Federal Labor Relations Council whose decisions and actions are not subject to judicial review.

Finally, the committee overwhelmingly rejected proposals, sponsored by the administration, which would have—in effect—preserved the status quo in labor-management relations and merely codified the Executive order under which the existing labor-management program has operated. This, despite the fact that extensive public hearings on this legislation produced overwhelming testimony that the current program was overly biased in favor of management, narrow in its scope, and ineffective in meeting the needs of agency managers and employees alike.

We were disappointed, nevertheless, by the action of the committee in weakening two important areas of this bill—scope of bargaining and union security.

The committee narrowed the scope of issues over which Federal employees could bargain to exclude contracting out; work assignment and duties; and, limitations on the use of military, supervisors and other nonbargaining unit employees for work performed by members of the bargaining unit. Having already excluded pay and major money-related fringe benefits from the bargaining table, we feel that the bill limits negotiations to issues of secondary importance.

The committee also deleted the bill's provision for an agency shop if, after election of an exclusive representative, a majority of the employees vote in favor of such an arrangement. We strongly believe that—since an employee organization is required to represent all employees in a bargaining unit—all of those employees should assume some share of the costs involved in this representation. The additional costs involved in binding arbitration for the resolution of grievances—which both the administration and the committee propose—will place an additional financial burden upon employee organizations. Without adequate resources, employee organizations will be hard-pressed to meet their new and expanded representation responsibilities.

Further, title VII was weakened by the committee in narrowing the matters which would be subject to the grievance appeals procedures and by denying employee representatives official time for the processing of employee's grievances and appeals.

In supporting title VII we also recognized the said reality that the issue of collective bargaining for Federal employees has been clouded by an hysterical atmosphere. We realize that many of our colleagues

erroneously associate any increase in collective bargaining rights for Federal employees with an attendant decrease in the efficiency of Federal service. We strongly disagree with that view. Effective labor unions can and do play a positive role in improving productivity in public service. It is our hope that the positive experiences which will result from this bill's modest expansion of collective bargaining rights will assuage the concerns of our colleagues and lead to a more progressive labor-management program in the future.

In the meantime, we ask our colleagues to support the incremental approach which H.R. 11280 takes to labor-management relations and to oppose any further weakening amendments. To do so would seriously undermine the careful balance between management and employee interests that the committee has sought to attain.

WILLIAM L. CLAY.
WILLIAM D. FORD.
CECIL HEFTEL.
MICHAEL O. MYERS.
PATRICIA SCHROEDER.
STEPHEN J. SOLARZ.
CHARLES H. WILSON.

SEPARATE VIEWS OF PAT SCHROEDER ON LABOR MANAGEMENT

It is not often politic for officers in the executive and legislative branches to mention it, but there are millions of workers in the private sector (ranging from \$200 per hour consultants to \$3 per hour custodians) who, but for the Federal Government contracting work out, would be Federal employees. These private employees are, of course, in jobs which have and are being created to perform work the Federal Government needs performed without "creating more bureaucrats."

Nobody talks about the horrible things which would happen if such people were allowed to participate in political activities or engage in full collective bargaining. They already have such opportunities. I have yet to see anyone propose that such opportunities be abolished. Things have not been so horrible.

The executive branch, which claims it needs so much management "flexibility" in labor-management when it comes to its own employees, is perfectly happy day in and day out not only to contract with private companies which don't have such management "flexibility" and face situations in which employees in such companies have opportunities for all sorts of labor actions. The executive branch also enforces through its various agencies this same so called labor-management "inflexibility." So much for the horrors of collective bargaining.

This same executive branch has been known, at times, to deal with more accommodation with companies headed by people active in its own political party than with those with other views and, indeed, to appoint people from firms which contract with the Government to positions in the Government. So much for there not being politics in the executive branch.

So much for equity.

PAT SCHROEDER.

ADDITIONAL VIEWS TO H.R. 11280

I support and endorse H.R. 11280 as approved by the committee. I voted in support of reporting the bill to the House. I reluctantly accepted certain provisions which weakened the labor-management section of the bill, and—I was constrained to propose the inclusion of a new title IV to the bill reforming the Hatch Act. My colleagues on the committee indicated their support for my views by a roll call vote of 13 to 10.

In my judgment, there is no greater priority for Federal employees than broadening the extent to which they may participate in political activities while strengthening protections to both the public and employees against coercion and improper political activities.

Although both the Committee on Post Office and Civil Service and the House have already approved this legislation, I took this unusual action because it is becoming increasingly unlikely that the other body will act upon this legislation this year. House approval of title IX will thereby insure that Hatch Act reform is at least considered by conferees—should this legislation reach that point.

Many Members of Congress and other interested parties expended considerable energy in meeting the concerns of employee organizations as well as the administration in moving this important legislation through the House last year.

The administration unwisely opposes the inclusion of this title within the context of civil service reform. I believe that the issue of full political participation for Federal employees and protection of the public interest should be addressed here and now.

Inclusion of Hatch Act Reform in civil service reform does not make the federal civil service subject to politicization. This argument was rejected overwhelmingly by the House twice—during the 94th and 95th Congresses.

Inclusion of Hatch Act Reform does not constitute a “burden” on civil service reform legislation. Civil service “reform” and Hatch Act Reform are inextricably interrelated. Each insures that the people’s business—the business of our Government—is conducted in a fair and impartial manner.

Inclusion of Hatch Act reform in this bill is not as untimely as the administration would like the Congress to believe. There can be nothing more “timely” than providing Federal employees with the right to full participation in the political process of our Nation.

I urge my colleagues to demonstrate their support for Hatch Act reform in the context of this legislation as they have on earlier occasions—to strike a blow for justice, equity, and good government—by joining me in resisting the efforts of those who would further deny the unfulfilled dream of first class citizenship to Federal employees. The time for reforming the Hatch Act is now.

WILLIAM L. CLAY.

SUPPLEMENTAL VIEWS ON H.R. 11280

This legislation offers the Members of the House an opportunity to objectively reform and reinvigorate a Federal civil service merit system that, during its 95-year lifespan, has begun to show signs of immunity to effective management.

It needs to be emphasized that civil service reform is a non-partisan issue. Simply stated, civil service reform is good government. Honest civil service reform, however, can only be accomplished by rising above the demands of those who would use this legislation only in their special interest.

Unfortunately, the committee did not follow the right road. The legislation wheeled off track and out of control. What started out as a bipartisan effort to write effective legislation degenerated into a blatant gutting of the bill by a majority of the majority who seemed bent on destroying the legislative centerpiece of their own President.

With studied deliberateness, these fractious Democrats made it clear they would march in stiff cadence to a divide-and-conquer beat. They displayed no interest in participating in reasonable and responsible discussion of the legislation. Evidence of that attitude unfolded when they lined up to oppose a routine motion to permit Civil Service Commission experts to comment and respond to committee questions on highly technical provisions of the bill. Fortunately, the motion to give all of our Committee Members the benefit of expertise utilized by other Committees of the House during the markup sessions carried by a single vote.

Undaunted by that temporary setback, members of the majority laid down a barrage of crippling amendments which placed responsibility for salvaging Civil Service reform squarely on Republican shoulders. It was a responsibility we welcomed.

With clear disregard for the administration's strategy, the provisions of H.R. 10, the Hatch Act emasculation, were grafted to the bill. This power play from the Democratic side to curry the favor of Federal labor union leadership was a test of wills that graphically showed the split between congressional Democrats and the White House.

Continuing to salt the wound, this rebellious band then attached to the bill the provisions of H.R. 3161, reducing the basic workweek of Federal firefighters—a bill which President Carter had vetoed only a month earlier and returned to the Congress with a strong message of rejection.

In a further show of disregard for the administration proposal, the committee Democrats used as the original text for the labor-management relations title not the language offered by the President but a Clay-Ford-Solarz version of labor-management relations tailored to meet the special interest of the union hierarchy.

In this title of the bill, the committee Democrats were just slightly less destructive. While the Republicans were the swing votes in eliminating the agency shop provision from the bill, the prolabor forces again took over.

The administration proposal was to codify the language of the existing Executive order governing labor-management relations in the Federal sector. It has been an effective tool for good management under each administration since President Kennedy. When offered piecemeal during mark up, the President's proposals were trampled in the rush of the committee Democrats to satisfy labor leaders to the detriment of both Federal rank and file employees and management.

Similarly, the title dealing with the senior executive service was diluted to the point where it was left meaningless. There is little incentive or opportunity for the utilization of talented personnel in challenging job assignments when the application of the SES is limited to three agencies for a 2-year period.

The package that finally emerged from committee is a legislative fiasco. But beneath its burden of special interest fat it contains the muscle of sound civil service reform. We believe it can be salvaged if responsible action and leadership is displayed in the House.

Therefore, we urge each Member of the House to approach this legislation objectively and with the public interest in mind.

Whatever is enacted will be administered by both Democratic and Republican Presidents in the future. Shortsighted concessions to the voices of special interest is not serving the public.

The American public, through proposition 13 and a host of other indicators, strongly favors a Government more efficient and responsive to its needs. The taxpayers want Government reform.

EDWARD J. DERWINSKI.
TOM CORCORAN.
JIM LEACH.

ADDITIONAL VIEWS

Criticism of the civil service is nothing new. But today it is growing as more and more Americans become disenchanted with the cost, size, and inefficiency of bureaucracy, whether Federal, state, or municipal. Citizens doubt, with good reason, Government's ability to deal effectively with the issues of inflation, unemployment, housing, energy, and other areas. Increasingly skeptical of government's claims to have the answers and resources to solve the problems facing our country, voters have rejected bond proposals and other initiatives to raise funds for local school systems and water projects, for example. They have strongly indicated a desire for less government, a trimmer bureaucracy, in other words, more value for their tax dollars. Proposition 13, overwhelmingly passed in California, is evidence that government reform is a priority item for the public.

In this atmosphere of widespread support for reform, it should have been possible for the Committee on Post Office and Civil Service to report a civil service bill which would make the system less costly and more responsive. However, the spirit of true reform has apparently not infected the majority of the members of the committee.

The Civil Service Reform Act of 1978 (H.R. 11280) is in shambles. Much of the real reform which existed in the original proposal has been diluted by the committee's actions in three major areas: addition of the Hatch Act repeal legislation, enlargement of union rights, and the serious weakening of veterans preference practices.

President Carter, to his credit, attempted to take one of the government's biggest bulls by the horns when he submitted H.R. 11280 to the Congress. This legislation was a noble effort by the President to fulfill one of his most popular campaign promises—that is, reducing the size and cost of the Federal bureaucracy and introducing some measure of efficient, responsible management to the civil service system.

Republicans on the committee, and in Congress as a whole, endorsed the general thrust of the administration plan:

Increase the Government's efficiency by placing new emphasis on the quality of performance of Federal workers—insure that employees and the public are protected against political abuse of the system.

Unfortunately, the Members of the majority party serving on the Post Office and Civil Service Committee did not see fit to implement the President's proposal. Rather, the majority has chosen to saddle H.R. 11280 with a number of controversial, highly damaging amendments which make continued support by responsible Members difficult, if not impossible.

Certainly no amount of rhetoric can change the simple fact that the President's original purpose is not served by attacking Hatch Act revision and dangerously expanding labor rights from those provided in the existing Executive Order 11491.

The President's message of March 2, 1978, transmitting the legislation to Congress was greeted with cautious expressions of support by Republican Members who have traditionally been advocates of reform of the Federal bureaucracy and the civil service system. The Republican members of the Post Office and Civil Service Committee were assiduously courted by the President and high-ranking administration officials during hearings and markup of H.R. 11280. The campaign to sell civil service reform was convincing and effective. Republican Members actively participated in hearings and often provided quorums for the markup sessions.

However, our cautious endorsement of H.R. 11280 could not withstand the actions of some Committee Democrats in amending the bill to include radical changes in current labor practices in the Federal service and to add the repeal of the Hatch Act.

HATCH ACT REPEAL

The Hatch Act is vital to the protection of the individual liberty and integrity of Federal employees. Since 1939 the Hatch Act has effectively prevented the coercion of Federal employees into participation in partisan political activities under threat of career sanctions.

The potential for conflict between the role of an impartial public servant and that of a politically active private citizen is great. Since 1971, the Congress has recognized this potential and has considered limiting the range of permissible political activities of Federal employees in order to further the objective of a politically neutral civil service. There is little doubt that the public supports the concept of a civil service unfettered by political influence or favoritism.

Under the current Hatch Act, a covered employee retains the right to vote, to express a political opinion, to make political contributions, to engage in nonpartisan activity, and to participate in partisan activity if he lives in an area where a majority of the residents are subject to Hatch Act restrictions. Surely civil servants can operate under these protections without feeling that they are "second-class citizens" totally without political rights or privileges.

Removing the safeguards which are now embodied in the Hatch Act would open the door for a return to the spoils system and the politicization of the civil service. To saddle civil service reform—a worthy goal—with the repeal of the Hatch Act, is to doom the reform effort, if not in the House then in the Senate.

We must examine where the push for the insertion of Hatch Act repeal is coming from and let this determination guide us in our decision not to strip the civil servant of every protection, leaving him bare to the power of the unions and certain political factions which would force the employee into political activity against his wishes—but essential to his survival.

The majority of Federal employees fear political coercion and discrimination far more than they desire the opportunity to run for political office and become involved in partisan political activities. Tying long-awaited Federal service improvements to this blatant attempt to organize civil servants into a partisan political force can only further increase public distrust of Government and its bureaucracy.

LABOR-MANAGEMENT RELATIONS

Title VII of H.R. 11280 would make serious changes in the long-standing policy of Federal labor-management. These are changes which we cannot support.

Commitments to Committee Republicans by the administration that the labor-management title would not go beyond current Federal labor practices as embodied in Executive Order 11491 were not kept. Instead, in an attempt to placate labor loyalists on the Committee, the administration agreed to certain "compromises" which far exceed the scope of Executive Order 11491.

It is, of course, impossible to predict with certainty the ultimate ramifications of a particular piece of legislation or a particular amendment. However, we must nonetheless consider all the possible consequences—unintended as well as those planned by the drafters of the legislation. From this perspective, we must view with alarm certain adverse developments that may well come to pass should title VII of H.R. 11280 become law.

It seems likely, if not certain, that title VII would greatly increase the power of Government employee unions to the detriment of the public interest in the predictable and efficient provision of Government services.

Currently, Federal employees have the right to organize and bargain collectively under Executive Order 11491, as amended. The labor-management provisions of H.R. 11280 dangerously expand the scope of bargaining beyond that established in section 11 of Executive Order 11491—

the obligation to meet and confer does not include matters with respect to the mission of the agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit; the technology of performing its work; or its internal security practices.

Under the committee bill, only agency mission, budget, organization, internal security practices and number of employees are retained as exclusive management rights. Management is also reserved the authority to assign work and make decisions on "contracting out."

The Federal employee unions will now have the right to negotiate such important issues as promotion policy, job classification and reduction-in-force standards and procedures. As a sidelight, there are also provisions for negotiation of grievance and arbitration procedures.

It would be fair to conclude that it is not clear how the committee bill will finally affect the scope of bargaining in the Federal labor sector. It is clear, however, that the provisions of the Executive Order pertaining to bargaining have been effectively jettisoned.

The labor-management title of H.R. 11280 moves Federal labor relations closer to those in the private sector which is not a parallel situation. In our opinion, this is a dangerous step. The competitive marketplace of the private sector is absent in Government employment. Funds from which wages, salaries and benefits are paid or extended to Federal employees come primarily from taxes. Expanding the right to bargain would give Government workers excess power and

leverage which would inequitably subordinate the budgetmaking process to their interest and against the basic interests and well-being of American taxpayers.

In October, 1975, the Sacramento Bee printed an editorial admitting that the paper's earlier support for collective bargaining for public employees was wrong. The editorial went on to state that :

Government is not in a position to successfully bargain collectively. If a private business enterprise is faced with wage demands so unreasonable that it will be forced out of business, the private business can say no, even if it means a strike. But Government is different. Often unreasonable demands cannot be turned down by Government because the public cannot tolerate the loss of essential services.

We recognize the unique position occupied by Federal employees and the responsibility of the Government to provide fair pay, good working conditions, and reasonable job protection. However, title VII represents an abrogation of the duties and constitutional responsibilities of the executive branch and Congress. Title VII must be amended on the floor to incorporate into law the existing Federal employee labor relations program which has served both the public and the Federal employee well through four administrations.

In any legislation dealing with labor-management relations in the Federal service, priority consideration must be given to protecting the interest of the responsible, dedicated employee, the taxpaying public which provides and pays for the jobs, and all citizens in general.

VETERANS' PREFERENCE

It is our position that the current practice of veterans' preference should not be removed or weakened. We feel strongly that the Congress and all Americans made a commitment to the veteran years ago that we must continue to uphold today. Veterans' preference does not give an unfair advantage to veterans seeking Federal employment, but merely facilitates the hiring of well-qualified applicants whose careers have been interrupted or delayed because of military service.

The Federal Government should lead the way in providing job opportunities for men and women who have served our Nation in the Armed Forces, not take them away. H.R. 11280 contains provisions dealing with veterans' preference in Federal employment which are a severe setback to veterans in the civil service and to those seeking jobs.

For our complete views on veterans' preference, we refer you to the additional views of the several Members on this subject.

CONCLUSION

The Federal Government now employs an estimated 2.8 million persons, in addition to the military. As bureaucracy has grown, initiative has been stifled and mediocrity rewarded. Still, there are thousands of competent, dedicated government employees at all levels who are effective in their jobs. These civil servants must be protected as the Congress attempts to evaluate and change the present system. American

taxpayers must also be protected and their interest in good government furthered. This is what true civil service reform should accomplish. The bill reported by the Post Office and Civil Service Committee fails in almost every instance.

It is difficult to make progress in reforming a 94-year-old system in a short period of time and in a single piece of legislation. H.R. 11280, had it been considered in a responsible, nonpartisan manner could have been the first and most important step to making the civil service more responsive and cost-efficient. The committee missed the opportunity for true reform—we hope the House will not make the same mistake.

JOHN H. ROUSSELOT.
JAMES M. COLLINS.
EDWARD J. DERWINSKI.
TRENT LOTT.
GENE TAYLOR.

INDIVIDUAL VIEWS

There is little doubt that during the 1976 Presidential campaign, President Carter successfully gained the image of being the "anti-Washington" candidate. His promises to reorganize the Federal Government were highlighted by frequent reference to the bureaucracy as bloated, wasteful and inefficient; and his message was that if elected President he would reorganize the Federal Government to make it more efficient.

The irony of civil service reform bill reported to the House by the Post Office and Civil Service Committee is that, taken as a whole, it will move the Federal work force in exactly the opposite direction.

There are several areas where the reported bill bears little resemblance to the proposals initially advanced by the Carter administration, including provisions that remove the current Hatch Act ban on political activity of Federal workers, provisions that greatly expand the power of Federal employee unions, and provisions that protect overpaid employees from being reduced in pay or grade.

It is not surprising that the committee greatly altered President Carter's proposed legislation, given the fact that organized labor exerts an inordinate amount of influence—some would say dominant—over some of my colleagues on the committee.

VETERANS' PREFERENCE

Some of the alterations the committee made to the bill, however, did not go far enough. The original Carter administration proposal called for substantial dilution in this nation's longstanding policy of according military veterans preference in examination, appointment and job retention in Federal employment.

The committee's bill offers a so-called "compromise" that reduces veterans' preference to a point where it will be nearly meaningless in the future. I do not believe that veterans' preference laws have hurt the quality of the Federal civil service, nor do I believe that the application of the law has harmed the employment opportunities of other qualified persons.

Despite all the publicity over the supposed adverse impact veterans' preference has for certain other groups, I urge the House not to lose sight of the fact that a veteran must be qualified before he or she receives any appointment preference at all. Veterans' preference has not meant that the Federal Government must appoint a minimally qualified veteran over a well-qualified nonveteran.

Our current veterans' preference laws give veterans an advantage in appointment and retention, although it is not an overwhelming one. The concept of veterans' preference is based on the belief that those men and women who served their country honorably in time of war should have some first consideration in serving their country as civil-

ians from among those with the same relative qualifications. Further, since the vast majority of veterans were civilians whose careers and lives were disrupted by military service, we currently provide some special consideration to them when their civil service careers are again disrupted by layoffs and cutbacks.

The only proper alteration in President Carter's proposal to reduce veterans' preference that the Committee should have made was to reject it. Since the Committee did not reject this part of the overall reform measure, it is now up to the full House to do so.

HATCH ACT REPEAL

As far as I am concerned, the committee's addition of Hatch Act repeal to the civil service reform bill is counterproductive, and will result in the politicizing of the Federal work force.

The proposed overhaul of the civil service system is aimed at making it easier to fire incompetent Federal employees and at making advancement in the career civil service depend a little more on merit than time on the job. This would make for less personal security in the Federal service, especially at the top and middle levels of management.

If removal of the Hatch Act ban on political activity is coupled with the loosening of job protections for key managers, I have little doubt that the potential for abuse of Federal employees through political coercion is even greater than it was just a year ago when the House made the mistake of passing H.R. 10.

The American public expects and deserves a nonpartisan career civil service. They will not have it for long if we undermine the professional integrity of Federal workers and expose them to subtle pressure in such areas as job assignments and promotions.

Employees as well as Government programs will come to be labeled as political, and the appearance of favoritism based on political affiliation will be commonplace, if the Hatch Act revision title is left in the bill. Decisions having preferential or adverse impact on anyone, whether a Federal employee seeking to do a good job or a citizen seeking fair and impartial treatment from his Government, will be perceived as being politically motivated.

PROTECTING OVERPAID EMPLOYEES

According to a June 12, 1977, Gallup poll, 64 percent of the national sample believe that Federal workers are paid more for equivalent work than employees in the private sector.

It is not possible for me to support a provision of the civil service reform bill that will give permanent protection to Federal employees against reductions in salary or grade when their jobs are "downgraded" through re-classification actions.

This concept of continuing to pay higher salaries to Federal employees than their actual job duties warrant, so long as they remain in the job, is not what I think the American public is willing to accept as "reform."

Under existing law, if an employee's position is downgraded through a reclassification action, he is entitled to retain his former rate of pay

for 2 years. This provision is sufficiently liberal, in my view, and at the end of the 2-year period his pay is reduced to the level appropriate for the job.

The pay and grade retention provisions of the reported bill are apparently supported by the Carter administration, but I doubt that Members of the House will hear administration spokesmen proclaim the benefits of continuing to pay employees for work they are not performing.

INCREASED UNION POWER

The committee's bill greatly increases the role of Federal employee unions and goes substantially beyond what the Carter administration originally proposed in the way of a legislated program for Federal labor-management relations. In the area of appeals, however, the committee's bill reflects one change supported by the administration that will have the effect of greatly increasing the chances for a marginal employee in danger of losing his job or being demoted to stay on the payroll.

The bill permits a system through which employees could choose between appealing an adverse action taken against them to the Merit Systems Protection Board or using binding arbitration to decide the outcome of adverse actions.

This provision would, in my view, be a divisive factor in Federal employment because it sharply differentiates between union members and nonmembers concerning dismissals or other disciplinary actions based on poor performance. Although the bill, in its appeals chapter authorizes the Merit Systems Protection Board to adopt alternative methods for workers not represented by unions to settle matters subject to its jurisdiction, I am not reassured that this will offer equal and uniform treatment for all Federal employees.

Other forms of encouraging an expansion of power of Federal employee unions are sprinkled throughout title VII of the committee's bill, all of which go beyond what I understood the Carter administration could support.

Under the guise of "reasonable compromises" between the Carter proposal and a strong prolabor proposal written by a few Members, the committee has sent to the floor a bill that jeopardizes a manager's right to manage by strengthening unions to a point where they could call the shots.

The committee's bill widens the scope of matters subject to collective bargaining in such a way as to include hiring policies of agencies, job classifications, the internal promotion procedures of agencies, and the rights and procedures in job transfers.

One area of the bill in particular that will lead to increased unionization of Federal employees at the expense of the taxpayer is the provision giving the new Federal Labor Relations Authority the ability to grant exclusive recognition status to a union without an election.

Under our current labor-management procedures in Federal Government, an election is always necessary before an agency can grant exclusive recognition status to a union unless it is a situation involving a consolidation of already existing units.

Several other provisions provide outright taxpayer support for labor unions representing Federal employees, such as allowing un-

limited time off with pay for union members negotiating labor contracts or processing grievances and providing a dues check-off system at no cost to the union or its members.

CONCLUSIONS

When the President's effort to change the structure of the Federal civil service personnel system was launched earlier this year, it was hailed far and wide as an attempt to improve the managerial competence of the bureaucracy.

I started out with the idea that I could support responsible reform in those areas where I thought it was needed; and that although I did not agree with every item advanced by the President, I would listen to the administration's case for change.

The administration has not made a strong enough case to convince me that all of its proposed changes are necessary. Moreover, this complex legislation has been altered by the committee to such a degree that it will not, in my view, accomplish what the President outlined as his goals and objectives.

Because I am not encouraged that the House will correct the mistakes of the committee, I have asked myself whether the proposal will make a better Federal civil service—and I have concluded that it will not.

GENE TAYLOR.

ADDITIONAL VIEWS OF MR. LEACH

I support Civil Service reform. Legislation is clearly necessary to introduce greater management efficiency into the vast Federal bureaucracy. Unfortunately, the original administration bill, which was introduced as a bipartisan initiative, was badly cut up in committee. Provisions to repeal the Hatch Act and expand the power of government unions were unnecessarily tacked on to an otherwise responsible approach. These troublesome provisions are dealt with in other supplemental views and I am confident will be corrected during floor consideration of the bill. Accordingly I would like briefly to touch on five amendments I offered in committee, two of which were accepted and three of which I intend to offer for further consideration on the House floor.

The first deals with the whole issue of decentralization. The committee accepted by unanimous voice vote my amendment mandating a study of the geographical distribution of governmental functions. A suspicious public looks upon Washington, D.C., as the center not only of excessive bureaucratic authority but as the beneficiary of substantial profit from governmental enterprise. Today every major Federal department is headquartered in Washington, D.C. The vast majority of supergrades, choice political appointments, and other highly paid jobs with the greatest policymaking authority are located in this area. Yet those in the regional and local offices of these major departments and agencies are frequently in far greater contact with the daily administration of Federal programs.

I am convinced there is something inherently wrong with the creation of a "single factory town" which lacks a Main Street, which knows no Willie Lomans or Archie Bunkers. A prudent decentralization of services is needed to bring government closer to the people who must bear the cost and share the benefits of Federal programs. Hopefully the forthcoming study, required in this bill, will give us new direction in diminishing the arrogance and unresponsiveness which tends to accompany a concentration of power.

A great concern of all of us who have ever served in the executive branch is the inflexibility of promotion policies. This bill is designed above all to bring greater accountability into the senior executive level. I am convinced a secondary goal should be to develop ways to reward and promote on merit at more junior levels. Accordingly I was pleased the committee accepted my amendment to allow far greater flexibility in promotions than currently exists under the Whitten amendment. First enacted during the Korean war, the Whitten amendment limits the number of promotions which may be made in a single year. Yet one of the problems with an inflexible civil service system is that often competent individuals, particularly women and younger employees, are underutilized by the Federal Government. Qualified individ-

uals may, for a number of reasons, be forced to enter the Federal workforce at levels of responsibility below their capability and the Whitten amendment has been a barrier to the promotion of these individuals. The committee has in my judgment wisely expressed its desire that authority be created for a more flexible application of the Whitten amendment in the future in instances where there is clear evidence of merit and dedication to the career service.

Although I was pleased with committee recognition of the objectives of decentralization and more rapid merit promotion, I was disappointed that the bill continues to miss the mark on three key aspects of government reform.

First, the committee rejected an amendment I offered to limit, for the duration of this administration, the size of the Federal workforce to the number so employed at the outset of the current administration. Statistics issued by the Civil Service Commission indicate that the size of the Federal workforce has grown in the past year and a half by more than 40,000 and I can conceive of no better vehicle to halt further growth in the Federal bureaucracy than the civil service reform bill itself. Something is wrong with any society that becomes top-heavy with bureaucracy and I would hope to obtain bi-partisan support for my amendment to place a cap on Federal employment on the House floor.

Second, I was disappointed that the committee failed to approve a provision clarifying the ethics obligations which the Federal Government should require of its employees at all levels. The rejected amendment would have prohibited Federal employees, or unions representing such individuals, from soliciting gifts, favors, or related items—either for the Federal employee or the employee's family—from any person, corporation or group which may be substantially affected by the performance or nonperformance of the employee's official duties or the official functions of the agency for which the employee is working. Although our committee has approved ethics legislation dealing with Government officials, most of that legislation does not extend to the rank and file membership of the Federal workforce. The majority of the concepts embodied in the rejected amendment are contained in existing Executive Order 11222 and ought, in my judgment, to be incorporated into statute.

Finally, I was distressed that the committee refused to ratify a proposal which, if adopted, would provide for expeditious suspension procedures for federally employed air traffic controllers who deliberately engage in job actions now barred by law or Executive order. To permit a limited number of Federal employees to hold the innocent taxpaying public hostage, by slowing down or stopping air transportation, should not be tolerated, and prompt action should be taken to deal with such action, within reasonable guidelines protecting the employee. To permit such abuses of the public trust to continue is unconscionable.

It is my hope that the full House will give careful consideration to the merit of these amendatory provisions and will take affirmative action to strengthen the bill and thereby enhance the integrity and responsiveness of the Federal bureaucracy.

JIM LEACH.

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95TH CONGRESS }
2d Session }

SENATE

{ REPORT
No. 95-969

CIVIL SERVICE REFORM ACT OF 1978

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2640

TO REFORM THE CIVIL SERVICE LAWS

together with

ADDITIONAL AND MINORITY VIEWS



JULY 10 (legislative day, MAY 17), 1978.—Ordered to be printed

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Calendar No. 90095TH CONGRESS }
2d Session

SENATE

{ REPORT
No. 95-969**CIVIL SERVICE REFORM ACT OF 1978**

JULY 10 (legislative day MAY 17), 1978.—Ordered to be printed

Mr. RIBICOFF, from the Committee on Governmental Affairs,
submitted the following**REPORT**

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 2640]

The Committee on Governmental Affairs, to which was referred the bill (S. 2640) to reform the civil service laws, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. BACKGROUND

The changes in law which are proposed in S. 2640 will constitute the most comprehensive reform of the Federal work force since passage of the Pendleton Act in 1883. Since that time total civilian employment has increased from approximately 131,000 to almost 2.9 million employees, of whom almost 93 percent work under a merit system. In 1977, the Federal civilian payroll amounted to over \$46 billion, more than 11 percent of Federal outlays for that year. Despite the enormous growth in Federal employment and the accompanying increase in the laws and regulations governing the civil service, no systematic congressional review or revision of the system has been attempted in close to 100 years. S. 2640, as amended, is that long overdue, comprehensive reform.

S. 2640 is based on many of the recommendations by the President's Personnel Management Project. That exhaustive study took 5 months to complete and involved thousands of experts and members of the public. Building on the comprehensive work of the President and his staff, the Governmental Affairs Committee held 12 days of public

hearings and heard from 86 witnesses, representing 55 organizations. The committee held seven markup sessions before ordering the bill reported. S. 2640 is the centerpiece of the President's efforts to make the Government more efficient and accountable. The committee believes that, as amended, S. 2640 will promote a more efficient civil service while preserving the merit principle in Federal employment.

II. BRIEF SUMMARY OF THE BILL

The following is a brief listing of the principal changes that S. 2640 makes in the civil service system.¹ The bill:

- Codifies merit system principles and subjects employees who commit prohibited personnel practices to disciplinary action;

- Provides for an independent Merit Systems Protection Board and Special Counsel to adjudicate employee appeals and protect the merit system;

- Provides new protections for employees who disclose illegal or improper Government conduct;

- Empowers a new Office of Personnel Management to supervise personnel management in the executive branch and delegate certain personnel authority to the agencies;

- Establishes a new performance appraisal system and new standard for dismissal based on unacceptable performance;

- Streamlines the processes for dismissing and disciplining Federal employees;

- Creates a Senior Executive Service which embodies a new structure for selecting, developing, and managing top-level Federal executives;

- Provides a merit pay system for GS-13 to 15 managers, so that increases in pay are linked to the quality of the employees' performance;

- Authorizes the Office of Personnel Management to conduct research in public management and carry out demonstration projects that test new approaches to Federal personnel administration; and

- Creates a statutory base for the improvement of labor-management relations, including the establishment in law of the Federal Labor Relations Authority.

III. THE NEED FOR REFORM

Both the public and those in government have a right to the most effective possible civil service; that is, one in which employees are hired and removed on the basis of merit and one which is accountable to the public through its elected leaders.

The civil service system is the product of an earlier reform, which, in protest against the 19th century spoils system, promised a work force in which employees were selected and advanced on the basis of

¹During its consideration of S. 2640, the committee has also had under consideration Reorganization Plan No. 2 of 1978, which provides for the creation of the Office of Personnel Management, the Merit Systems Protection Board, the Office of Special Counsel, and the Federal Labor Relations Authority. The plan, which was submitted to Congress on May 23, 1978, is scheduled to become effective 60 days after submission, if not disapproved by either House of Congress during the interim.

competence rather than political or personal favoritism. Protection of the merit principle in Federal employment has been accomplished through the enactment of numerous laws, rules, and regulations. Although the civil service system has largely succeeded in safeguarding merit principles, there have been frequent attempts to circumvent them, some of which have been successful.

Assaults on the merit system have taken place despite, and in some instances because of, the complicated rules and procedures that have developed over the last century. The welter of inflexible strictures that have developed over the years threatens to asphyxiate the merit principle itself.

The complex rules and procedures have, with their resultant delays and paperwork, undermined confidence in the merit system. Many managers and personnel officers complain that the existing procedures intended to assure merit and protect employees from arbitrary management actions have too often become the refuge of the incompetent employee. When incompetent and inefficient employees are allowed to stay on the work rolls, it is the dedicated and competent employee who must increase his workload so that the public may be benefitted. The morale of even the best motivated employee is bound to suffer under such a system. Moreover, the system's rigid procedures—providing almost automatic pay increases for all employees—makes it as difficult to reward the outstanding public servant as it is to remove an incompetent employee.

The committee agrees with President Carter that “most civil service employees perform with spirit and integrity.” Unfortunately, the existing civil service system is more of a hindrance than a help to dedicated Federal employees.

The civil service system is an outdated patchwork of statutes and rules built up over almost a century. Federal management practices are antiquated in comparison with the current state of the managerial art. Research and experimentation concerning management practices is virtually nonexistent.

The public is ill served by the existing civil service system. As the President's Personnel Management Project put it :

It is the public which suffers from a system which neither permits managers to manage nor which provides assurance against political abuse. Valuable resources are lost to the public service by a system increasingly too cumbersome to compete for talent. The opportunity for more effective . . . service to the public is denied by a system so tortuous that managers regard it as almost impossible to remove those who are not performing. (Final Staff Report, Vol. 1, p. vi.)

When programs fail or are damaged by mismanagement and incompetence, both the taxpayer and the program beneficiary suffer.

For this reason, civil service reform has been described as a “paramount consumer issue.”

. . . millions of consumers look to federal civil servants to protect them from cancerous additives in food, filth in meat products, defects in cars, radiation in television sets, flammability in clothes, poisons in air and water, and monopoly

prices in all goods and services. Consumers look to federal civil servants to wisely spend the twenty or thirty percent of their income which they pay to the federal government in taxes. Consumers look to federal civil servants to see that their mail is promptly delivered, their bank deposits insured, their energy needs met. In short, effective, efficient, honest, patriotic, committed and hard-working federal employees are a basic consumer interest. (Testimony of Ralph Nader before Senate Governmental Affairs Committee, April 10, 1978.)

Government executives and managers are vital to the success of public programs. The existing civil service system, however, has failed to adequately recruit and develop government managers. Too little emphasis has been placed on training and experience when hiring or promoting executives who will run programs worth billions of dollars and have a tremendous impact on the lives of millions of people.

Throughout this country's history—and especially since 1883—there has been a tension between protections established to insure that employees are hired and fired solely on the basis of their ability, and the need of managers and policymakers to have flexibility to perform their jobs. Frequently, this tension is characterized as the “rights of employees” versus the “need for management flexibility.” Although it has recognized this tension, the Committee has viewed civil service reform from the standpoint of the public, rather than the more limited perspective of either the employee or manager. The “rights of employees” to be selected and removed only on the basis of their competence are concomitant with the public's need to have its business conducted competently. Similarly, the need for Federal executives to manage their personnel responsibilities effectively can only be justified by the benefit derived by the public from such management flexibility. An employee has no right to be incompetent; a manager has no right to hire political bed fellows.

The public has a right to an efficient and effective Government, which is responsive to their needs as perceived by elected officials. At the same time, the public has a right to a Government which is impartially administered. One of the central tasks of the civil service reform bill is simple to express but difficult to achieve: Allow civil servants to be able to be hired and fired more easily, but for the right reasons. This balanced bill should help to accomplish that objective. It is an important step toward making the Government more efficient and more accountable to the American people.

IV. MAJOR PROVISIONS IN S. 2640

Separation of Civil Service Commission functions

When the Civil Service Commission was created in 1883, Congress did not intend to create a central personnel agency, but rather to police patronage. The President was authorized to appoint, with the advice and consent of the Senate, a Commission to be composed of three members, not more than two of whom were from the same party, removable at the will of the President. The Commission's job was to screen, examine, and present a choice of applicants to fill jobs in the agencies in the competitive service. General issues of personnel man-

ing the civil service abuses only a few years ago. Establishment of a strong and independent Board and Special Counsel will discourage subversions of merit principles. Dwight Ink, Executive Director of the President's Personnel Management Study, called the independent and strong Merit Board "the cornerstone" of civil service reform.

The bill provides for an independent Board and Special Counsel. By statute, no more than two members of the Board will be of the same political party. Its members' terms will last 7 years, with removal only for cause. The Special Counsel will serve a term coterminous with that of the President. Board Members will not be eligible to serve more than one term. As a result of this structure, the Board should be insulated from the kind of political pressures that have led to violations of merit principles in the past. Both the Board and the Special Counsel will exercise statutory responsibilities independent of any Presidential directives. Absent such a mandate for independence for the Merit Board, it is unlikely that the committee would have granted the Office of Personnel Management the power it has or the latitude to delegate personnel authority to the agencies.

In addition, S. 2640 gives the Board and the Special Counsel new powers to protect the merit system more effectively. Unlike the Civil Service Commission, the Board will have subpoena authority for obtaining evidence that is essential in conducting investigations and adjudicating appeals by Federal workers. The Special Counsel will have power to initiate disciplinary action against those who knowingly and willfully violate the merit principles by engaging in prohibited personnel practices. In addition to simple reprimand, these sanctions include removal, suspension, demotion, exclusion from Federal employment for up to 5 years, and fines up to \$1,000. S. 2640 requires the Board to direct agencies, in certain cases, to pay employees' attorneys' fees.

Creation of statutory labor-management relations authority

A major aspect of Federal personnel management under S. 2640 will be carried out by a new Federal Labor Relations Authority. At present, this responsibility is shared by the Assistant Secretary of Labor for Labor-Management Relations and the part-time Federal Labor-Relations Council. The Assistant Secretary is charged with decisionmaking regarding unfair labor practices, and the Council serves as an appellate body. S. 2640 provides for consolidation of this authority in a single administrative organization, which is impartial by virtue of its independence from any direct responsibility to the incumbent administration, and which has a statutory mandate to govern Federal labor-management activities and procedures.

Consolidating responsibility in FLRA should eliminate what is perceived by Federal employee unions and others as a conflict of interest in the existing Council. Its members consist of the Chairman of the Civil Service Commission, the Director of the Office of Management and Budget, and the Secretary of Labor—policymakers who are responsible primarily as top managers in the incumbent administration. S. 2640 will assure impartial adjudication of labor-management cases by providing for a new Board whose members are selected independently—nominated by the President and confirmed by the

Senate—rather than by virtue of their service as Federal managers.

Creation of the FLRA also will eliminate the existing fragmentation of authority between the Assistant Secretary of Labor for Labor-Management Relations and the Federal Labor Relations Council. The FLRA will have comprehensive jurisdiction in Federal labor-management relations. Merging the responsibility into a single agency will eliminate the need for continuous coordination between two separate agencies with differing and at least potentially conflicting mandates. This change should result in more effective policymaking and administration in this area of vital importance to both Federal employees and Federal managers, as well as the public at large.

S. 2640 also provides explicit statutory responsibilities for FLRA. The part-time Federal Labor Relations Council was established by Executive order. With approval of S. 2640, the intent of Congress regarding the functions and operations of Federal labor-management relations will be clearly established.

Whistle blowers

S. 2640 gives the Merit Systems Protection Board and the Special Counsel explicit authority to protect whistle blowers—Federal employees who disclose illegal or improper government activities. Often, the whistle blower's reward for dedication to the highest moral principles is harassment and abuse. Whistle blowers frequently encounter severe damage to their careers and substantial economic loss.

Protecting employees who disclose government illegality, waste, and corruption is a major step toward a more effective civil service. In the vast Federal bureaucracy it is not difficult to conceal wrongdoing provided that no one summons the courage to disclose the truth. Whenever misdeeds take place in a Federal agency, there are employees who know that it has occurred, and who are outraged by it. What is needed is a means to assure them that they will not suffer if they help uncover and correct administrative abuses. What is needed is a means to protect the Pentagon employee who discloses billions of dollars in cost overruns, the GSA employee who discloses widespread fraud, and the nuclear engineer who questions the safety of certain nuclear plants. These conscientious civil servants deserve statutory protection rather than bureaucratic harassment and intimidation.

S. 2640 will establish significant protections for whistle blowers. For the first time, and by statute, the Federal Government is given the mandate—through the Special Counsel of the Merit Systems Protection Board—to protect whistle blowers from improper reprisals. The Special Counsel may petition the Merit Board to suspend retaliatory actions against whistle blowers. Disciplinary action against violators of whistle blowers' rights also may be initiated by the Special Counsel. In addition, S. 2640 establishes a mechanism by which the allegations made by whistle blowers can be reviewed by responsible government officials. At the same time, S. 2640 will not protect employees who disclose information which is classified or prohibited by statute from disclosure. Nor would the bill protect employees who claim to be whistle blowers in order to avoid adverse action based on inadequate performance.

range, advancement would, at least in part, be based on the quality of the work of the employees covered by this provision. Full comparability adjustments would not be given to all employees covered by the provision. The money saved would be used to compensate employees whose performance merited an additional pay increase.

Research and demonstration projects

In recognition of changing public needs, Title VI of S. 2640 authorizes the Office of Personnel Management to conduct research in public management and carry out demonstration projects that test new approaches to Federal personnel administration. Certain sections of the Federal personnel laws would be waived for purposes of small-scale experiments. Among the subjects of possible projects are appeals mechanisms, alternative forms of discipline, security and suitability investigations, labor-management relations, pay systems, productivity, performance evaluation, and employee development and training.

Expanded knowledge in organizational management is always useful, and pilot projects provide one of the best sources of information. Through experimentation, it is possible to avoid both excessive rigidification in the personnel system and comprehensive change with extensive unanticipated consequences. Researchers are able to get the facts about the likely results of proposed new procedures by applying them on a small scale rather than throughout the entire organization. If successful, a proposed change can then be extended; if not, it can be eliminated more easily; if the results are mixed, the new system can be adjusted.

Experimentation of this kind should permit responsiveness to changing public needs as reflected in the Federal personnel system. It may mean less need for reform in future years. It permits flexibility and the foresight to meet emerging issues.

This provision of S. 2640 also will provide a statutory basis for the Office of Personnel Management to conduct demonstration projects. It embodies the intent of Congress that continuing review of personnel techniques and systems is a vital aspect of civil service reform.

Labor management relations

S. 2640 incorporates into law the existing Federal employee relations program. At the same time, S. 2640 recognizes the special requirements of the Federal government and the paramount public interest in the effective conduct of the public's business. It insures to Federal agencies the right to manage government operations efficiently and effectively.

The basic, well-tested provisions, policies and approaches of Executive Order 11491, as amended, have provided a sound and balanced basis for cooperative and constructive relationships between labor organizations and management officials. Supplemented by the Federal Labor Relations Authority to administer the program, and expanded arbitration procedures for resolving individual appeals, these measures will promote effective labor-management relationships in Federal operations.

The bill permits unions to bargain collectively on personnel policies and practices, and other matters affecting working conditions within the authority of agency managers. It specifies areas for decision which are reserved to the President and heads of agencies, which are not sub-

ject to the collective bargaining process. It excludes bargaining on economic matters and on nonvoluntary payments to unions by employees. Strikes by Federal employees are prohibited; bargaining impasses are resolved through the Federal Mediation and Conciliation Service and the Federal Service Impasses Panel; and employees are protected in their rights to join, or refrain from joining, labor organizations.

Intergovernmental Personnel Act Amendments

Title VI also provides for the use of a single set of merit system standards to be applied to state and local governments in those programs which receive Federal funding. This change is designed to aid state and local officials who now must meet several sometimes conflicting requirements.

V. HISTORY OF LEGISLATION

S. 2640 had its genesis early in 1977 when officials of the Civil Service Commission, the Office of Management and Budget and other executive branch agencies met in preparation for the President's Personnel Management Project. The Project was officially begun in June 1977, and took 5 months to complete.

The Project involved 110 staff members, the great majority of whom were career employees, assigned to 9 different task forces. These 110 people were from numerous agencies and commissions within the executive branch, as well as Congress and the private sector. Alan H. Campbell, Chairman of the Civil Service Commission, served as Chairman of the Project, and Wayne G. Granquist, Associate Director of OMB, as Vice Chairman.

The project staff held 17 public hearings throughout the United States in which approximately 7,000 individuals participated as part of the consultation process. Also, 800 organizations were contacted for comments on option papers. Although the staff carrying out the project were largely from the public service, people were drawn from outside Government into the study process on an extensive scale. Each of the project task forces studying separate aspects of the personnel system developed detailed option papers which discussed the problems and suggested a wide range of recommendations.

After completion of the three volume report, the Carter administration developed S. 2640, which embodies many of the recommendations contained in the President's study. In March of 1978, the President submitted S. 2640 to Congress.

In March of 1978, the President submitted S. 2640 to Congress.

The Governmental Affairs Committee held 12 days of hearings during which 86 individuals, representing 55 organizations, testified. In addition, Senators Ribicoff and Percy wrote to almost 90 experts in public administration and personnel management requesting their views on this legislation and the proposed Civil Service Reorganization Plan. The vast majority of the respondents expressed support for the reforms. Most of the witnesses who testified also voiced support for S. 2640.

The following is a list of the witnesses who testified at the hearings, in order of their appearance:

Mr. George Auman—President, Federated Professional Association.

Mr. Ed MacCutchen—Member, Executive Committee.

Mr. Lionel Murphy—Member, Executive Committee and Legislative Research Director.

Following the completion of these hearings the Committee met on May 22, June 7, June 8, June 12, June 13, June 14, and June 29 to consider this legislation. On June 29 the Committee voted 11-2 to report favorably S. 2640, as amended.

VI. SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This section provides that the Act is to be known as the "Civil Service Reform Act of 1978."

SECTION 2. TABLE OF CONTENTS

This section sets forth the table of contents for the eight titles of the statute. They are: Title I—Merit System Principles; Title II—Civil Service Functions, Performance Appraisal, Adverse Actions; Title III—Staffing; Title IV—Senior Executive Service; Title V—Merit Pay; Title VI—Research, Demonstration, and Other Programs; Title VII—Labor-Management Relations; and Title VIII—Miscellaneous.

SECTION 3. FINDINGS AND STATEMENT OF PURPOSE

This section establishes as policy of the United States that the merit system principles governing the Federal civil service be expressly stated, and that the personnel practices which are prohibited in the Federal service be statutorily defined. It provides that the authority and powers of the independent Merit Systems Protection Board and Special Counsel to enable the Board to handle hearings and appeals involving Federal employees, to enable the Special Counsel to investigate prohibited personnel practices and protect Federal employees from reprisals arising out of the disclosure of information, exercise of an appeal right, or conduct involving political activity. It provides that certain personnel functions, including the function of filling positions in the competitive service, may be delegated from the Office of Personnel Management to agencies, with oversight of the delegation retained by the Office of Personnel Management. It calls for the establishment of a Senior Executive Service to provide additional flexibility for executive agencies in recruitment and management efforts, and provides that pay increases should be based on quality of performance rather than length of service. It provides that a research and demonstration program should be authorized to enable Federal agencies to utilize new and different personnel management concepts and to provide for greater productivity in the Federal civil service. Finally, it codifies in statute the rights previously granted by Executive Order 11491 to Federal employees to organize, bargain collectively, and participate through labor organizations in decisions which affect their working conditions.

SUBCHAPTER I—SUSPENSION FOR 30 DAYS OR LESS

Section 7501. Definitions

Section 7501 defines the employee coverage of this subchapter and the term "suspension." This subchapter applies to competitive service employees who are serving under career, career-conditional, and other non-temporary appointments, and who have completed a probationary or trial period. This definition of employee would include all competitive service employees who are currently covered by these procedural protections. It does not apply to members of the Senior Executive Service, employees not in the competitive service who are excluded from coverage by OPM regulation, or an employee in an agency or unit of an agency engaged in foreign intelligence or counter-intelligence excluded from the application of the merit systems principles by section 2301.

For the first time, the term *suspension* is defined in statutory language as a disciplinary action temporarily denying an employee his duties or pay. The bill follows the definition of the term previously adopted by the Civil Service Commission in its policy issuances.

Section 7502. Actions Covered

Section 7502 specifies that this subchapter covers suspensions of 30 days or less.

The provisions of this subchapter do not apply to the suspension of an employee under present section 7532 of this title, which outlines the procedures to be followed when such an action is taken in the interest of national security; nor do they apply to disciplinary actions taken by the Board under section 1207 upon a complaint filed with it by the Special Counsel pursuant to section 1206.

Section 7503. Cause and Procedure

Subsection (a) provides that an action to suspend an employee must be taken in accordance with regulations prescribed by the Office of Personnel Management. As in current law the agency may take such action only "for such cause as will promote the efficiency of the service."

Subsection (b) defines the rights of an employee against whom a suspension of 30 days or less is proposed. These include the rights currently provided by statute. In addition, the right to furnish material in support of the answer is expanded to include, in addition to affidavits, other documentary evidence which the employee may wish to submit. The employee is also accorded the right to reply orally and to be accompanied by an attorney or other representative. It is expected that, by regulation, OPM will provide employees the right to review material on which the agency has relied in proposing an action. An employee who is suspended for 30 days or less is entitled to have the action reviewed by the employing agency, but has no right of appeal to the Merit Systems Protection Board. In the alternative, this type of action may be the subject of grievance procedures established by labor-management agreements under title VII of this bill.

Paragraph (2) specifically exempts certain agencies or positions in agencies from inclusion under this title, including (a) the Federal Bureau of Investigation, (b) the Central Intelligence Agency, (c) the Defense Intelligence Agency, (d) the National Security Agency, (e) the Drug Enforcement Authority, and (f) other Executive agencies or units thereof whose principal function is the conduct of intelligence or counterintelligence activities, as determined by the President.

Paragraph (3) defines an "employee" as an individual employed in or under an agency.

Paragraph (4) defines an "eligible" as an individual who has qualified for an appointment to the competitive service, and whose name has been entered on an appropriate register or list of eligibles.

Paragraph (5) defines "demonstration project" as one aimed at determining whether a specified change in policies or procedures will result in improved Federal personnel management, and is conducted or supervised by the Office of Personnel Management.

Paragraph (6) defines "research program" as a planned study of public management policies and systems, the manner in which they are operating, their effects, comparisons among policies and systems, and possibilities for change.

Section 4702. Research and development functions

Section 4702 authorizes the Office of Personnel Management to establish, maintain, and evaluate research and development projects to find improved methods and technologies in Federal Personnel Management. OPM is also directed to establish and maintain a system for collection and public dissemination of such research and development, and to encourage exchange of information among interested parties. OPM is authorized to carry out these activities directly or through contract or agreement.

Section 4703. Demonstration projects

Section 4703 establishes the scope and limitation of OPM's authority to conduct experimental demonstration projects aimed at improving Federal personnel management. Because this Section permits OPM to waive certain provisions of law in conducting these projects, the Committee was particularly concerned that adequate safeguards be developed to assure that this power not be abused. Any demonstration project that oversteps these limitations, or does not satisfy the essential definitional intent of such projects is prohibited.

Part (a) of this Section authorizes OPM to conduct and evaluate, either directly or through agreement or contract with one or more Federal agencies or other public or private organizations, demonstration projects involving up to 5,000 individuals (not including control groups) and having an active duration of up to 5 years. No more than 10 active demonstration projects may be underway at any one time. The intent of this requirement is to limit to 50,000 the total number of Federal employees that may be involved directly, at any one time, in active demonstration projects. For purposes of this limitation, an "active" project is intended to mean one where the experimental condition remains in effect. A project where the experiment is no longer in effect, but where evaluation study is still underway, would not be considered an "active" project for purposes of this limitation.

In order to provide OPM with the ability to experiment with new and innovative means of improving Federal personnel management, the Committee agreed to a limited allowance for OPM to either (a) act beyond specific authorities granted to it under Title 5, United States Code, or (b) waive inconsistent provisions of Title 5, United States Code, in creating experimental conditions for purposes of demonstration projects.

While the Committee recognized the need to allow OPM adequate flexibility to develop new approaches to Federal personnel management policies and procedures, it was concerned about the dangers inherent whenever any Federal agency is given authority to waive provisions of law. For this reason, a number of provisions were inserted to assure that demonstration project authorities are not used to abridge employee rights, contravene the express will of Congress, or undermine the essential purpose of this Act, that is, to create a fairer, more effective, more merit-oriented Federal civil service. For instance, the Committee decided to insert language forbidding any demonstration project to violate merit system principles or prohibited personnel practices established under Title II of this Act. Any demonstration project which does so would be subject to the full range of disciplinary powers accorded the Merit Systems Protection Board and its Special Counsel. Further, no demonstration project may affect leave, insurance, or annuity provisions established under this Title.

To provide assurance that demonstration projects are proper, rigorous procedural safeguards must be satisfied before any such project may go into effect. A detailed plan must be developed, published in the Federal Register, and submitted to public hearings as a precondition to implementation. The plan must identify the purposes of the proposed demonstration project, the number, types, and categories of employees and eligibles to be affected, the methodology, the duration, the anticipated costs, the training to be provided, and the methodology and criteria for evaluation of the project. Further, employees who might be affected by the project must be notified and consulted with at least 6 months prior to first implementing the project. Congress also must be provided a detailed report on the proposed project at least 3 months in advance of implementation.

No project may be implemented unless the agency involved has approved the proposal.

To insure that employees have an active input into the planning and implementation of demonstration projects and are fully appraised of any change which might affect their status or well-being, parts (e) and (f) of this section establish rules for prior consultation with employees before a project may be initiated. Where employees are within an agency unit where an employee organization holds exclusive recognition rights, no demonstration project may be entered into (a) if the project would violate a negotiated agreement between the employee organization and such agency unless a written agreement provides for such projects, or (b) if the project is not covered by such a written agreement, unless there has been consultation or negotiation, as appropriate, with the employee organization. It is the intent of this provision that the authority to enter into demonstration projects and to waive certain provisions of law not be construed as license to violate any agreement entered into by an agency and its employees, or

to bypass the exclusive recognition rights accorded an employee organization.

Where employees are within a unit where an employee organization has not been accorded exclusive recognition rights, the requirement for prior consultation with employees must still be adhered to, and part (f) forbids the implementation of any project where consultation has not taken place.

Finally, an evaluation is required of all demonstration projects entered into under this section, including an evaluation of results and their impact on improving public management. All agencies are mandated to cooperate with the Director of OPM in the performance of his demonstration project authority, including the providing of information and reports.

Section 4704. Allocation of Funds

Section 4704 allows OPM to allocate funds appropriated to it for the purpose of conducting demonstration or research projects to other agencies, where such other agencies are to be actually conducting or assisting in the conducting of such projects. However, to insure continued Congressional control over such funds, allocated funds may remain available only for so long as specified in appropriation Acts. And no contracts may be entered into under this Section unless specifically provide for in advance by relevant appropriations Acts.

Section 4705. Reports

Section 4705 requires that OPM, as part of its annual report to Congress, include a summary of all research and demonstration projects conducted during the year, the effect of the projects on improving management efficiency, and recommendations of policies and procedures which will improve the attainment of general research objectives.

Section 4706. Regulations

Section 4706 authorizes the OPM to prescribe regulations to administer the provisions of this Chapter.

SECTION 602. INTERGOVERNMENTAL PERSONNEL ACT AMENDMENTS

This Section amends the Intergovernmental Personnel Act as follows:

Subsection 602(a) amends section 208 of the Intergovernmental Personnel Act (IPA) to (1) authorize Federal agencies to require State and local governments, as a condition of participation in Federal assistance programs, to have merit personnel systems for the positions engaged in the administration of such programs; and (2) abolish all statutory personnel requirements established as a condition of the receipt of Federal grants-in-aid by State and local governments, except those listed in Section 208 of the IPA, those that prohibit discrimination in employment or require equal employment opportunity or affirmative action, the Davis-Bacon Act, and the Hatch Political Activities Act.

Subsection 602(b) amends section 401 of the IPA to extend the authority to participate in the mobility program to certain other organizations.

Subsection 602(c) amends section 403 of the IPA to make commissioned Public Health Service Officers eligible to participate in the IPA mobility program.

Subsection 602(d) amends section 502 of the IPA to define the Trust Territory of the Pacific Islands as a jurisdiction which is eligible to participate in all IPA programs.

Subsection 602(e) amends section 506 of the IPA to include the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands in the formula allocation of IPA grants and exclude these jurisdictions from the local government allocation.

SECTION 603. AMENDMENTS TO THE MOBILITY PROGRAM

This Section amends Title 5 of the United States Code to expand the Intergovernmental Mobility Program as follows:

Subsections 603 (a) through (d) amend sections 3371 through 3375 of title 5, United States Code, to extend eligibility to participate in the mobility program to the Trust Territory of the Pacific Islands; to a military department; a court of the United States; the Administrative Office of the United States Courts; the Library of Congress; the Botanic Garden; the Government Printing Office; the Congressional Budget Office; the United States Postal Service; the Postal Rate Commission; the Architect of the Capitol; the Office of Technology Assessment; and other organizations such as a national, regional, statewide, or metropolitan organization representing member State or local governments; an association of State or local public officials; or a nonprofit organization, one of whose principal functions is to offer professional advisory, research, development or related services to governments or universities concerned with public management. Federal employees in non-career appointments in the Senior Executive Service and employees in the excepted service who are serving in confidential or policy determining positions are excluded from participation in the mobility program.

Subsection 603(e) amends section 3374 of title 5, United States Code, to provide technical amendments to assure fairness and equity for persons participating in mobility assignments. If enacted, Federal retirement and other benefits, in the rare cases where such programs apply to certain State and D.C. government employees, would not be lost by such employees while they are on mobility assignments. Federal agencies would be authorized to reimburse State and local governments and institutions of higher learning, and other organizations for various fringe benefits (e.g., health and life insurance, retirement, etc.) of employees on detail from such organizations.

Subsection 603(f) amends section 3375 of title 5, United States Code, to authorize an executive agency to reimburse mobility assignees for certain miscellaneous relocation expenses related to a geographic move for purposes of a mobility assignment on the same basis such payments are authorized on a permanent change of station (e.g., automobile registrations, drivers' licenses, etc.).

TITLE VII—LABOR-MANAGEMENT RELATIONS

Title VII establishes a Federal Labor Management Relations Authority and creates a statutory base for the improvements of labor-management relations in the Federal service. The Authority will carry

out the duties and responsibilities now being handled by the part-time Federal Labor Relations Council and Assistant Secretary of Labor for Labor-Management Relations. Title VII permits labor unions to bargain collectively over personnel policies, practices, and matters affecting working conditions within the authority of agency managers. It specifies areas for decision which are reserved to management and may not be subjected to the collective bargaining process.

Title VII also provides statutory base for the establishment of grievance and arbitration procedures for Federal employees organized in collective bargaining units. Through the statutory establishment of a Federal Service Impasses Panel, it provides for the resolution of impasses between agencies and labor unions. Further, it sets out a group of unfair labor practices for both the agencies and the unions.

SECTION 701 (A)

This section provides that subpart F of part III of title 5, United States Code, is amended to add the following chapter.

CHAPTER 72—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Section 7201. Findings and purpose

Subsection (a) states findings of Congress that the public interest demands the highest standards of employee performance and the continued development of modern and progressive work practices to facilitate the efficient accomplishment of the operations of the Government.

Subsection (b) states findings of Congress that the protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them can be accomplished with full regard for the public interest and contributes to the effective conduct of public business.

Subsection (c) states that the purpose of this subchapter is to prescribe rights and obligations of employees of the Federal Government and to establish procedures to meet the special requirements and needs of the Federal Government.

Section 7202. Definitions; application

Subsection (a) (1) defines "agency."

Subsection (a) (2) defines "employee." The definition includes a person who was separated from service as a consequence of, or in connection with, an unfair labor practice under section 7174 of this subchapter. This language is an adaptation of language in section 2(3) of the National Labor Relations Act. By its operation under NLRA, and intended by its inclusion in this subchapter, persons determined to have been separated in violation of the unfair labor practice provisions of this subchapter could vote in representation elections and have access to those provisions, e.g., "It shall be an unfair labor practice . . . to interfere with . . . an employee in the exercise of rights assured by this subchapter." The term "uniformed services" used in subsection (a) (2) (D) (ii) is intended to have the same meaning as that given the term by section 2101(3) of this title which reads as follows:

Sec. 2101. Civil Service; armed forces; uniformed services

For the purpose of this title—

* * * * *

(3) “uniformed services” means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the Environmental Science Services Administration.

Subsection (a) (3) defines “labor organization.” Subsection (a) (4) defines “agency management.” Subsection (a) (5) defines “Authority.” Subsection (a) (6) defines the “General Counsel.” Subsection (a) (7) defines the “Panel.” Subsection (a) (8) defines the “Assistant Secretary.”

Subsections (a) (9), (10) and (12) define “Confidential employee,” “Management official” and “Professional employee,” respectively. Executive Order 11491 referred to but did not define these terms. The Assistant Secretary defined them in case decisions. Such definitions are now codified in sections 7162(a) (9), (10) and (12).

Subsection (a) (11) defines “supervisor.” Subsection (a) (12) defines “professional employee.” Subsection (a) (13) defines “agreement.”

Subsection (a) (14) defines “collective bargaining,” “bargaining” or “negotiating” as synonymous terms with references to the mutual obligation of agency representatives and the exclusive representative set forth in section 7215. Subsection (a) (15) defines “exclusive representative.” Subsection (a) (16) defines “person.”

Subsection (a) (17) defines “grievance.” This term is intended to apply broadly than just to complaints concerning matters covered by a *negotiated* grievance procedure. For example, “grievance” as used in section 7212(c) refers to a procedure which has not been negotiated by the parties, such as an agency grievance procedure, but does not apply to complaints concerning matters not subject to a grievance procedure such as classification and Fair Labor Standards Act matters.

Subsection (b) provides that this subchapter applies to all employees and agencies in the executive branch except for specific exclusions set forth below. This subsection tracks the language of Executive Order 11491, section 3(a).

Subsection (c) specifies the agencies, subdivisions thereof and personnel to which this subchapter does not apply. It reflects current exclusions under Executive Order 11491. For the purpose of clarity, the National Security Agency, the U.S. Postal Service and the personnel of the Authority, General Counsel and Panel are specifically listed as excluded. S. 2640 as introduced included among the exceptions the United States Postal Commission. The Committee decided that there was no reason to exclude the Commission because there are no national security issues involved and by statute it is a government agency.

Subsection (d) provides that an agency head may, as deemed in the national interest, suspend this subchapter with respect to an agency or subdivision located outside the U.S. It tracks the provision of Executive Order 11491, section 3(c).

Subsection (e) provides that employees engaged in administering a labor-management relations law (except for personnel of the Authority, General Counsel and Panel, who are excluded by subsection

(c) of this section) may not be represented by labor organizations which also represent other employees covered by that law. A similar provision is contained in Executive Order 11491, section (3) (d), the purpose of which is to avoid conflicts of interest for the employees administering the labor-management relations law.

Section 7203. Federal Labor Relations Authority; Office of the General Counsel

Subsection (a) establishes the Federal Labor Relations Authority as an independent establishment in the Executive Branch of the Government. This provision conforms with Reorganization Plan No. 2 of 1978.

Subsection (b) provides that the Authority is composed of a Chairperson and two other full-time members, not more than two of whom may be adherents of the same political party, and none of whom, in general, may be employed elsewhere in the Government. The composition of the Authority as an independent, third-party establishment will eliminate the appearance of bias which has inhered in the composition of the Federal Labor Relations Council (consisting of three high-level Government managers) under Executive Order 11491. The full-time nature of membership on the Authority is further responsive to criticism of the Council, the members of which serve on the Council on only a part-time basis.

Subsection (c) provides for the appointment and reappointment of the members, and the designation of the Chairman of the Authority. It further provides for removal of any member of the Authority by the President.

Subsection (d) provides for five-year terms of office of each member of the Authority, for the dates of expiration of such terms, and for the filling of vacancies.

Subsection (e) provides that a vacancy in the Authority shall not impair the right of the remaining members to exercise the Authority's powers.

Subsection (f) provides that the Authority shall make an annual report to the President for transmittal to Congress.

Subsection (g) creates the Office of the General Counsel in the Authority. It also provides for the General Counsel's appointment, term of office, reappointment, removal, and full-time service. It is the intent of the Committee that the Office of the General Counsel will be an independent organizational entity within the Authority, and thereby maintain a separation between the prosecutorial and adjudicatory functions of the Authority.

Section 7204. Powers and duties of the Authority; the General Counsel

Subsection (a) provides for the Authority's powers and duties to administer and interpret this subchapter, decide major policy issues, prescribe regulations needed to administer its functions, and disseminate information relating to its operations. Similar powers and duties are assigned to the Federal Labor Relations Council under Executive Order 11491. Under this provision, the Authority will not advise or issue policy guidance to agencies, which role will rest with the Office of Personnel Management. Likewise, the Authority is not

authorized to advise the President other than the normal role of agencies to suggest necessary and desired changes in legislation. Also, the Authority, like the Council, will not issue advisory opinions.

Subsection (b) provides that the Authority shall decide appropriate unit questions, supervise elections, decide questions concerning eligibility for national consultation rights, and decide unfair labor practice complaints. Similar powers and duties are assigned to the Assistant Secretary of Labor for Labor-Management Relations under Executive Order 11491. Integration of the powers and duties of the Assistant Secretary, except for decisions relating to alleged violations of the standards of conduct for labor organizations, in the Authority will improve coordination and eliminate the fragmented nature of the decision-making under the Executive Order between the Assistant Secretary and the Federal Labor Relations Council. The initial jurisdiction to decide alleged violations of the standards of conduct for labor organizations will be retained by the Assistant Secretary, who administers similar standards in the private sector.

The Committee revised subsection 7204(b)(2) to provide explicitly that a labor organization which receives a majority of the valid ballots cast in a representation election would be accorded exclusive recognition.

Subsection (c) provides for the Authority's powers to decide appeals on negotiability issues, exceptions to arbitration awards, appeals from decisions of the Assistant Secretary, and other matters it deems appropriate to assure the effectuation of the purposes of this subchapter. Similar decisional powers are assigned to the Federal Labor Relations Council under Executive Order 11491. The power of the Authority, like that of the Council, to consider other matters it deems appropriate to assure the effectuation of the purposes of this subchapter is intended to be used sparingly and to permit the Authority to deal with labor-management issues and problems within the overall scope of its authority, but not set forth expressly in this section of the subchapter. The phrase "may consider" as used in subsection (c) is intended to grant the Authority discretion with respect to the manner and extent, not the scope, of its decisional authority. Thus, it is not intended that the Authority be permitted to eliminate all consideration of matters expressly listed in this subsection, but that it be empowered, consistent with this subchapter, to establish by regulation procedural requirements, e.g., timeliness, service, etc., and procedural limitations on the conditions upon which merits decisions will issue. For example, currently the Council will grant a petition for review of an arbitration award only where it appears, based upon the facts and circumstances described in the petition, that the exceptions to the award present grounds that the award violates applicable law, appropriate regulations or the Order, or other grounds similar to those upon which challenges to arbitration awards are sustained by courts in private sector labor-management relations. Initial review of exceptions to an arbitration award is limited to a determination as to whether this condition has been met; if such condition has been met, a decision on the merits will later be issued. It is intended that the Authority, subject to its own regulations, will operate in a similar manner—reviewing all appeals, but limiting the extent of review where warranted.

The provision further expressly sanctions appeals to the Authority from final decisions and orders of the Federal Service Impasses Panel. The broad authority of the Council under Executive Order 11491 to interpret the Order, decide major policy issues and take whatever action is required to effectuate the purposes of the Order implies a right to oversee final decisions and orders of the Panel. This subchapter specifically sets forth the limited power of review by the central authority to assure uniform application of the legal requirements in the program, but it is not anticipated that it would often be necessary to exercise it except in the unlikely event that the legal requirements of the program are misapplied. The Authority would not otherwise review the substance or merits of any final decisions and orders of the Panel.

Subsection (d) provides that the Authority shall adopt an official seal which shall be judicially noticed.

Subsection (e) provides for the location of the Authority's office in or about the District of Columbia, for the exercise of the Authority's powers at any time or place, and for the power of its members or agents to make inquiries necessary to carry out its duties.

Subsection (f) provides that the Authority may appoint officers and employees, and delegate to such officers and employees authority to perform such duties and make such expenditures as may be necessary.

Subsection (g) provides for the allowance and payment of the Authority's expenses.

Subsection (h) provides for the Authority's power and duty to prevent violations of this subchapter; and for the Authority's powers to hold hearings, subpoena witnesses, administer oaths, take testimony or depositions of persons under oath, issue subpoenas requiring the production and examination of evidence, and take such other action as may be necessary. It also provides, under certain conditions, that the Authority may request an advisory opinion from the Director of the Office of Personnel Management; that the Director shall have standing to intervene as a party in Authority proceedings; and that the Director may request that the Authority reopen and reconsider its decision.

Subsection (i) provides that the Authority may require an agency or labor organization to cease and desist from violations of this subchapter and require it to take such remedial action as it considers appropriate to effectuate the policies of the subchapter.

Subsection (j) provides that the Authority shall maintain a record of its proceedings and make public any decision made by it or any action taken by the Panel under section 7222 of this title. Further section 552 (public access to information) shall apply with respect to any record maintained under this subsection of this title.

Subsection (k) provides that the General Counsel is authorized to investigate unfair labor practice complaints; to make final decisions concerning the issuances of notices of hearings on unfair labor practice complaints; to prosecute unfair labor practice complaints before the Authority; to direct and supervise all field employees of the General Counsel; to perform such other functions as the Authority prescribes, which would include participation before the Authority in unfair labor practice proceedings; and to prescribe regulations needed to administer the functions of the General Counsel under this subchapter.

The General Counsel is intended to be autonomous in investigating unfair labor practice complaints, in making “final decisions” as to which cases to prosecute before the Authority in its capacity as decision maker, and in directing and supervising field employees of the General Counsel. Specifically, the Authority would neither direct the General Counsel concerning which unfair labor practice cases to prosecute nor review the General Counsel’s determinations not to prosecute, just as the National Labor Relations Board does not exercise such control over its General Counsel.

Subsection (1) provides that the decisions of the authority shall be final and conclusive, and not subject to judicial review except for constitutional questions. Access to judicial review, however, for adverse action and discrimination matters would continue under this chapter.

Section 7211. Employees’ rights

Subsection (a) incorporates the policy contained in section 1(a) of Executive Order 11491 concerning the rights of employees to form, join or assist a labor organization and participate in its management or representation; or to refrain from such activity. It further provides that employees have the right to bargain collectively through representatives of their own choosing subject to limits contained in section 7215 (c) of this subchapter.

Subsection (b) incorporates the policy contained in section 1(b) of Executive Order 11491 that participation in the management or representation of a labor organization by a supervisor, or by other employees whose participation would create a real or apparent conflict of interest or would be incompatible with law or the employees’ official duties, is not authorized. The same policy is specifically extended to management officials and confidential employees for the same reasons.

Section 7212. Recognition of labor organizations

Subsection (a) provides that an agency shall accord exclusive recognition or national consultation rights to a labor organization which meets the requirements of this chapter for such recognition or consultation rights. This tracks section 7(a) of Executive Order 11491.

Subsection (b) provides that recognition, once accorded, shall continue as long as the organization meets the requirements of this chapter for recognition by preventing the disruption caused by repeated elections.

Subsection (c) tracks section 7(d) of Executive Order 11491. Section 7212(c) (1) creates no new employee rights but provides that recognition of a labor organization does not preclude an employee from exercising grievance or appellate rights already established by other laws or regulations or from choosing any personal representative in such proceedings as may be authorized by the law or regulation creating the grievance or appellate rights. However, where the grievance or appeal is covered and pursued under a negotiated grievance procedure as provided in section 7221 of this subchapter, all employees in the bargaining unit—union members and nonmembers alike—must use that procedure to resolve the dispute, and may be represented only by the exclusive representative. Where the negotiated procedure covers adverse action and discrimination complaints, the employee has an option to use the negotiated procedure of the statutory appeal proce-

ture, but not both. If the employee chooses the negotiated procedure, only the exclusive representative of the unit may act as the employee's representative. However, if the employee chooses the statutory appeal procedure, the employee may also choose his/her own representative, and the union (as exclusive representative of the unit) would have neither a right nor an obligation to represent the employee.

Section 7213. National consultation rights

This section provides that an agency shall accord national consultation rights to a labor organization which qualifies under criteria established by the Authority, describes the duties of an agency which has accorded national consultation rights to a labor organization, and provides further that questions as to the eligibility of labor organizations for national consultation rights shall be referred to the Authority for decision. When a labor organization holds national consultation rights, the agency must give the labor organization notice of proposed new substantive personnel policies and proposed changes in established personnel policies and an opportunity to comment on such proposals. The labor organization has a right to suggest changes in personnel policies and to have those suggestions carefully considered. The labor organization also has a right to consult, in person at reasonable times, upon request, with appropriate officials on personnel policy matters and a right to submit its views in writing on personnel policy matters at any time. National consultation rights do not include the right to negotiate. Further, the agency is not required to consult with a labor organization on any matter which would be outside the scope of negotiations if the labor organization held national exclusive recognition in that agency.

Section 7214. Exclusive recognition

Subsection (a) provides that an agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative in a secret ballot, by a majority of the employees as an appropriate unit. The proviso in subsection (a) permits an agency to grant exclusive recognition to a labor organization without an election when the appropriate unit is established by consolidating existing exclusively recognized units of that labor organization.

The Committee revised subsection 7214(a) to make it clear that a labor organization which receives a majority of the valid ballots cast in a representation election would be accorded exclusive recognition.

Subsection (b) defines the bases for determining appropriate units as well as certain conditions which are not appropriate for establishing such units. Any question with respect to the appropriate unit may be referred by the agency or the labor organization to the Authority for a decision.

The Committee clarified the language of subsection 7214(b) to provide that appropriate units may be established on an agency basis.

Subsection (c) provides that all elections conducted under the supervision of the Authority shall be by secret ballot. Elections may be held to determine whether a labor organization should be recognized as the exclusive representative in a unit; replace another labor

organization as the exclusive representative; cease to be the exclusive representative; and be recognized as the exclusive representative of employees in a unit composed of employees in units currently represented by that labor organization or continue to be recognized in existing separate units. Subsection (c) also contains an "election bar" rule under which no election may be held in any unit or part of such unit within 12 months of a valid election. This provision is intended to foster stability and certainty as to labor relations issues by preventing the disruption caused by repeated elections.

Section 7215. Representation rights and duties; good faith bargaining; scope of negotiations; resolution of negotiability disputes

Subsection (a) provides that a labor organization accorded exclusive recognition is the exclusive representative of employees in the unit and is entitled to act for and negotiate agreements covering all employees in the unit and to be represented at formal discussions between management and employees concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit. It also provides that the exclusive representative is responsible for representing the interests of all unit employees without discrimination and without regard to labor organization membership. It further provides that the agency and the labor organization shall negotiate in good faith for the purpose of arriving at an agreement.

The parties have a mutual duty to bargain not only with respect to those changes in established personnel policies proposed by management, but also concerning negotiable proposals initiated by either the agency or the exclusive representative in the context of negotiations leading to a basic collective bargaining agreement. Where agency management proposes to change established personnel policies, the exclusive representative must be given notice of the proposed changes and an opportunity to negotiate over such proposals to the extent they are negotiable. In addition, a union holding exclusive recognition must be given the opportunity to be represented at formal discussions between management and employees concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.

Subsection (b) defines the duty to "negotiate in good faith" to include approaching negotiations with a sincere resolve to reach an agreement, being represented at negotiations by appropriate representatives prepared to discuss and negotiate on all negotiable matters, meeting at reasonable times and places, and if an agreement is reached, executing a written document embodying the agreed terms and taking necessary steps to implement the agreement.

Subsection (c) provides that an agency and a labor organization accorded exclusive recognition shall negotiate with respect to personnel policies and practices and matters affecting working conditions so far as may be appropriate under this chapter and other applicable laws and regulations elaborated below. The scope of negotiations under this section is the same as under section 11(a) of Executive Order 11491. That is, under this subchapter a labor organization is

entitled to negotiate on the personnel policies and practices and matters affecting working conditions of employees in the bargaining unit which it represents, but only to the extent appropriate under laws and regulations which are set forth in the Federal Personnel Manual; consist of published agency policies and regulations issued at the agency level or level of primary national subdivision for which a compelling need exists (as determined under criteria established by the Authority); or are set forth in a national or other controlling agreement entered into by a higher unit of the agency.

Subsection (d) excepts certain enumerated matters from the obligation to negotiate under section 7215, in effect rendering bargaining on those matters optional or permissive; and recognize that there is an obligation to negotiate over the impact of realignments of work forces and technological change. Excepted from the obligation to negotiate are matters with respect to the numbers of employees in an agency; the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty (i.e., the agency's staffing patterns, including job content); and the technology of performing agency work.

Subsection (e) provides procedures for the resolution of negotiability issues arising in connection with negotiations. The procedures correspond exactly to those contained in section 11(c) of Executive Order 11491.

Section 7216. Unfair labor practices

Subsection (a) provides that certain enumerated actions are unfair labor practices for agencies. Similar unfair labor practices are contained in section 19(a) of Executive Order 11491. Those unfair labor practices are:

(1) interfering with, restraining, or coercing an employee in connection with the exercise of rights assured by this chapter of the United States Code;

(2) encouraging or discouraging membership in any labor organization by discrimination with regard to hiring, tenure, promotion, or other conditions of employment;

(3) sponsoring, controlling or otherwise assisting any labor organization, unless the assistance consists of furnishing customary and routine services and facilities—

(A) in a manner consistent with the best interests of the agency, its employees, and the organization, and

(B) on an impartial basis to any organization having equivalent status.

In addition, the subsection provides that it is an unfair labor practice for an agency to—

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

(5) refuse to accord appropriate recognition to a labor organization qualified for such recognition; or

(6) to refuse to consult or negotiate in good faith with a labor organization as required by the chapter.

Subsection (b) provides that certain actions are unfair labor practices for labor organizations. Similar unfair labor practices are contained in section 19(b) of Executive Order 11491 except that section 7216(b)(4) codifies the Federal Labor Relations Council's interpretation of section 19(b)(4) that it is an unfair labor practice for a labor organization to picket an agency in a labor-management dispute where such picketing interferes or reasonably threatens to interfere with an agency's operations. Specifically, this subsection makes it an unfair labor practice for a labor organization to—

(1) interfere with, restrain, or coerce an employee in connection with the exercise of rights assured by this chapter of the United States Code;

(2) cause or attempt to cause an agency to coerce an employee in connection with the exercise of rights under this chapter;

(3) coerce or attempt to coerce an employee, or to discipline, fine or take other economic sanction against a member of a labor organization, as punishment or reprisal or for the purpose of hindering or impeding work performance, productivity or the discharge of duties by the employee;

(4) (A) call, or participate in, a strike, work stoppage, slowdown, or picketing of an agency in a labor-management dispute if the picketing interferes or reasonably threatens to interfere with an agency's operations or (B) condone any activity described in (A) above by failing to take action to prevent or stop it;

(5) discriminate against an employee with regard to the terms or conditions of membership in the organization because of race, color, religion, national origin, sex, age, or handicapping condition; or

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

Subsection (c) provides that it is an unfair labor practice for a labor organization holding exclusive recognition to deny membership to a unit employee except under certain conditions. Those conditions are: (1) the employee's failure to meet reasonable occupational standards uniformly required for admission, or (2) failure by the employee to tender fees and dues uniformly required as a condition of acquiring and retaining membership. Similar language contained in section 19(c) of the Executive Order has been interpreted as an unfair labor practice provision. The subsection does not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution and bylaws as long as such action is consistent with the requirements of this chapter.

It is intended that unfair labor practice complaints will be handled by the General Counsel of the Authority in a manner essentially identical to National Labor Relations Board practices in the private sector. The one deviation from private sector practices is that it is envisioned that there be retained the current Executive Order 11491 requirement that there be first filed a pre-complaint charge which would provide an opportunity for informal resolution of the issues by the parties. If a matter is not resolved informally, a complaint may be filed with the General Counsel, who will conduct such investigation as is necessary to determine whether a reasonable basis for the com-

plaint has been established. If so, the General Counsel shall, in the absence of settlement, issue a notice of hearing. If a reasonable basis for the complaint has not been established, absent withdrawal, the complaint will be dismissed. At the formal hearing before an administrative law judge the General Counsel shall prosecute the unfair labor practice for the complainant. After the close of the hearing, the administrative law judge will issue a report and recommendation. The Authority shall, subject to its regulations, consider any exceptions filed by the parties and decide the unfair labor practice complaint.

Subsection (d) is similar to a provision contained in section 19(d) of Executive Order 11491. Under section 19(d), issues which can be raised under a statutory appeal procedure may not be raised as an unfair labor practice. This prohibition is preserved in section 7216(d). However, section 7221(d) of this chapter permits a negotiated grievance procedure to cover matters for which a statutory appeal procedure exists, except for those matters specifically enumerated. Where a negotiated grievance procedure covers a non-excepted matter for which a statutory appeal procedure exists (other than adverse action and discrimination matters), the otherwise applicable statutory appeal procedure may not be invoked to resolve such matters. Accordingly, the issues involved may be raised either under the negotiated grievance procedure or, where appropriate, in an unfair labor practice proceeding. Those matters specifically enumerated in section 7221(d), which cannot be covered in a negotiated grievance procedure must be resolved exclusively under the applicable statutory appeal procedure. Accordingly, issues which can be raised under such statutory appeal procedure may not be raised in an unfair labor practice proceeding. Finally, where discrimination or adverse action matters (including demotion or removal for unacceptable performance under section 4303 of this title) are covered by a negotiated grievance procedure, an employee has the option of using either the negotiated procedure or statutory procedures. The use of either option will preclude the use of the unfair labor practice procedures.

The subsection also provides that appeals or grievance decisions shall not be construed as unfair labor practice decisions under this chapter nor as precedent for such decisions. All complaints of unfair labor practices prohibited under this section that cannot be resolved by the parties shall be filed with the FLRA.

Subsection (e) provides that questions concerning whether issues can properly be raised under an appeals procedure as described in section 7216(d) shall be referred for resolution to the agency responsible for final decisions relating to those issues. This provision is similar to section 7221(g) of this subchapter in purpose and effect. Under section 7216(e), the question is whether a statutory appeal procedure described in 7221(d) precludes an unfair labor practice proceeding whereas under 7221(g) the question is whether such statutory appeal procedure renders a grievance nongrievable or nonarbitrable.

Section 7217. Standards of conduct for labor organizations

This section provides that labor organizations must subscribe to certain standards of conduct and that the Assistant Secretary shall prescribe regulations to effectuate this section. Subsection (a) sets

forth these standards of conduct, which are the same as contained in Executive Order 11491. An organization does not have to prove that it is free from corrupt influences and influences opposed to basic democratic values if its governing requirements include explicit and detailed provisions requiring it to (1) maintain democratic procedures and practices, (2) exclude persons from office in the organization if they are affiliated with communist or other totalitarian influences, (3) prohibit conflicts of interest by its officers and agents, and (4) maintain fiscal integrity in the organization's affairs.

Under subsection (b), an organization could still be 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 the organization is subject to such influences or that the organization has been subject to a sanction by a parent or affiliated organization because of its unwillingness or inability to comply with the requirements of subsection (a).

Subsection (c) requires a labor organization which has or seeks recognition as a representative of employees to file financial and other reports with the Assistant Secretary. It also must provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

Subsection (d) requires that complaints of violations of this section be filed with the Assistant Secretary. As noted under section 7204(b), the power and duty to decide alleged violations of the standards of conduct are not being transferred to the Authority because the Assistant Secretary administers similar standards in the private sector. Further, as noted under section 7204(c), the Authority may review the Assistant Secretary standards of conduct decisions as the Federal Labor Relations Council now does under Executive Order 11491.

This subsection also empowers the Assistant Secretary to require a labor organization to cease and desist from violations of this section and requires it to take action that he considers appropriate to carry out this section's policies.

Section 7218. Basic provisions of agreements

This section provides that each agreement between an agency and a labor organization is subject to certain enumerated requirements and mandates that these requirements be expressly stated in any agreement between an agency and a labor organization. Subsection 7218 (a)(1) provides that in the administration of agreements, officials and employees are governed by existing or future laws, the regulations of appropriate authorities, and certain published agency policies and regulations. Subsection (2) enumerates the rights that management officials of an agency must retain, and in effect prohibits negotiating on proposals which would negate management's reserved authority as to the rights involved: to determine the mission, budget, organization, and internal security practices of the agency; to direct employees of the agency; to hire, promote, transfer, assign, and retain employees in positions within the agency; to suspend, demote, discharge, or take other disciplinary action against employees; to relieve employees from duties because of lack of work or for other legitimate reasons; to maintain the efficiency of Government operations entrusted to the

agency; to determine the methods (how), means (with what), and personnel (by whom) by which agency operations will be conducted; and to take whatever actions may be necessary to carry out the agency's mission in emergencies. Section 7218(a) (1) and (2) corresponds to section 12(a) and (b) of Executive Order 11491 except that matters relating to an agency's mission, budget, organization, and internal security practices are prohibited from bargaining under subsection (2); and, further, it is specified in subsection (2) that nothing in that subsection shall preclude parties from negotiating procedures which management will observe in exercising its authority to decide or act or from negotiating arrangements for employees adversely affected provided that such negotiations do not result in certain consequences and are consonant with law and regulations as provided in section 7215(c). These principles with respect to the obligation to negotiate "procedures" and "impact," while not expressly stated in Executive Order 11491, are established in case law thereunder.

Subsection 7218(c) continues the requirement contained in Executive Order 11491 that nothing in the agreement shall require membership in a labor organization or require employees to pay money to a labor organization except pursuant to a voluntary, written authorization for the payment of dues through payroll deductions.

Subsection 7218(d) provides that the requirements of section 7218 must be expressly stated in all agreements between an agency and an organization.

Section 7219. Approval of agreements

This section provides that a negotiated agreement is subject to the approval of the head of the agency involved or other designated official, and provides a time limit (45 days from the date the agreement is signed by the negotiating parties) for the completion of such agency action. The purpose of the provision is to ensure that agreements conform to applicable laws (including this subchapter), existing published agency policies and regulations (unless an agency has granted an exception to them), and regulations of other appropriate authorities (such as the Office of Personnel Management). A substantially identical provision is contained in Executive Order 11491. Experience under that Executive Order in numerous negotiability disputes established that the provision was warranted to accomplish the purpose described, and that the time limit imposed was a reasonable one to expedite the review process without sacrificing the quality of such review.

Section 7221. Grievance procedures

Subsection (a) provides that an agreement must contain a procedure for the consideration of grievances. The coverage and scope of the procedure is left to negotiation between the parties so long as it does not conflict with statute and so long as it does not cover any of the matters specifically excluded from coverage by section 7221(d). Thus, if the parties choose to do so, they may negotiate into coverage under their grievance procedure many of the matters that are covered by statutory appeal procedures, such as appeal from the withholding of within-grade salary increases and appeal from reduction-in-force actions. With the exception of adverse actions and discrimination

complaints, where a grievance falls within the coverage of the negotiated grievance procedure, both union and nonunion members of the bargaining unit must use the negotiated procedure to resolve the grievance. Where the negotiated procedure covers adverse actions or discrimination complaints, under section 7221(e) and 7221(f) the employee will have an option to use the negotiated grievance procedure or the statutory appeal procedure, but not both.

Subsection (b) provides for the adjustment of grievances between an employee or group of employees and the agency without the intervention of the exclusive representative. However, in such cases the adjustment cannot be inconsistent with any of the terms of the argument and the exclusive representative must have been given an opportunity to be present at the adjustment.

Subsection (c) provides that a negotiated grievance procedure must provide for arbitration as the final step of the procedure. This contrasts with the provisions of Executive Order 11491 under which the determination as to whether to provide for arbitration was left to negotiation between the parties. However, arbitration can only be invoked by the agency or the exclusive representative. Thus an aggrieved employee does not have a right to arbitration. This maintains the right of an exclusive representative to refuse to take to arbitration any grievance which it, in good faith, believes should not be processed through to arbitration so long as it meets its representational responsibilities under this subchapter. This section further requires the parties to provide in their grievance procedure that, except as provided in section 7221(g), an arbitrator will be empowered to resolve arbitrability questions.

Subsection (d) provides that a negotiated grievance procedure may cover any matter over which an agency has authority so long as it does not otherwise conflict with the provisions of this subchapter, and so long as it doesn't include any matters involving examination, certification and appointment, suitability, classification, political activities, retirement, life and health insurance, national security or the Fair Labor Standards Act.

Subsection (e) provides employees with an option, in appealing matters covered under 5 U.S.C. section 4303 (demotion or removal for unacceptable performance) or 5 U.S.C. section 7512 (removal, suspension for more than 30 days, reduction in grade, reduction in pay of an amount exceeding one step of an employee's grade or 3 percent of the employee's basic pay, furlough for 30 days or less), of using the statutory appeal procedure under 5 U.S.C. section 7701 or the negotiated grievance procedure if such matters have been negotiated into coverage under the grievance procedure. It also provides that matters similar to those listed above which may arise under other personnel systems applicable to employees covered by this subchapter, such as those provided in title 38, United States Code, may, in the discretion of the aggrieved employee, be raised under either the negotiated grievance procedure or under any appellate procedures which would otherwise be available to the employee if the matter weren't covered by the grievance procedure.

Subsection (f) provides employees with an option on discrimination matters listed in 5 U.S.C. section 2302(b)(1) to use either a sta-

tutory procedure or the negotiated grievance procedure to resolve the matter. Selection by the employee of the negotiated procedure would not prejudice an employee's right to request the Merit Systems Protection Board to review a final decision in the matter as provided for in 5 U.S.C. section 7701.

Subsection (g) provides that questions as to whether a grievance is on a matter excepted from coverage under the grievance procedure by section 7221 (d) shall be referred for resolution to the agency responsible for final decisions in those matters.

Subsection (h) provides that if an employee exercises the option to pursue a matter covered under 5 U.S.C. sections 4303 and 7512 through the negotiated grievance procedure an arbitrator must apply the same standards in deciding the case as would be applied by an administrative law judge or an appeals officer if the case had been appealed through the appellate procedures of 5 U.S.C. section 7701.

Subsection (i) provides that the parties must negotiate the allocation of the costs of arbitration. It also prohibits an arbitrator from awarding attorney or representative fees, except in matters where an employee is the prevailing party and the arbitrator's decision is based on a finding of discrimination. Attorneys fees may be awarded and shall be governed by the standards applicable under the Civil Rights Act of 1964.

Subsection (j) provides that challenges to an arbitrator's award may be sustained by the Authority on grounds that the award violates applicable laws, appropriate regulations, or other grounds similar to those applied by Federal Courts in private sector labor-management relations. Challenges are not permitted to the Authority on matters covered by subsection (e). Decisions of the Authority are final, except for the right of an aggrieved employee under subsection (f).

Subsection (k) provides for judicial review of an arbitrator's award in matters covered under 5 U.S.C. sections 4303 and 7512 in the same manner and under the same conditions that apply to matters decided by the Merit Systems Protection Board. In applying the provisions of 5 U.S.C. section 7702 (Judicial review of decisions of the Merit Systems Protection Board) the word "arbitrator" should be read in place of the words "Merit Systems Protection Board". It further provides for judicial review of an arbitrator's award in matters similar to those covered under 5 U.S.C. sections 4303 and 7512 which arise under other personnel systems in the same manner and on the same basis as would be available to an employee who had not used the negotiated grievance procedure to appeal the matter.

The provision for judicial review is intended to assure conformity between the decisions of arbitrators with those of the Merit Systems Protection Board. Under the terms of this subsection, an arbitrator must establish a record that will meet the judicial tests provided for in section 7702 of this title.

Section 7222. Federal Service Impasses Panel; negotiation impasses

Subsection (a) (1) establishes within the Authority the Federal Services Impasses Panel. The Panel is composed of the Chairman and an even number of members, appointed by the President. No Federal employee shall be appointed to serve as a member of the Panel. Sub-

section (a) (2) provides for staggered appointments of Panel members, and that the Chairman shall serve for a five-year term. Any member of the Panel may be removed by the President. Subsection (a) (3) provides that the Panel may appoint an executive secretary. It also provides for the pay rates of members of the Panel.

Subsection (b) provides that the Federal Mediation and Conciliation Service upon request shall provide service and assistance to agencies and labor unions in the resolution of negotiation impasses.

Subsection (c) provides if voluntary arrangements fail either the labor union or the agency may request the Panel to consider the matter.

Subsection (d) provides that the Panel shall promptly investigate any impasse, and recommend procedures for resolving the matter. If the parties do not arrive at a settlement through means of one of the procedures recommended, the Panel may hold hearings and then take whatever action is necessary that is not inconsistent with the provisions of this chapter to resolve the impasse. Notice of the Panel's final action shall be promptly served and shall be binding for the term of the agreement unless the parties mutually agree otherwise.

Section 7231. Allotments to representatives

This section provides for agency payroll deduction of labor organization dues pursuant to written employee assignment and for the right to terminate such assignment at intervals of not more than 6 months. A similar provision is contained in Executive Order 11491 except that the Executive Order's requirement that such a payroll deduction be subject to the regulations of the Civil Service Commission has been deleted. Subsection (b) requires that an allotment for the deduction of dues terminates when the dues withholding agreement between the agency and the exclusive representative is terminated or ceases to be applicable to the employee. The allotment would also be terminated if the employee has been suspended or expelled from the labor organization which is the exclusive representative.

Section 7232. Use of official time.

This section provides for limitations on the use of official time by employees for labor organization activities. The same limitations are contained in Executive Order 11491. The limitations contained in the first part of this provision concern the use of official time for internal labor organization business and are directed toward restricting to nonduty hours activities which are of primary concern and benefit only to the labor organization. The second part of the provision prohibits employees who represent a labor organization from being on official time when negotiating an agreement, except to the extent that the negotiating parties agree otherwise within certain specified limits. Under the second part, the negotiating parties may agree to authorize official time for a reasonable number of labor organization negotiators, normally not to exceed the number of management representatives, for up to 40 hours or one-half the time spent in negotiations relating to the negotiation or renewal of a basic collective bargaining agreement, as opposed to negotiations which arise out of circumstances during the term of the basic agreement (midcontract negotiations). But nothing in the provision prohibits an agency and labor organization from negotiating provisions which provide

for official time for labor organization representatives to engage in contract administration and other representational activities (including negotiations which arise out of circumstances during the term of the basic agreement) which are of mutual interest to both the agency and the labor organization and which relate to the labor-management relationship and not to "internal" labor organization business. Examples of such representational and contract administration activities include the investigation and attempted informal resolution of employee grievances, participation in formal grievance resolution procedures, attending or preparing for meetings of committees on which both the labor organization and management are represented and discussing problems in agreement administration with management officials. The types of representational activities described, when the agency determines that such activities are related to the performance of labor-management functions contributing to the efficient administration of the agency, are consistent with the stated purposes of this chapter and agreement provisions pertaining to the use of official time for such contract administration purposes are of wide application throughout the Federal sector.

Section 7233. Remedial actions

This section provides that remedial action may be directed by appropriate authority, including an arbitrator, in order to effectuate the purposes and policies expressed in this subchapter, so long as such remedial action is consistent with the statute, including the backpay provisions of section 5596 of title 5, United States Code (Back Pay Act of 1966).

Section 7234. Subpenas

This section provides for the issuance of subpoenas by any Authority member, the General Counsel, the Panel, or any employee designated by the Authority requiring the attendance and testimony of witnesses and the production of evidence. It provides that no subpoena shall issue requiring disclosure of intra-management guidance, advice or training within an agency or between an agency and the Office of Personnel Management. It also provides for the administration of oaths, the examination of witnesses and the receipt of evidence. In the case of failure to obey a subpoena, a United States district court is authorized by this section to issue an order requiring the appearance of witnesses or the production of evidence. Failure to comply with the court's order could be punished as contempt of court. This section also provides that witnesses be paid the same fees and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

Section 7235. Regulations

This section provides for the issuance of regulations by the Authority, the General Counsel, the Panel, and the Federal Mediation and Conciliation Service, to carry out their respective functions. The requirements of the Administrative Procedure Act shall be applicable to the adoption, amendment or repeal of such regulations. This provision is consistent with the practice which obtained in the issuance of regulations under Executive Order 11491.

Subsection 701(b) of the bill specifies that certain laws, agreements, recognitions, policies, regulations, procedures and decisions would not be precluded by the amendments adopted earlier in section 701.

Paragraph (1) sanctions the maintenance of exclusive recognitions, certifications, or lawful bargaining agreements entered into before the effective date of this subchapter, and the maintenance of recognition for units of management officials or supervisors by labor organizations which traditionally represent such personnel in private industry and which hold recognition in an agency on the effective date of this subchapter. Similar "grandfather" provisions are contained in Executive Order 11491.

Paragraph (2) provides for the continuation of policies, regulations, procedures, and decisions established or issued under Executive Order 11491 or any related Executive order, until revised or revoked by law, or until superseded by action of the Authority. Under this provision, cases which arose under Executive Order 11491 shall continue to be processed after the effective date of this subchapter in the same manner as before such effective date, except to the extent otherwise provided by law or by appropriate decision or regulation of the Authority.

Subsection 701(c) of the bill provides that the terms of office of members of the Authority, and the General Counsel, which terms are fixed under Reorganization Plan No. 2 of 1978, shall continue in effect until those terms would expire under the reorganization plan, and that, upon the expiration of those terms, appointments to office will be made for the respective 5-year terms provided in section 7203 of title 5. It further provides that the terms of office of Impasse Panel members, which terms are not fixed under the reorganization plan, shall continue in effect until members of the Panel are appointed for the respective fixed terms provided in section 7222 of title 5.

Subsection 701(d) authorizes the appropriation of such funds as are necessary to carry out the functions of the Authority, the General Counsel, and the Panel, and the functions of the Assistant Secretary under this section.

The next subsection provides for an amendment of the analysis to add to this chapter.

Subsections 701 (f), (g), and (h) amend sections 5314-5316 of title 5, United States Code, to add the Chairmen, the Members, and the General Counsel of the Federal Labor Relations Authority to positions at levels III, IV, and V (respectively) of the Executive Schedule.

Section 702. Remedial Authority

This section of the Act amends the Back Pay Act of 1966 to reflect the broader interpretation of the statute that has been given the Back Pay Act in recent years by the Comptroller General and the Civil Service Commission through decision and regulations. It also reflects the 1976 decision of the Supreme Court in *United States v. Testan* by explicitly exempting reclassification actions from its provisions.

This provision would strike out subsections (b) and (c) of section 5596 of title 5, United States Code, and add new subsections (b) and

(c). The new subsection (b) provides for coverage under the Back Pay Act for any employee who is found by an appropriate authority to have suffered a withdrawal, reduction, denial, or denial of an increase in, all or part of the employee's pay, allowances, differentials or any other monetary or employment benefits which would not have occurred but for an unjustified or unwarranted action taken by an agency.

Subsection (b) (1) provides that when any of the above-described circumstances are found, the employee is entitled to be made whole for any losses found to have been suffered by the employee, less any interim earnings the employee may have earned and would not have earned if the unjustified or unwarranted action had not been taken. It specifically provides that a make-whole remedy may include reinstatement to the same position that the employee was in before the unjustified or unwarranted action was taken or for restoration to a substantially similar position. It also provides for directing a promotion to a higher level position when such an order would effectuate the make-whole purposes of the Act.

Subsection (b) (2) maintains the current provisions of the Back Pay Act regarding annual leave restoration that were added to the Act by Pub. L. 94-172 section 1(a) Dec. 23, 1975, 89 Stat. 1025. It provides that for all purposes an employee is deemed to have performed service for the agency during the period of the unjustified or unwarranted action.

Subsection (c) (1) defines an "unjustified or unwarranted action" to include acts of commission as well as omission with respect to non-discretionary provision of law, Executive order, regulation or collective bargaining agreement.

Subsection 5596(c) (2) defines administrative determination. The listed agencies and persons are not meant to be all-inclusive.

Subsection (c) (3) lists certain agencies and persons who, for purposes of applying the provisions of the Act, are deemed to be an "appropriate authority." The list is not meant to be all-inclusive.

Subsection (d) provides that the provisions of the section shall not apply to reclassification actions, thus specifically recognizing the Supreme Court decision in *United States v. Testan*. It also provides that in formulating a remedy under the Act an otherwise proper promotion action by a selecting official from a group of properly ranked and certified candidates cannot be set aside.

Subsection (e) provides that the Office of Personnel Management shall prescribe regulations to carry out the section. It specifically provides that the regulations do not apply to the Tennessee Valley Authority.

TITLE VIII—MISCELLANEOUS

SECTION 801. SAVINGS PROVISIONS

Subsection (a) of section 801 provides that all Executive orders, rules, and regulations shall continue in effect except as the provisions of this Act may govern. Such Executive Orders, rules, and regulations, are to continue in effect, according to their terms, until modified, terminated, suspended or repealed by the President, the Office of Personnel Management, the Merit System Protection Board, the Equal Em-

ployment Opportunity Commission, or the Federal Labor Relations Authority as to matters within their respective jurisdictions.

Subsection (b) provides that no provision of the Act shall affect any administrative proceedings pending at the time the provision takes effect. Orders are to be issued in such proceedings and appeals taken from those proceedings as if this Act has not been enacted.

Subsection (c) provides for the continuation of any suit by or against the heads of the Office of Personnel Management and Merit Systems Protection Board or officers or employers of those agencies, as in effect immediately before the effective date of the Act. Such suits, actions, or other proceedings are to be determined as if the Act had not been enacted.

SECTION 802. AUTHORIZATION OF APPROPRIATIONS

This section authorizes to be appropriated out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act.

It is expected that most of the funds necessary to carry out the provisions of this Act will be derived from appropriations under current law. The moneys needed for the Office of Personnel Management, Merit Systems Protection Board, and Office of Special Counsel are largely to be derived from current Civil Service Commission authorizations. The original estimates supplied by the Administration as to the allocation of resources among the new agencies and units, however, needs to be revised. The Committee has substantially increased the authority and responsibilities of the Merit Systems Protection Board and the Special Counsel. The resources allocated to these bodies should therefore be substantially greater than original Administration estimates.

SECTION 803. POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS PROVISIONS

This section makes clear that except as expressly provided in this Act, nothing in it shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which the President had immediately before the effective date of this Act. Nor is it to be construed to limit, curtail, or terminate the President's authority to delegate, redelegate, or terminate any delegation of functions which he had immediately before the effective date of this Act.

SECTION 804. TECHNICAL AND CONFORMING AMENDMENTS

Subsection (a) of this section provides that any provision in either Reorganization Plan Numbers 1 or 2 of 1978 inconsistent with any provision of this Act is repealed.

Subsection (b) authorizes the President or his designee to submit to the Senate Committee on Governmental Affairs and the House Committee on Post Office and Civil Service a draft of any technical and conforming amendments to title 5 of the United States Code which have not been made by this Act and which are necessary to reflect the amendments to the substantive provisions of law made by this Act and Reorganization Plan Numbered 2 of 1978. Such technical and conforming amendments must be submitted as soon as practicable but not later than 30 days after the date of enactment of this Act.

quired. This is in addition to existing staff transferred from other agencies to this function. The estimated costs are as follows:

Estimated cost—labor-management relations:

Fiscal year:	<i>Millions</i>
1979 -----	\$0.3
1980 -----	.5
1981 -----	.6
1982 -----	.6
1983 -----	.7

OTHER COSTS

There are a number of sections of this legislation which authorize or require the development of rules and regulations and require the submission of various new reports, but for which no specific costs have been attributed. It has been assumed that these new requirements will cost an additional \$1 million in the first year. Regulation development costs are expected to decrease over the projection period, and reporting costs to remain constant. The actual physical moving costs resulting from the reorganization have been estimated to be \$1 million in fiscal year 1979.

Estimated costs—general:

Fiscal year:	<i>Millions</i>
1979 -----	\$2.0
1980 -----	0.4
1981 -----	.4
1982 -----	.5
1983 -----	.5

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Mary Maginniss and Kathy Weiss.
10. Estimate approved by:

C. G. NUCKOLS
For James L. Blum,
Assistant Director for Budget Analysis.

IX. RECORD VOTE IN COMMITTEE

June 14, 1978

In compliance with section 133 of the Legislative Reorganization Act of 1946, as amended, rollcall votes taken during Committee consideration of this legislation are as follows: Vote on Eagleton/Javits Amendment on Veterans Preference: 7 yeas—9 nays.

YEAS	NAYS
Eagleton	Muskie
Sasser	Chiles
Humphrey	Nunn
Percy	Glenn
Javits	Stevens
Danforth	Mathias
Ribicoff	(Proxy)
	Jackson
	Roth
	Heinz

Vote on Study on Veterans Preference: 13 yeas—1 nay:

YEAS	NAYS
Muskie	Eagleton
Chiles	
Nunn	
Glenn	
Sasser	
Humphrey	
Percy	
Javits	
Stevens	
Mathias	
Danforth	
Heinz	
Ribicoff	

June 29, 1978

Vote on Javits/Ribicoff Amendment on appellate procedures in mixed discrimination cases: 7 yeas—4 nays:

YEAS	NAYS
Percy	Glenn
Javits	Sasser
Danforth	Mathias
Ribicoff	Heinz
(Proxy)	
Jackson	
Nunn	
Humphrey	

FINAL PASSAGE: Ordered reported:¹ 8 yeas—2 nays:

YEAS	NAYS
Eagleton	Stevens
Chiles	Mathias
Glenn	
Sasser	
Percy	
Javits	
Danforth	
Ribicoff	
(Proxy)	
Jackson	
Nunn	
Humphrey	

¹ Committee rules provide that on "Final Passage" proxies may be allowed solely for the purpose of recording a member's position on the pending question.

Calendar No. 972

95TH CONGRESS }
2d Session }

SENATE

{ REPORT
No. 95-1049

REORGANIZATION PLAN NO. 2 OF 1978

 JULY 28 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. RIBICOFF, from the Committee on Governmental Affairs,
submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. Res. 464]

The Committee on Governmental Affairs, to which was referred the resolution (S. Res. 464) to disapprove Reorganization Plan No. 2 of 1978, having considered the same, reports unfavorably thereon and recommends that the resolution do not pass.

PURPOSE OF THE PLAN

Reorganization Plan No. 2 of 1978 is part of the President's comprehensive proposal to reform the Federal personnel management system.

The stated purpose of the Plan is to "create new institutions to increase the effectiveness of management and strengthen the protection of employee rights." Together, the Reorganization Plan and the Civil Service Reform Act present a complementary set of reforms in the civil service structure and system. The Plan establishes the organizational framework that is essential to achieving lasting improvements in the administration of the Federal personnel system. Its acceptance by Congress will make possible the attainment of the substantive reforms embodied in the Civil Service Reform Act.

Among the structural deficiencies that Reorganization Plan No. 2 is designed to overcome are the following:

1. *The conflicting roles of the Civil Service Commission.*—The Commission has so many conflicting roles that it is unable to perform all of them adequately. At one and the same time it is expected to serve the President in providing managerial leadership for the personnel man-

agement functions in the executive branch, while serving as the protector of the integrity of the merit system, protecting employee rights and performing a variety of adjudicatory functions.

2. *Lack of appropriate staff to the President for personnel management.*—The President must rely on a semi-independent body separated by structure and tradition from the Chief Executive. As a consequence, Presidential effectiveness in directing Federal personnel management is weakened and problems do not receive the attention they should.

3. *Lack of political neutrality.*—The Civil Service Commission, despite its presumed political neutrality, has not been an effective deterrent to partisan political or other abuses of the merit system.

4. *Fragmented labor-management responsibilities.*—Labor-management functions are fragmented among the Federal Relations Council, the Federal Service Impasses Panel, the Department of Labor, and the Civil Service Commission. There is a widely acknowledged need to create one institution which will be responsible for functions in the Federal labor-relations area.

5. *Over-centralization of personnel management functions in the Civil Service Commission.*—Control of personnel management functions is so centralized that it greatly adds to the paperwork burden, contributes to system inflexibility and causes excessive delays.

In his Message to Congress on May 23, the President stated:

I am confident that this Plan and the companion civil service reform legislation will both lead to more effective protection of Federal employees' legitimate rights and a more rewarding workplace. At the same time, the American people will benefit from a better managed, more productive and more efficient Federal Government.

MAJOR PROVISIONS OF REORGANIZATION PLAN NO. 2

Reorganization Plan No. 2 provides the structural framework for the Civil Service Reform legislation the President has submitted to Congress (S. 2640).

The plan replaces the present Civil Service Commission with two new agencies: an Office of Personnel Management and a Merit Systems Protection Board.

The OPM will be the central personnel agency of the Federal government. The Office will aid the President in preparing rules for the administration of civil employment; advise the President on civil employment matters; execute, administer and enforce civil service laws, rules and regulations; coordinate research in improved personnel management; and recommend to the President actions to apply merit principles in all areas of personnel management.

The OPM will be headed by a Director, appointed by the President and confirmed by the Senate.

The Board will be headed by a bipartisan panel of three members appointed by the President and confirmed by the Senate. They will serve 6-year, staggered terms. The Board will exercise all of the adjudicatory functions now vested in the Civil Service Commission, and it will serve as the major protector of the merit system and employee rights.

The plan creates, within the Board, a Special Counsel to investigate and prosecute political abuses and merit system violations. The Special Counsel will be appointed to a 4-year term by the President and confirmed by the Senate. The Special Counsel will be independent of, and not subject to, the Board.

Finally, the Reorganization Plan establishes a Federal Labor Relations Authority as a new agency responsible for administering the Federal Labor Relations program. The Authority will assume functions now held by a Federal Labor Relations Council and certain duties performed by the Assistant Secretary of Labor for Labor-Management relations. These include: determining appropriate bargaining units, supervising elections and certifying exclusive bargaining units; investigating and prosecuting unfair labor practice complaints; and deciding appeals from determinations of issues alleged to be non-negotiable. The plan also continues in existence the Federal Service Impasses Panel, which will operate as a distinct entity within the Authority.

The Authority will consist of a chairman, two members and a General Counsel, all appointed by the President and confirmed by the Senate.

The plan will take effect at such time or times, on or before January 1, 1979, as the President shall specify, but not sooner than the earliest date allowable under section 906 of title 5, United States Code.

HEARINGS

The committee held joint hearing on both the Civil Service Reform legislation (S. 2640) and Reorganization Plan No. 2. The President submitted S. 2640 to Congress in March, but the plan was not submitted formally until May. Before the hearings began in March, however, the administration had sent to the committee a draft of the plan which did not differ significantly from the version sent up in May. Thus, the witnesses' testimony and the questions from committee members covered both S. 2640 and the reorganization plan.

There were 12 days of hearings held, during which 86 individuals representing 55 organizations testified. In addition, the committee wrote to almost 90 experts in public administration and personnel management requesting their views on the bill and the plan. A large majority of the respondents expressed strong support for the reforms. Most of the witnesses who testified also supported both the bill and the plan.

COST ESTIMATE

The cost estimate prepared by the Congressional Budget Office is contained in the following letter received from its Director:

JULY 24, 1978.

HON. ABRAHAM RIBICOFF,
Chairman, Committee on Governmental Affairs,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed Senate Resolution 464, as ordered reported by the Senate Committee

on Governmental Affairs, July 24, 1978. This resolution would disapprove the reorganization plan proposed by the President for the reorganization of the Civil Service Commission.

Based on this review, it is estimated that the cost of implementing this reorganization plan would be approximately \$3 million in the first year, fiscal year 1979. Thereafter the cost would be about \$2.7 million in fiscal year 1980, increasing each year with inflation to \$3.2 million in fiscal year 1983.

These costs include the salaries and benefits of additional personnel in the Office of Personnel Management, the Merit Systems Protection Board, and the Federal Labor Relations Authority, as well as projected costs for research in personnel management. The estimate also includes approximately \$1 million in fiscal year 1979 for relocation of personnel.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin, *Director*.

COMMITTEE ACTION

On July 24, the Governmental Affairs Committee, by a vote of 12 to 2, reported the plan to the Senate with a recommendation opposing the resolution of disapproval that was pending before the Senate.

ROLLCALL VOTES

July 24, 1978

Vote on committee disapproval of pending resolution of disapproval regarding Reorganization Plan No. 2.

Aye	Nay
Ribicoff	Stevens
Jackson	Mathias
Eagleton	
Chiles	
Nunn	
Sasser	
Humphrey	
Javits	
Roth	
Danforth	
Heinz	
Proxy	
Percy	

SECTION-BY-SECTION ANALYSIS

PART I. OFFICE OF PERSONNEL MANAGEMENT

Section 101. Establishment of the Office of Personnel Management and its Director and other matters

This section provides for an independent establishment in the executive branch to be called the Office of Personnel Management. It

provides for the appointment by the President of the Office of Personnel Management, by and with the advice and consent of the Senate, and for his compensation at Level II of the Executive Schedule. It further abolishes the position referred to in 5 U.S.C. 5109(b), involving duties related to retirement, life insurance and health benefits.

Section 102. Transfer of functions

This section transfers, except as otherwise specified in the Plan, all of the functions now vested by statute in the U.S. Civil Service Commission, its Chairman, or the Boards of Examiners established under 5 U.S.C. 1105, to the Director of the Office of Personnel Management. This transfer of functions effects essentially the transfer of the policymaking, executive, and managerial functions.

Section 103. Deputy Director and Associate Directors

This section provides for the appointment by the President of a Deputy Director of the Office of Personnel Management, by and with the advice and consent of the Senate, and for his compensation at Level III of the Executive Schedule. The duties of the Deputy are to be prescribed by the Director and the Deputy shall act for the Director during his absence or disability or during a vacancy in the Office of the Director.

This section further provides for the appointment within the excepted service of as many as five Associate Directors who shall be compensated at Level IV of the Executive Schedule and whose position titles shall be determined by the Director.

Section 104. Functions of the Director

This section provides that the functions of the Director shall include, but not be limited to: as the President may request, aiding the President in preparing rules of the administration of civilian employment now within the jurisdiction of the Civil Service Commission; advising the President, at his request, on any civilian employment matters now within the jurisdiction of the Commission. This section also articulates the Director's responsibility, except to the extent that such functions remain vested in the Merit System Protection Board or are transferred to the Special Counsel, for executing, administering and enforcing the civil service rules and regulations of the President and of the Office and the statutes governing them, and other activities of the Office, including retirement and classification matters. This section authorizes the Director to conduct or otherwise provide for studies and research for the purpose of improving personnel management and recommending to the President actions to further the efficiency of the Civil Service and the systematic application of merit systems principles in areas such as selection, promotion, transfer, performance, pay conditions of service, tenure and separation. Finally, this section assigns the Director responsibility for performing the training responsibilities now performed by the Commission as set forth in 5 U.S.C., chapter 41.

On July 11, the President submitted an amendment to Section 104(c) of the Plan which provided that the OPM Director, where appropriate, shall provide to the public a reasonable opportunity to comment and submit written views on the implementation and interpretation of OPM rules and regulations.

Section 105. Authority to Delegate functions.

The section provides that the Director may delegate to the heads of agencies employing persons in the competitive service the performance of any function or portion thereof transferred under this Plan as it relates to employees or applicants for employment in such agencies.

PART II. MERIT SYSTEMS PROTECTION BOARD

Section 201. Merit Systems Protection Board

Subsection (a) changes the designation of the United States Civil Service Commission to the Merit Systems Protection Board and redesignates the Commissioners of the Civil Service Commission as members of the Board. Subsection (b) affirms that the Chairman of the Board will be its chief executive and administrative officer and abolishes the position of Executive Director currently established in section 1103 (d) of title 5, United States Code.

By redesignating the Civil Service Commission the Merit Systems Protection Board rather than abolishing the Commission and creating a new entity by that name, the 6-year terms of the Commissioners are preserved. (The Reorganization Act does not allow for the creation of an office with a term longer than 4 years.)

Section 202. Functions of the Merit Systems Protection Board and related matters

Subsection (a) sets forth the hearing, adjudicatory, and appeals authority of the Board. It authorizes the Board to hear and decide the following statutory appeals and matters currently adjudicated by the Commission :

- (1) Political activities of certain State, local, and Federal employees (Hatch Act violations) (5 U.S.C. 1504-1507 and 7325);
- (2) Withholding of within-grade salary increases (5 U.S.C. 5335);
- (3) Removal of an administrative law judge (5 U.S.C. 7521);
- (4) Adverse actions against preference eligibles (5 U.S.C. 7701);
- (5) Determinations by the Bureau of Retirement, Insurance, and Occupational Health concerning retirement applications and annuities (5 U.S.C. 8347 (d)); and
- (6) Restoration to duty following military service (38 U.S.C. 2023).

Subsection (b) provides that the Board shall retain the function now vested in the Commission or its Chairman of enforcing its adjudicative decisions in those matters covered in subsection (a) of this section pursuant to the provisions of 5 U.S.C. 1104 (a) (5) and (b) (4).

Subsection (c) provides that a member of the Board may request an interpretation of regulations or policy directives issued by the Office of Personnel Management in connection with a matter before the Board.

Subsection (d) provides that the Board must notify the Director of the Office of Personnel Management whenever the interpretation or application of a rule, regulation or policy directive issued by the Office is at issue in any matter before the Board and give the Director standing to intervene in the proceedings.

Subsections (e) and (f) provide for the designation, by the Board, of chairmen of performance rating boards and, by the chairman, of a chairman of boards of review in connection with the removal of air traffic controllers from air traffic controller positions; respectively.

Subsection (g) accords the Board authority to conduct special studies relating to the Civil Service, and to other merit systems in the Executive Branch, and to report to the President and the Congress concerning whether the public interest in a workforce free of personnel practices prohibited by law or regulations is being protected. The Board will have access to personnel records and information collected by the Office of Personnel Management to the extent permitted by law, and will be authorized to require additional reports from other agencies as needed. The Board shall make recommendations to the President and Congress as it deems appropriate.

Subsection (h) authorizes the Board to delegate any of its administrative functions to its staff. Subsection (i) authorizes the Board to issue regulations governing its functions, including regulations defining its review procedures, the time limits for appealing, and the rights and responsibilities of parties to appeals. The regulations shall be published in the Federal Register. Subsection (i) also provides that the Board shall not issue advisory opinions.

Section 203. Savings provision

This section provides that the Board shall accept appeals from agency actions effected prior to the effective date of the Plan. This section provides that: (1) proceedings before the Federal Employees Appeals Authority shall continue before the Board; (2) proceedings before the Appeals Review Board and before the Civil Service Commission on appeal from decisions of the Appeals Review Board shall continue before the Board. It is not intended, however, that matters continued before the Board must be heard by the Board *en banc*. This section further provides that other employee appeals heard by boards or bodies pursuant to law or regulation shall continue to be processed pursuant to those laws or regulations. The section does not affect the right of any employee to judicial review.

Section 204. The Special Counsel

Subsection (a) provides for the appointment by the President, with the advice and consent of the Senate, of a Special Counsel as the head of a separate Office located within the Board. Subsection (a) further provides that the Special Counsel's appointment shall be for a term of 4 years and that he shall be compensated at Level IV of the Executive Schedule. It is intended that the Special Counsel shall be independent of the Board and not subject to direction by the Board.

Subsection (b) of this section transfers to the Special Counsel all functions of the Commission relating to investigations of prohibited political activity on the part of Federal employees (Chapter 73 of title 5 U.S. Code) and of certain State and local employees (Chapter 15 of title 5, U.S. Code). Additionally, it authorizes the Special Counsel to investigate to ascertain whether information that should have been disclosed under the Freedom of Information Act has been withheld by a Federal official in a capricious or arbitrary manner, under 5 U.S.C. 552(a)(4)(F).

Subsection (c) authorizes the Special Counsel to investigate, pursuant to 5 U.S.C. 1303, allegations of personnel practices which are prohibited by law or regulation. The initiation of such investigations would not be contingent on the receipt of a formal complaint. The Special Counsel could investigate on his own initiative based on information from any source.

Subsection (d) provides that when the Special Counsel determines that there are personnel practices prohibited by law or regulation which require corrective action, he shall report his findings and recommendations to the Chairman of the Merit Systems Protection Board, to the agency affected and to the Office of Personnel Management, and may report such findings to the President.

Subsection (e) provides that when he believes disciplinary action is warranted, the Special Counsel may prepare charges based on investigations carried out under this section against employees within the jurisdiction of the Board. (Employee coverage of matters within the Special Counsel's jurisdiction is determined by provisions of the pertinent statute or regulation.) Charges with supporting documentation are to be presented to the Board, which will determine whether the charges will be adjudicated by the Board itself, or by an administrative law judge designated by the Board. In the case of a Presidential appointee, the Special Counsel would refer the results of the investigation to the President.

Subsections (f) and (g) authorize the Special Counsel to appoint personnel needed to perform the functions of his office and to issue rules and regulations governing the receipt and investigation of matters under this section. The Special Counsel's regulations must be published in the Federal Register.

Subsection (h) provides that the Special Counsel shall issue no advisory opinions.

PART III. FEDERAL LABOR RELATIONS AUTHORITY

Section 301. Establishment of the Federal Labor Relations Authority

Subsection (a) of this section establishes the Federal Labor Relations Authority as an independent establishment in the executive branch; provides that the Authority be composed of three members, one of whom shall be the chairman, and not more than two of whom shall be members of the same political party; provides that members of the Authority are to hold no other office or position, except where provided by law or by the President.

Subsection (b) of this section provides that members of the Authority be appointed by the President, by and with the advice and consent of the Senate; provides that members of the Authority be compensated at the rate for Level IV of the Executive Schedule; provides that the President designate one member of the Authority to serve as Chairman; and provides that the chairman be compensated at the rate of Level III of the Executive Schedule.

Subsection (c) of this section provides for staggered terms of four years for members of the Authority, with the initial members being appointed for 2 and 3 years and the Chairman for 4 years, and provides that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member he replaces.

Subsection (d) of this section provides that the Authority shall make an annual report to the President for transmittal to the Congress.

Section 302. Establishment of the General Counsel of the Authority

This section establishes a General Counsel for the Authority. It provides that the General Counsel shall be appointed by the President by and with the advice and consent of the Senate for a term of 4 years and provides that he shall be compensated at the rate set for Level V of the Executive Schedule. This section provides further that the General Counsel shall perform duties as prescribed by the Authority, including but not limited to the duty of determining and presenting the facts required by the Authority to decide unfair labor practice complaints.

Section 303. The Federal Service Impasses Panel

This section transfers the existing Federal Service Impasses Panel to the Authority and provides for its continuance as a distinct organizational entity within the Authority.

Section 304. Functions

This section transfers, subject to the provisions of section 306, to the Authority: the functions of the Federal Labor Council under Executive Order 11491, as amended; the functions of the Civil Service Commission under sections 4(a) and 6(e) of Executive Order 11491, as amended; the functions of the Assistant Secretary of Labor for Labor Management Relations under Executive Order 11491, as amended, except for those functions related to alleged violations of the standards of conduct for labor organizations under section 6(a)(4) of that Executive Order; and to the panel, the functions and authorities of the Federal Service Impasses Panel under Executive Order 11491, as amended.

Section 305. Authority decisions

This section provides that the decisions of the Authority on any matter within its jurisdiction shall be final and not subject to judicial review.

Section 306. Other provisions

This section provides that, unless and until they are modified, revised, or revoked, all policies, regulations, and procedures established, and decisions issued, under Executive Order 11491, as amended, shall remain in full force and effect. This section reserves to the President the power to modify the functions transferred to the Authority and the Impasses Panel pursuant to Section 304 of this Plan.

Section 307. Savings provision

This section provides that all matters which relate to functions transferred by Section 304 to the Authority, which are pending on the effective date of the plan before the Federal Labor Relations Council, the Vice Chairman of the Civil Service Commission, or the Assistant Secretary for Labor-Management Relations shall continue before the Authority under its rules and procedures. All matters pending before the Federal Service Impasses Panel shall continue before the Panel under its rules and procedures.

PART IV. GENERAL PROVISIONS

Section 401. Incidental transfers

Section 401 provides for the transfer of personnel, property, records, unexpended balances of appropriations, allocations and other funds employed, used, held, available or to be made available in connection with the functions transferred under this plan to the appropriate agency or component thereof at such time as the Director of the Office of Management and Budget shall determine. No unexpended balances transferred may be used, however, for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget is authorized to terminate the affairs of any agency abolished by this Plan and to take such further measures as may be needed to effectuate the purposes of the plan.

Section 402. Interim officers

Section 402 authorizes the President to appoint employees in the executive branch at the time of the reorganization to act as Director and Deputy Director of the Office of Personnel Management, as Special Counsel, as Chairman and members of the Federal Labor Relations Authority, as Chairman and members of the Federal Service Impasses Panel and as General Counsel of the Authority, until those offices are filled under the provisions of this plan or by recess appointment. The intent is to carry over the existing Federal Service Impasses Panel into the new Federal Labor Relations Authority. In addition, the President would be entitled to authorize that these officials be compensated in accordance with the salaries specified for the offices mentioned above, in lieu of other compensation from the United States. The redesignation of the Civil Service Commission as the Merit Systems Protection Board in no way alters or interferes with the incumbency or term of office of the duly appointed chairman, vice-chairman, or member of the Civil Service Commission who becomes by virtue of this plan, chairman, vice-chairman, or member of the Board.

Section 403. Effective date

This section provides that the Plan shall take effect at such time or times, on or before January 1, 1979, as the President shall specify, but not sooner than the earliest date allowable under section 906 of title 5, United States Code.

MINORITY VIEWS OF MR. MATHIAS AND MR. STEVENS

We strongly favor civil service reform as a further means of improving the operations of government. However, we are deeply troubled by the committee's premature action on the reorganization plan. This plan should not be adopted until some version of S. 2640 is enacted into law. The President's plan is an integral part of his comprehensive reform package. It is inextricably intertwined with S. 2640, one of the most complex bills pending before this Congress. We can cite several examples of these interrelationships.

The plan creates an Office of Personnel Management (OPM) that assumes most of the functions and powers of the present bipartisan Civil Service Commission. The Director of OPM would have the responsibility to assure compliance with the Civil Service laws and

regulations. This one person will have enormous power and authority to affect the quality of the civil service.

The fundamental purpose of the Civil Service Act of 1883 was to preclude federal offices "from being used as reservoirs of political patronage or ordinary appliances of party power". Accordingly, the proponents of the merit system established the three-member, bipartisan Civil Service Commission. They were confident that an organization independent of political influences would be in the interest of the country and for the good of all.

This committee has insured that S. 2640 contains many vital safeguards against the possibilities for the Director's use of this power for personal or political favoritism. Now the Congress needs to carefully consider the legislation to determine whether the safeguards in the bill deal adequately with the added risks of the transfer of authority.

Additionally, should the plan go into effect prior to enactment of the legislation, there would be no merit principles in the law, and no prohibited personnel practices detailed. The skeletal structure would be there with none of the building blocks.

Finally, we know that the House Post Office and Civil Service Committee included Hatch Act reform provisions in its version of the legislation. If the provisions of this reform package are combined with Hatch Act reform, we will see the end of American government as we know it today. This action by the House committee raises the real possibility that we will see an impasse with this legislation. It would be irresponsible of this Congress to allow this Reorganization Plan to go into effect without first working its will on the bill. We are certain that enactment of any civil service reform legislation during this session will be a long and torturous process.

Senator Stevens and I introduced a Resolution of Disapproval (S. Res. 462) this past May. It reflects our belief that it is inappropriate to allow the reorganization plan to go into effect until the Congress is much farther along in reaching decisions on the bill.

CONFERENCE REPORT

	Page
*H. Rept. No. 95-1717, October 5, 1978, (Joint Explanatory Statement of Managers only) -----	793
*The conference provisions of the bill may be found in the Public Law version of the Act, above as page 1, except for those corrections in the enrollment made by S. Con. Res. 110, above at page 605.	
The Conference Report was also printed as S. Rept. No. 95-1272, dated October 4, 1978, and at 124 <i>Congressional Record</i> H 11624 (daily ed. Oct. 5, 1978) with Title VII beginning on page H 11647 and the Joint Explanatory Statement on page H 11658.	
To avoid duplication, only H. Rept. No. 95-1717 is reprinted in this legislative history.	

CIVIL SERVICE REFORM ACT OF 1978

OCTOBER 5, 1978.—Ordered to be printed

Mr. UDALL, from the committee of conference,
 submitted the following

CONFERENCE REPORT

[To accompany S. 2640]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2640) to reform the civil service laws, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Service Reform Act of 1978".

TABLE OF CONTENTS

Sec. 2. The table of contents is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

Sec. 3. Findings and statement of purpose.

TITLE I—MERIT SYSTEM PRINCIPLES

Sec. 101. Merit system principles; prohibited personnel practices.

TITLE II—CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

Sec. 201. Office of Personnel Management.

Sec. 202. Merit Systems Protection Board and Special Counsel.

Sec. 203. Performance appraisals.

Sec. 204. Adverse actions.

Sec. 205. Appeals.

Sec. 206. Technical and conforming amendments.

TABLE OF CONTENTS—Continued

TITLE III—STAFFING

- Sec. 301. Volunteer services.*
- Sec. 302. Interpreting assistance for deaf employees.*
- Sec. 303. Probationary period.*
- Sec. 304. Training.*
- Sec. 305. Travel, transportation, and subsistence.*
- Sec. 306. Retirement.*
- Sec. 307. Veterans and preference eligibles.*
- Sec. 308. Dual pay for retired members of the uniformed services.*
- Sec. 309. Civil service employment information.*
- Sec. 310. Minority recruitment program.*
- Sec. 311. Temporary employment limitation.*

TITLE IV—SENIOR EXECUTIVE SERVICE

- Sec. 401. General provisions.*
- Sec. 402. Authority for employment.*
- Sec. 403. Examination, certification, and appointment.*
- Sec. 404. Retention preference.*
- Sec. 405. Performance rating.*
- Sec. 406. Awarding of ranks.*
- Sec. 407. Pay rates and systems.*
- Sec. 408. Pay administration.*
- Sec. 409. Travel, transportation, and subsistence.*
- Sec. 410. Leave.*
- Sec. 411. Disciplinary actions.*
- Sec. 412. Retirement.*
- Sec. 413. Conversion to the Senior Executive Service.*
- Sec. 414. Limitations on executive positions.*
- Sec. 415. Effective date; congressional review.*

TITLE V—MERIT PAY

- Sec. 501. Pay for performance.*
- Sec. 502. Incentive awards amendments.*
- Sec. 503. Conforming and technical amendments.*
- Sec. 504. Effective date.*

TITLE VI—RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

- Sec. 601. Research programs and demonstration projects.*
- Sec. 602. Intergovernmental Personnel Act amendments.*
- Sec. 603. Amendments to the mobility program.*

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

- Sec. 701. Federal service labor-management relations.*
- Sec. 702. Backpay in case of unfair labor practices and grievances.*
- Sec. 703. Technical and conforming amendments.*
- Sec. 704. Miscellaneous provisions.*

TITLE VIII—GRADE AND PAY RETENTION

- Sec. 801. Grade and pay retention.*

TITLE IX—MISCELLANEOUS

- Sec. 901. Study on decentralization of governmental functions.*
- Sec. 902. Savings provisions.*
- Sec. 903. Authorization of appropriations.*
- Sec. 904. Powers of President unaffected except by express provisions.*
- Sec. 905. Reorganization plan.*
- Sec. 906. Technical and conforming amendments.*
- Sec. 907. Effective date.*

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE ON CONFERENCE

The managers on the part of the Senate and the House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2640), The Civil Service Reform Act of 1978, submit the following joint statement to the House and the Senate in explanation of the effect of the major actions agreed upon by the managers and recommended in the accompanying report:

FINDINGS AND STATEMENT OF PURPOSE

The conference substitute in section 3 combines the findings and purposes of both the Senate bill and the House amendment. It adopts the Senate language which states as one of the policies of the United States that the right of Federal employees to organize and bargain collectively, and participate through labor organizations in decisions which affect them, with full regard for the public interest and the effectual conduct of public business, should be specifically recognized in statute. A provision in the House amendment was modified to provide that research programs and demonstration projects will be subject to congressional oversight.

TITLE I

EXCLUSIONS FROM COVERAGE OF THE MERIT SYSTEM PRINCIPLES AND PROHIBITED PERSONNEL PRACTICES

The Senate bill applies the merit system principles and prohibited personnel practices to (A) an executive agency; (B) the Administrative Office of the U.S. Courts; and (C) the Government Printing Office. The Senate bill excludes from coverage (A) a Government corporation; (B) the Federal Bureau of Investigation, the Defense Intelligence Agency, the National Security Agency, certain positions in the Drug Enforcement Administration, and, as determined by the President, an executive agency or unit thereof whose principal function is the conduct of foreign intelligence or counterintelligence activities; (C) the General Accounting Office; and (D) any position excluded by the President based upon determination by him that it is necessary or warranted by conditions of good administration or because of its confidential, policymaking, policy-determining or policy-advocating character.

The House excludes only the U.S. Postal Service, the Postal Rate Commission and a limited number of Legislative Branch agencies from merit system principles. The House amendment excludes from coverage of the prohibited personnel practice (i) a Government corporation; (ii) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any executive agency

or unit thereof designated by the President which conducts foreign intelligence or counterintelligence activities. It also excludes from the application of prohibited personnel practices an action taken against an employee in a position which is excepted from the competitive service because of its confidential, policy-determining or policy-advocating character. Although the House amendment does not exclude the FBI from coverage of the prohibited personnel practices, it provides that functions of the Special Counsel relating to the enforcement of the section with respect to the Bureau must be carried out by the President or his designee. It also provides that disclosure described in section 2302(b)(3)(A) (disclosures of Government wrongdoing) shall be made to the Attorney General or his designee. The Attorney General is required to issue rules and regulations to protect employees and applicants for employment in the FBI from taking or failure to take any personnel action as a reprisal for such disclosure.

The conference substitute in section 2301 adopts the House provisions concerning the application of merit system principles. Unless a law, rule or regulation implementing or directly concerning the principles is violated (as under section 2302(b)(11)), the principles themselves may not be made the basis of a legal action by an employee or agency.

The conference substitute in section 2302 adopts the Senate approach to exclusions from the prohibited personnel practices with some modifications. The Drug Enforcement Agency and Foreign Service officers are not excluded from coverage of the prohibited personnel practices. In developing procedures under this bill for the consideration of alleged prohibited personnel practices and adverse action appeals, involving Foreign Service personnel, efforts should be made to achieve maximum compatibility with the Foreign Service Act, and to avoid either duplication or fragmentation of remedies. It is the committee's intent that full effect should be given to the laws applicable to Federal employees generally and also to those dealing specifically with the Foreign Service.

The conference substitute excludes the FBI from coverage of the prohibited personnel practices, except that matters pertaining to protection against reprisals for disclosure of certain information described in section 2302(b)(8) would be processed under special procedures similar to those provided in the House bill. The President, rather than the Special Counsel and the Merit Board, would have responsibility for enforcing this provision with respect to the FBI under section 2303.

ADMINISTRATION OF THE MERIT SYSTEM PRINCIPLES

The Senate bill authorizes the President, pursuant to his authority under this title, to take such actions, including the issuance of such rules, regulations, and directives as necessary to assure that personnel management in the agencies covered by the section is based on and embodies the merit system principles.

The House amendment contains a similar authorization for the President to take actions, including the issuance of rules, regulations, or directives to carry out the merit system principles. Since the House

amendment contains no exclusions from coverage of the merit system principles, the President's authority to administer the provision is broader than the Senate version.

The conference substitute in section 2301 (c) provides that in administering the provisions of this chapter the President shall have the same authority as contained in the Senate bill to take action to insure that personnel management is based on and embodies the merit system principles. With respect to any entity in the executive branch which is excluded under section 2302, the head of that entity must, pursuant to authority otherwise available, and subject to the inherent executive power of the President, take action which is consistent with the provisions of this title and which the agency head determines is necessary to insure that personnel management in that entity is based on and embodies the merit system principles.

CONTENT OF THE PRINCIPLES

One of the merit system principles listed in the Senate bill is that equal pay should be provided for work of equal value . . . with appropriate consideration of both national and local rates paid by non-Federal employers. The House amendment contains a similar principle but specifies that consideration should be of both national and local rates paid by "private sector" employers.

The conference substitute in section 2301 (b) (3) adopts the House language. This wording makes clear that this act is not intended to change law concerning the appropriate employers surveyed in determining comparability pay for Federal employees.

The conference substitute in section 2301 (b) (9) also adopts a modified House provision which says that employees should be protected against reprisal for lawful disclosure of certain kinds of information. The term "lawful disclosure" refers to the kinds of information listed in section 2302 (b) (8) of the title.

PERSONNEL ACTIONS

The Senate bill's definition of personnel action is similar to the House amendment with respect to most provisions. The Senate bill, however, refers to any other substantial change in duties that are inconsistent with an employee's salary or grade level. The House wording refers to a change which "may reasonably be expected to result in a reduction in pay or grade."

The conference substitute in section 2302 (a) (2) (x) is the same as the Senate bill. By adopting this wording, the conferees have no intention of returning to or restoring the concept of reduction in rank. To be covered under this provision a personnel action must be significant, but it need not be expected to result in a reduction in pay or grade. It must also be inconsistent with an employee's salary or grade level. Thus, for example, if an individual is currently employed and assigned duties or responsibilities consistent with the individual's professional training or qualifications for the job, it would constitute a personnel action if the individual were detailed, transferred, or re-assigned so that the employee's new overall duties or responsibilities

were inconsistent with the individual's professional training or qualifications. Or, if an individual holding decisionmaking responsibilities or supervisory authority found that such responsibilities or authority were reduced so that the employee's responsibilities were inconsistent with his or her salary or grade level, such an action could constitute a personnel action within the meaning of this subsection.

This is not intended to interfere with management's authority to assign individuals in accordance with available work, the priorities of the agency, and the needs of the agency for individuals with particular skills or to establish supervisory relationships. Moreover, it is the overall nature of the individual's responsibilities and duties that is the critical factor. The mere fact that a particular aspect of an individual's job assignment has been changed would not constitute a personnel action, without some showing that there has been a significant impact as described above on the overall nature or quality of his responsibilities or duties. If, for example, an employee working on a particular agency rulemaking proceeding is assigned comparable responsibilities with respect to a different rulemaking proceeding, that new assignment would not constitute a personnel action.

REPRISALS FOR DISCLOSURE OF INFORMATION

The Senate bill provides that it is a prohibited personnel practice to take or fail to take a personnel action as a reprisal for disclosure of certain information if such disclosure is not specifically prohibited by statute or Executive Order 11652, or any related amendments thereto. Among the kinds of information described in the Senate bill is information which the employee reasonably believes evidences a gross waste of funds.

The House provision refers to a waste of funds, not "gross" waste. It also provides that an employee would not be protected against reprisal for a disclosure of information if such disclosure is specifically prohibited by law or if such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs. The House amendment also makes it a prohibited personnel practice to take a reprisal action against an employee or applicant for disclosure of certain information to the Special Counsel of the Merit Systems Protection Board or the Inspector General of an agency or another employee designated by the Board to receive such information.

The conference substitute in section 2302(b)(8) adopts the Senate provision concerning gross waste. It adopts the House provision concerning disclosures not specifically prohibited by law in the interest of national defense or the conduct of foreign affairs. The reference to disclosures specifically prohibited by law is meant to refer to statutory law and court interpretations of those statutes. It does not refer to agency rules and regulations.

The conference report also adopts the House provision concerning reprisals for disclosure to the Special Counsel, an Inspector General of an agency, or another employee of an agency designated by the head of the agency to receive information outlined in the conference report.

CONDUCT UNRELATED TO JOB PERFORMANCE

The Senate bill contains no express provision concerning nonperformance related conduct of an employee or applicant.

The House amendment specifies that it is a prohibited personnel practice to discriminate for or against any employee or applicant on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others. The bill also provides, though, that nothing in the paragraph shall prohibit an agency from taking into account any conviction of the employee or applicant for any crime of violence or moral turpitude when determining suitability or fitness.

The conference report in section 2302(b)(10) adopts the House provision modified so that conviction of a crime may be taken into account when determining fitness or suitability of an employee or applicant. This provision is not meant as an encouragement to take conviction of a crime into account when determining the suitability or fitness of an employee or applicant for employment. Nor is it to be inferred that conviction of a crime is meant to disqualify an employee or an applicant from employment. The conferees intend that only conduct of the employee or applicant that is related to the duties to be assigned to an employee or applicant or to the employee's or applicant's performance or the performance of others may be taken into consideration in determining that employee's suitability or fitness. Conviction of a crime which has no bearing on the duties to be assigned to an employee or applicant or on the employee's or applicant's performance or the performance of others may not be the basis for discrimination for or against an employee or applicant.

VIOLATION OF LAW, RULE OR REGULATION IMPLEMENTING MERIT SYSTEM PRINCIPLES

The Senate bill makes it a prohibited personnel practice to take a personnel action in violation of a law, rule, or regulation implementing or relating to the merit system principles in section 2301.

The House amendment contains no comparable provision.

The conference substitute in section 2302(b)(11) adopts the Senate provision modified so that the law, rule, or regulation must "directly concern," a merit system principle in order to be actionable as a prohibited personnel practice. This provision would make unlawful the violation of a law, rule, or regulation implementing or directly concerning the merit system principles but which do not fall within the first 10 categories of prohibited personnel practices. Such actions may lead to appropriate discipline. For example, should a supervisor take action against an employee or applicant without regard for the individual's privacy or constitutional rights, such an action could result in dismissal, fine, reprimand, or other discipline for the supervisor.

DISCLOSURE OF INFORMATION TO CONGRESS

The Senate bill provides that this section of the bill shall not be construed to authorize the withholding of information from Congress

or the taking of any personnel action against an employee who discloses information to Congress.

The House amendment has no comparable provision.

The conference substitute in 2302 adopts the Senate provision. The provision is intended to make clear that by placing limitations on the kinds of information any employee may publicly disclose without suffering reprisal, there is no intent to limit the information an employee may provide to Congress or to authorize reprisal against an employee for providing information to Congress. For example, 18 U.S.C. 1905 prohibits public disclosure of information involving trade secrets. That statute does not apply to transmittal of such information by an agency to Congress. Section 2302(b) (8) of this act would not protect an employee against reprisal for public disclosure of such statutorily protected information, but it is not to be inferred that an employee is similarly unprotected if such disclosure is made to the appropriate unit of the Congress. Neither title I nor any other provision of the act should be construed as limiting in any way the rights of employees to communicate with or testify before Congress.

TITLE II

TERM OF THE DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT

The Senate bill provides that the Director of the Office shall have a 4-year term coterminous with that of the President, and that the Director may be removed only for inefficiency, neglect of duty, or malfeasance in office.

The conference substitute deletes the limitation on the President's removal power contained in the Senate bill, making the Director removable at the will of the President. In order to provide the Director with a measure of independence from the President in performing his duties, though, the conference substitute provides that the Director have a 4-year term, and deletes the Senate requirement that the term be coterminous with that of the President.

SENATE CONFIRMATION OF CHAIRMAN OF THE MSPB

The Senate bill requires confirmation of the Chairman of the Merit Systems Protection Board as chairman of the Board. The House amendment has no comparable provision.

The conference substitute in section 1203 adopts the Senate provision. This would mean that a sitting member of the Board who is nominated for the chairmanship must be confirmed by the Senate for that position. If the President appoints a person who is not serving on the Board to the chairmanship, that person could be confirmed simultaneously as both Chairman and a member of the Board.

STAYS OF AGENCY PERSONNEL ACTIONS

The Senate bill specifies procedures for the MSPB to issue temporary and permanent stays of agency personnel actions involving Hatch Act reprisals, reprisals against whistleblowers, or reprisals for the exercise of appeal rights. It authorizes the Special Counsel to peti-

tion the Merit Systems Protection Board for a stay of such personnel actions.

The House amendment allows the Special Counsel to order a stay of up to 30 days of any prohibited personnel practice. The MSPB may extend the Special Counsel's stay beyond 30 days.

The conference substitute in section 1208 adopts the Senate approach that the Board, as a quasi-judicial body, is the appropriate authority to issue the stay. The conference substitute provides that the Board give great deference to the recommendation of the Special Counsel that a stay is needed. The substitute adopts the House provision making the stay procedure available for all prohibited personnel practices, not just the three instances cited in the Senate bill. The conference substitute also requires that if the Board does not act upon the Special Counsel's request for a stay within 3 days of that request, the stay will automatically go into effect at the expiration of the 3-day period. That stay, however, could last no longer than 15 calendar days.

APPOINTMENT OF PERSONNEL BY THE MSPB AND SPECIAL COUNSEL

The Senate bill authorizes the Chairman of the Board and the Special Counsel to appoint personnel. It provides that an appointment to a confidential, policy-determining, policy-advocating or policymaking position, or to a position in the Senior Executive Service, must comply with the provisions of this title, except that the appointment shall not be subject to the approval or supervision of OPM or the Executive Office of the President. The House amendment contains no comparable provisions.

The conference substitute in sections 1205(j) and 1206(j) adopts a modified Senate approach. It provides that with certain exceptions, dealing with qualifications of employees, the appointments would not be subject to the approval or supervision of OPM or the Executive Office of the President. The purpose of these provisions is to prevent "political clearance" of appointments to the independent Merit Board and Office of the Special Counsel. The conferees believe that it would be inappropriate for any unit of the White House or the Office of Personnel Management to screen such candidates. The individuals appointed to these positions, though, must have the qualifications and meet the standards specified elsewhere in this title.

ANNUAL REPORT OF THE MERIT SYSTEMS PROTECTION BOARD

The Senate requires the Board to submit an annual report to the President and Congress on its activities which must include a description of significant actions taken by the Board to carry out its functions. The report must also review the activities of OPM, including whether or not the actions of OPM are in accord with merit system principles.

The conference substitute in section 1209 adopts the Senate provision, but provides that the Board need only report on those OPM activities it decides are "significant." It is expected that the Board will conduct an evaluation and review of the significant activities of the OPM, but it should not, in connection with the annual report, conduct an investigation into all internal operations of OPM and its employees.

SPECIAL COUNSEL INVESTIGATION OF PROHIBITED PERSONNEL PRACTICES

The Senate bill provides that if the Special Counsel determines that there are prohibited personnel practices that require corrective action, the Special Counsel must report his findings to the MSPB and the OPM and may report the findings to the President. The Special Counsel may include in the report suggestions as to what corrective action should be taken, but the final decision on corrective action would be made by the agency involved.

The House amendment is similar to the Senate bill except that the Merit Systems Protection Board, rather than the agency involved, would make the final decision concerning what corrective action is to be taken.

The conference substitute in section 1206(d) requires the Special Counsel to report his determination, along with any recommendations concerning corrective action, to the head of the agency involved. If the agency has not taken the recommended corrective action within a reasonable period, the Special Counsel may request the Board to consider the matter. It is expected that the Special Counsel and the agencies involved will, whenever practicable, resolve questions concerning proper corrective action without resorting to the Merit Systems Protection Board. If the matter is presented to the MSPB, however, the Board will make the final decision concerning the corrective action to be taken.

SPECIAL COUNSEL TERMINATION OF AN INVESTIGATION

The conference substitute in section 1206(a) (1) adopts the House provision which requires the Special Counsel to notify a person when the Special Counsel terminates an investigation based on that person's allegation. The notification is required as a matter of courtesy to the person who goes to the Special Counsel with an allegation. The notification and the reasons for termination of the investigation, however, need not be detailed. The Special Counsel has complete discretion to decide what form the notice should take. All that this provision requires is a brief notification of and of the summary reasons for the termination of the Special Counsel's investigation.

INVESTIGATION OF EMPLOYEE COMPLAINTS OF ILLEGALITY OF IMPROPRIETY

Both the Senate bill and the House amendment contain provisions for Special Counsel receipt of information which concerns alleged illegal or improper agency activity.

A. Special Counsel action within 15 days after receiving information:

The Senate bill requires only that the Special Counsel promptly transmit the information to the agency concerned. There is no requirement that the Special Counsel determine the validity or otherwise review the information.

The House amendment requires the Special Counsel to determine whether the information "warrants" an investigation by the agency concerned. There is no requirement that all information be promptly transmitted to the agency concerned.

The conference substitute in section 1206(b) requires the Special Counsel to promptly transmit all information to the agency concerned. During the 15 days the Special Counsel is to conduct such review of the information as he deems practicable, and to determine whether he will require an investigation.

B. Standard for referring the information for agency investigation :

Under the Senate bill the Special Counsel determines whether there is a "substantial likelihood" that the information discloses illegal or improper agency activity.

Under the House bill the Special Counsel determines whether the information "warrants" an agency investigation.

The conference substitute in section 1206(b) adopts the "substantial likelihood" standard contained in the Senate bill.

C. Discretion of Special Counsel in requiring an agency investigation :

If the Special Counsel finds "substantial likelihood," he may require an agency investigation under the Senate bill. It intended that the Special Counsel require an investigation only of the more serious matters.

Under the House bill if the Special Counsel determines information "warrants" an investigation, he shall require an agency investigation.

The conference substitute adopts the Senate language.

D. Special Counsel review of agency reports :

1. The Senate bill does not require that the Special Counsel review the agency report. Copies of the report are required to be transmitted to the Congress, the President, and the Special Counsel. The reports are available to the public (there is an exception for classified information).

The House amendment requires the Special Counsel to review the report and determine whether : (a) findings of the agency head are reasonable; (b) the agency's investigation was complete and unbiased; and (c) the corrective action taken or planned is sufficient.

Under the conference substitute copies of the report will go to the Congress, the President, and the Special Counsel. The Special Counsel is required to review the report to determine whether : (a) it contains the specific information required by the act; and (b) whether the findings of the agency head appear reasonable. The Special Counsel may transmit his determinations to the Congress and President include such findings in the public report specified in a later provision of the bill. The Special Counsel's authority to report the agency's action to an employee or to include such information in a public report only extends to noncriminal matters. The Special Counsel should use his discretion in determining whether the names of individuals should be made publicly available or transmitted to the employee.

E. Source of information which may trigger investigation :

Under the Senate bill only information from present or past employees or applicants for employment in the agency involved may trigger an investigation.

Under the House amendment information from any employee or applicant may trigger an investigation.

The conference substitute merges the two provisions so that information from present or past employees or applicants in the agency involved, plus information from other employees which was obtained during the performance of those employees' duties and responsibilities may trigger an investigation. It is expected that the Special Counsel will inform the employee or applicant of the action taken by the Special Counsel and the agency involved concerning the individual's disclosure of information.

SPECIAL COUNSEL INVESTIGATIONS OF A PATTERN OF PROHIBITED PRACTICES

The Senate bill provides that if the Special Counsel believes that there is a pattern of prohibited personnel practices by any agency or employee and such practices involve matters which are not otherwise appealable to the Board under section 7701, the Special Counsel may seek corrective action by filing a written complaint with the Board. For example, there may be hiring or promotion practices which violate merit system principles but which may not give rise to an appealable action under this title. Similarly, competitive examinations may be administered in such a way as to constitute a violation of section 2302. Under this paragraph, the Special Counsel would have authority to seek corrective action, and the Board is empowered to order such corrective action as it finds necessary.

The House amendment contains no comparable provision.

The conference substitute in section 1206(h) adopts the Senate provision. By adopting this provision, the conferees do not intend to divest the Civil Service Commission's Bureau of Personnel Management Evaluation or its successor unit in the Office of Personnel Management of its present functions including its authority to order corrective actions. The Senate bill makes it a prohibited personnel practice to grant any preference or advantage not authorized by law, rule, or regulation to any person for the purpose of improving or injuring the prospects of any particular individual or "category of individuals." The substitute omits this phrase but it is expected that a pattern of activities disadvantaging a category of individuals would be actionable under this subsection.

SPECIAL COUNSEL INVESTIGATIONS OF ARBITRARY AND CAPRICIOUS WITHHOLDING OF INFORMATION

The Senate bill authorizes the Special Counsel to conduct an investigation of any alleged prohibited practice which consists of an arbitrary or capricious withholding of information prohibited under section 552 of this title.

The House amendment is similar to the Senate bill but adds the proviso that the Special Counsel may not investigate under this subsection any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or Executive order.

The conference substitute in section 1206(e) adopts the House amendment. This provision retains the status quo regarding the au-

thority of an outside agency (currently the Civil Service Commission ; the Special Counsel under this Act) to investigate withholdings of national security information. The status quo is to be maintained with respect to investigations of arbitrary or capricious withholding of other kinds of information as well; this provision is not intended to require that an administrative or court decision be rendered concerning withholding of information before the Special Counsel may investigate allegations of such a prohibited practice.

SPECIAL COUNSEL DISCLOSURE OF EMPLOYEES' IDENTITY

The Senate bill prohibits the Special Counsel from disclosing the identity of an employee or applicant who provides information about certain prohibited personnel practices or government wrongdoing, unless the Special Counsel determines that disclosure is "unavoidable." The comparable provision in the House amendment permits disclosure of the employee's identity only if it is "necessary to effectively carry out the investigation" initiated by the employee.

The conference substitute in section 1206(b) permits the Special Counsel to disclose the identity of an employee who provides certain information to the Special Counsel only if such disclosure is necessary to carry out the Special Counsel's functions. Although the rule is non-disclosure, this provision would allow the Special Counsel to exercise his discretion concerning when the employee or applicant's name might be disclosed. Thus, a major investigation might not be aborted solely to avoid disclosing the employee or applicant's name. At the same time, protection of employees is a primary function of the Special Counsel. It is expected that the Special Counsel will give great weight to this function in deciding whether it is necessary to permit disclosure of the employee or applicant's name. The fact that the Special Counsel finds it necessary to disclose the identity of an employee in no way relieves the Special Counsel of his obligation to protect the employee from reprisals.

APPEALS TO THE MERIT SYSTEMS PROTECTION BOARD

RIGHT TO A HEARING

The Senate bill provides that an employee is entitled to an evidentiary hearing before the Merit Systems Protection Board unless a motion for summary decision is granted. A motion for summary decision shall be granted if the presiding officer decides that there are no genuine and material issues of fact in dispute. The presiding officer may provide for discovery and oral representation of views, at the request of either party, in connection with a summary decision.

The House amendment contains no provision for summary decision. It provides that an employee has a right to a hearing before the MSPB for which a transcript will be kept and the right to be represented by an attorney or other representative.

The conference substitute in section 7701(a) adopts the House provision so that the employee is entitled to a hearing on appeal to the Merit Systems Protection Board. The hearing may be waived by the employee.

ADMINISTRATIVE LAW JUDGES AND MORE EXPERIENCED APPEALS OFFICERS

The Senate bill provides that, in cases of employee removals on appeal before the Merit Systems Protection Board, such cases be assigned to either an administrative law judge or a senior appeals officer, notwithstanding subsection 554(a) (2) of this title.

The House amendment contains no such provision.

The conference substitute in section 7701(b) provides that such removal cases be assigned to either an administrative law judge or a more experienced appeals officer. This provision reflects the conferee's intent that appeals from removal actions, which involve the most serious form of disciplinary action against an employee, be adjudicated by the most competent and able presiding officers available. Many complaints were heard during consideration of the Civil Service Reform Act of a lack of confidence in the ability of many hearing officers. For this reason, it was the preferred position at an early point in Senate consideration of the legislation that all removal cases be assigned to administrative law judges.

Because there is only one administrative law judge available within the Civil Service Commission, and because of the serious administrative problems that would ensue from requiring use of administrative law judges in all removal actions, however, the substitute provides that where the administrative law judge is available and a choice exists whereby a removal appeal may be assigned to any one of a number of appeals officers, the more experienced appeals officer be chosen where practicable. In this context, experience would involve having heard employee removal cases in the past, the seniority of the appeals officer, and other similar factors.

BURDEN OF PROOF

The Senate bill puts the burden of proof in cases of alleged employee misconduct on the employing agency. For actions based on unacceptable performance, the Senate provides that "the agency shall have the initial burden of proof subject to an opportunity for rebuttal by the employee," in establishing its case.

The House amendment places the burden of proof in both misconduct and performance cases on the employing agency.

The conference substitute in section 7701 adopts the House approach.

STANDARDS OF REVIEW

The Senate bill provides that for actions based upon unacceptable performance the agency action will be upheld unless "there is no reasonable basis on the record for the agency's decision." For actions based upon misconduct the standard in the Senate bill is "substantial evidence."

The House amendment provides that both for actions based on unacceptable performance and upon misconduct the agency's action shall be sustained only if its decision is supported by a preponderance of evidence introduced before the MSPB.

The conference substitute in section 7701(c) provides that the standard of proof in misconduct cases will be "preponderance of the evidence." The conferees agreed, though, that in performance cases a lower standard of proof should be required because of the difficulty of proving that an employee's performance is unacceptable. The conference substitute therefore provides that an agency's decision in performance cases shall be upheld if its action is supported by substantial evidence in the record before the MSPB. The substantial evidence test was adopted both because it is clearly a lower standard than now used in performance cases and because it is a generally understood term in administrative law.

APPEALABLE ACTIONS IN WHICH ALLEGATION OF DISCRIMINATION HAS BEEN RAISED

Both the Senate bill and the House amendment adopt special procedures for resolving appealable actions where an allegation of discrimination is raised. The Senate bill provides that, whenever an issue of discrimination is raised in the course of a hearing before the Board, the Board must notify the EEOC and the EEOC has the right to participate fully in the proceeding. After action by the Board, the EEOC has an opportunity to review the decision and revise it. The Board may then accept the EEOC's decision, or issue a new one. Where the two agencies are unable to agree, the matter is immediately certified to the court of appeals for resolution. Before the court of appeals, the expertise of both the MSPB and the EEOC is to be given weight in their respective areas of jurisdiction. While the matter is pending in the court, the EEOC is authorized to grant interim relief to the employee.

The House amendment allows the EEOC to delegate to the MSPB authority to make a preliminary determination in an adverse action in which discrimination has been raised, but it directs the EEOC to make the final determination in such cases. The decision of the EEOC constitutes final administrative determination in the matter, and there is no further review in the courts, unless the employee decides to appeal.

The conference substitute in section 7702 adopts the Senate approach at the administrative level, with some modifications, but it places an administrative tribunal, ad hoc in nature, at the apex of the administrative process, rather than depending upon the court of appeals to resolve conflicts between the two agencies. The conference substitute maintains the principle of parity between the MSPB and the EEOC and establishes an appropriate balance in regard to the enforcement of both the merit system principles of title 5 of the United States Code and title VII of the Civil Rights Act of 1964 and other laws prohibiting discrimination. At the same time it preserves for EEOC, as proposed in Reorganization Plan No. 1 of 1978, authority for issuing general policy directives implementing title VII of the Civil Rights Act. This preserves an important policy role for EEOC which it may invoke, consistent with the requirements of law, regardless of the outcome of a particular case. The conference substitute also protects the existing rights of an employee to trial de novo under the Civil Rights Act after a final agency action or if there is no administrative decision after a specified number of days.

APPEALS PROCEDURE

This section applies to both employees and applicants. In all mixed cases, that is, cases involving any action that could be appealed to the MSPB and which involve an allegation of discrimination, the MSPB will hold hearings and issue a decision on both the issue of discrimination and the appealable action. The EEOC will not participate in this proceeding. The term "decision" as used throughout this section includes any remedial order the agency or panel may impose under law.

It is expected that the Board will make adequate training and resources available for the training and supervision of these appeals officers provided for in section 7702(a) to avoid the possibility of inadequate preparation for the processing of those appeals matters which involve allegations of discrimination.

The decision of the Board shall be final agency action unless the employee files a petition with the EEOC to reconsider the case. In the case of class actions, the law generally governing the right of one or more members to appeal an initial decision shall be applicable in this case as well. If the EEOC decides to reconsider the MSPB decision, it may remand the case to the Board for further hearing or provide for its own supplemental hearing as it deems necessary to supplement the record. This amends the procedures established in the Senate bill which did not allow the EEOC to take additional evidence. In making a new decision, the EEOC must determine that: (1) the MSPB decision constitutes an incorrect interpretation of any law, rule, or regulation over which the EEOC has jurisdiction; or (2) the application of such law to the evidence in the record is unsupported by such evidence as a matter of law.

If the EEOC concurs in the decision of the Board, including the remedy ordered by the MSPB, then the decision of the Board shall be final agency action in the matter. If the EEOC decision differs from the MSPB decision, then the case must be referred back to the MSPB. The MSPB may accept the EEOC decision, or if the MSPB determines that the EEOC decision (1) constitutes an incorrect interpretation of any civil service law, rule, or regulation; or (2) the application of such law to the evidence in the record is unsupported by such evidence, as a matter of law, it may reaffirm its initial decision with such revisions as it deems appropriate.

If the Board does not adopt the order of the EEOC, the matter will immediately be certified to the special three-member panel. The panel will review the entire administrative record of the proceeding, and give due deference to the expertise of each agency in reaching a decision. The employee and the agency against whom the complaint was filed may appear before the panel in person, or through an attorney or other representative. The decision of the special panel will be the final agency action in the matter.

Upon application by the employee, the EEOC may, as in the Senate bill, issue certain interim relief as it determines appropriate, to mitigate any exceptional hardship the employee might incur. The bill establishes mandatory time limits to govern the maximum length of time the employing agency, the MSPB, the EEOC, or the Panel may take

to resolve the matter at each step in the process. The act makes compliance with these deadlines mandatory—not discretionary—in order to assure the employee the right to have as expeditious a resolution of the matter as possible. The conferees fully expect the agencies to devote the resources and planning necessary to assure compliance with these statutory deadlines. The bill imposes a statutory requirement that the delays that have been experienced in the past in processing discrimination complaints will be eliminated. Where an agency has not completed action by the time required by this statute it shall immediately take all necessary steps to rapidly complete action on the matter.

It is not intended that the employing agencies, the Board, the Commission, or the special panel would automatically lose jurisdiction for failing to meet these time frames. Congress will exercise its oversight responsibilities should there be a systematic pattern of any body failing to meet these time frames.

RIGHTS OF EMPLOYEES UNDER CIVIL RIGHTS ACT

The conference substitute fully protects the existing rights of employees to trial de novo under title VII of the Civil Rights Act of 1964 or other similar laws after a final agency action on the matter. Under the act's provisions, this final agency action must occur within 120 days after the complaint is first filed. After these 120 days, the employee may appeal to the Board or file a complaint in district court in those cases where the agency in violation of the law has not issued a final decision. If the employee files an appeal of the agency action with MSPB, the employee may file a suit in district court any time after 120 days if the Board has not completed action on the matter by that time. Finally, the act gives the employee the right to sue in district court 180 days after it petitions EEOC to review the decision of MSPB even if the administrative process is not completed by that time, as required by other provisions in the section. Once the employee files a petition with EEOC, however, it may not bring an action in district court until the end of this 180-day period, or until there is final agency action on the matter.

There are in all eight different times when the employee may have the right to bring suit in Federal district court. They are as follows:

1. 120 days after filing a complaint with the employing agency even if the agency has not issued a final decision by that time.
2. 30 days after the employing agency's initial decision.
3. 120 days after filing a petition with the MSPB if the MSPB has not yet made a decision.
4. 30 days after an MSPB decision. If the employee petitions EEOC to review the matter and EEOC denies the petition, the 30-day period in this case runs from the denial of such a petition by EEOC.
5. 30 days after the EEOC decision, if EEOC agrees with the MSPB.
6. 30 days after MSPB reconsideration if MSPB agrees with the EEOC.
7. 30 days after the special panel makes a decision.

8. 180 days after filing a petition with the EEOC for reconsideration of an MSPB decision, if a final agency decision by EEOC, MSPB, or the Panel has not been reached by that time.

If a suit is brought in district court, the rules of equity provide that minor procedural irregularities in the administrative process for which the employee is responsible should not predetermine the outcome of the case.

SPECIAL PANEL

The special panel will be comprised of one member of the EEOC designated on an ad hoc basis by the Chairman of the EEOC, one member of the MSPB designated on an ad hoc basis by the Chairman of the MSPB, and a permanent chairman who will be an individual from outside the Government. The members appointed by EEOC and MSPB to represent the agency in a particular case must be able to represent the views and decision of the majority of the Board or Commission in that particular case. The Chairman will be appointed by the President with the advice and consent of the Senate to a term of six years, and shall be removable only for cause.

The MSPB and the EEOC shall make available to the panel appropriate and adequate administrative resources to carry out its responsibilities under this act. The cost of such services must, to the extent practicable, be shared equally by EEOC and MSPB.

Because it is anticipated that the special panel will not have to be convened often, the conferees do not expect that it will need substantial resources or administrative support. For instance, the EEOC, because it is larger, could provide a convenient place for the panel to meet.

ATTORNEYS' FEES

The Senate bill authorizes attorneys' fees to be awarded in appeals cases by a hearing officer whenever the employee prevails and the officer determines that the agency's action was taken in bad faith or in cases where a discrimination under the Civil Rights Amendment of 1964 has occurred.

The House amendment authorizes attorneys' fees in any case where the officer determines that payment "is warranted" or in a case involving a discrimination under the Civil Rights Amendment of 1964.

The conference substitute (sections 7701(g) and 5596(b)(1)(A)(ii)) authorizes attorneys' fees in cases where employee prevails on the merits and the deciding official determines that attorneys' fees are warranted in the interest of justice, including a case involving a prohibited personnel practice or where the agency's action was clearly without merit. The reference to these two types of cases is illustrative only and does not limit the official from awarding attorneys' fees in other kinds of cases.

JUDICIAL REVIEW OF DECISIONS OF THE MERIT SYSTEMS PROTECTION BOARD

The Senate bill provides that, except for actions filed under the antidiscrimination laws, a petition to review a final order or decision of the Merit Systems Protection Board shall be filed in the U.S. Court of Appeals, or in the U.S. Court of Claims.

The House amendment substitutes "United States District Court" for the Senate's "United States Court of Appeals."

The conference substitute in section 7703(c) adopts the Senate provision, incorporating the traditional appellate mechanism for reviewing final decisions and orders of Federal administrative agencies.

EXECUTIVE PAY LEVEL OF PRESIDENTIAL APPOINTEES

The Senate bill provides the following pay levels for Presidential appointees under this act: Level III—Director of the Office of Personnel Management level IV—Deputy Director of the Office of Personnel Management, Chairman of the Merit Systems Protection Board; level V—Associate Director of the Office of Personnel Management (five positions), Member of the Merit Systems Protection Board (two positions), Special Counsel; GS-18—General Counsel of the Federal Labor Relations Authority.

The House amendment placed each of these positions at one grade higher on the Executive pay scale.

The conference substitute adopts the House pay levels for Director of the Office of Personnel Management (level II); Chairman of the Merit Systems Protection Board and Deputy Director of the Office of Personnel Management (level III); Members of the Merit Systems Protection Board and Special Counsel (level IV); and General Counsel of the Federal Labor Relations Authority (level V). The substitute adopts the Senate pay level for the Associate Directors of the Office of Personnel Management (level V).

TITLE III

STAFFING

VETERANS' PREFERENCE

Definition of veteran

The Senate bill alters the definition of a veteran eligible for five-point preference in Federal employment to include certain veterans receiving discharges under other than honorable conditions from the military but who are eligible for veterans benefits under provisions of title 38, United States Code. The House amendment retains current law under which only veterans discharged under honorable conditions can qualify for hiring preference.

The conference substitute adopts the House provision.

Preference eligibility for widows and widowers

The Senate bill changes current laws under which all widows and widowers of eligible veterans receive 10-point preference, regardless of the conditions surrounding the veteran's death. Ten points would be limited to widows/widowers of disabled veterans or veterans who lost their lives in combat. The Senate also extends preference to widows/widowers of peacetime veterans who served from 1955 through 1964 who currently receive no preference. The House amendment retains current law.

The conference substitute adopts the House provision on this point.

Competitive examinations

The Senate bill allows any preference eligible, disabled or non-disabled, to reopen any competitive examination for which there is a list of eligibles. The House amendment retains current law, under which only a ten point preference eligible has the right to reopen competitive examinations.

The conference substitute adopts the House provision.

Notification to disabled veteran of physical requirements

The Senate bill provides that, where a disabled veteran is deemed ineligible for a Federal civil service position due to physical disability, the disabled veteran must be notified of this fact, given an opportunity to respond, and have this determination reviewed by the Office of Personnel Management. The House amendment has no comparable provision.

The conference substitute in section 307(b) accepted the Senate language on this point, though limiting notification and review rights to eligible disabled veterans of 30 percent disability or more. The 30 percent rule was adopted because (1) it was felt that without some limitation, the paperwork burden and the flood of relatively minor cases could well disrupt the efficient operation of OPM in this area, and (2) a 30 percent rule would better protect more seriously disabled veterans.

Notification of passover

The Senate bill requires that any disabled veteran an agency wishes to pass over in the course of hiring be notified of that fact, given an opportunity to respond, and have a final determination made by the Office of Personnel Management as to the propriety of the passover. In addition, OPM is forbidden from delegating its responsibility for reviewing passovers to any other agency of the Government. The House amendment contains no comparable provision.

The conference substitute in section 307(c) adopts the Senate provision with two changes. First, it applies the notification and other procedural protections only to disabled veterans of 30 percent disability or more. Second, it limits the prohibition against OPM delegation of passover functions only to those functions related to disabled veterans. Thus, OPM would be allowed to delegate passover functions related to nondisabled veterans, or disabled veterans of less than 30 percent disability. Again, the purpose of this substitute provision is to better protect the rights of more seriously disabled veterans, while avoiding excessive paperwork.

Retention preference for disabled preference eligibles

The Senate bill provides preference for disabled veterans with ten percent disability or more over any other preference eligibles in any reduction in force proceeding. The House amendment contains no such provision.

The conference substitute in section 307(d) adopts the Senate provision, but limits the additional reduction-in-force preference to disabled veterans of 30 percent disability or more.

Notification to disabled veterans in reduction in force

The Senate bill provides that where a disabled veteran is deemed ineligible for retention in a reduction in force proceeding due to physical disability, the veteran be so notified, given an opportunity

to respond, and a final determination be made by OPM. The House amendment contains no comparable provision.

The conference substitute in section 307(f) adopts the Senate provision. However, it limits notice and other procedural rights to disabled veterans of 30 percent disability or more.

MINORITY RECRUITMENT

The House amendment provides for a minority recruitment program. It directs the Equal Employment Opportunity Commission to determine, within categories of civil service employment, which minority group designations constitute a lower percentage of the total number of employees within the employment category than the percentage that the minority constituted within the labor force of the United States. It provides that not later than 60 days after enactment of the bill the EEOC will issue guidelines, make determinations as to underrepresentation and transmit these determinations to the OPM, to Federal agencies and to Congress. The House amendment further provides that the OPM will implement, by regulation, not later than 180 days after enactment of the bill, a minority recruitment program designed to eliminate the underrepresentation of the designated minorities. Each year the OPM is directed to report to Congress on the activities related to the minority recruitment program and furnish the data necessary for an evaluation of its effectiveness. The Senate bill contains no such provision.

The Conference substitute in section 310 accepted the House provision. It was the understanding and intention of the conferees, however, that this section will introduce no new appealable rights and that it is solely a recruitment program, and not a program which will determine and govern appointments. Further, this program must be administered consistent with the provisions of Reorganization Plan No. 1 of 1978.

LIMITATION ON EXECUTIVE BRANCH EMPLOYMENT

The House amendment provides that effective one year after the date of enactment and until January 20, 1981, the number of individuals employed in or under an executive agency shall not exceed the number of individuals so employed on January 1, 1977. This limitation would not apply during a time of war or national emergency declared by the Congress or the President. The Senate bill has no comparable provision.

The conference substitute in section 311 provides that the total number of civilian employees in the executive branch, excluding the Postal Service and the Postal Rate Commission, on September 30, 1979, 1980, and 1981 shall not exceed the number of such employees on September 30, 1977. This ceiling will apply to all full-time, part-time and intermittent employees, but excludes up to 60,000 employees in certain special categories such as students, disadvantaged youth, the temporary summer aid program and the Federal junior fellowship program and personnel participating in the worker-trainee opportunity program. Under the conference substitute the President may adjust the number of executive branch employees when he determines it is necessary in the national interest; however, the number of additional employees may not exceed the percentage increase in the population of the United States from September 30, 1978. The conferees note that this authority

relates only to adjustments in the total number of Federal employees. It does not authorize the President to waive any law which otherwise limits the employment of individuals for certain types of positions. For instance, the overall percentage of noncareer or limited term appointees to the Senior Executive Service would remain subject to the limitations established in section 3134.

NOTIFICATION OF VACANCIES IN EXECUTIVE AGENCIES

The House amendment requires executive agencies to notify the Office of Personnel Management of vacant agency positions. This information must then be transmitted to the U.S. Employment Service which is required to keep up-to-date listings of vacancies along with other relevant application information.

The conference substitute in section 309 provides that the Office of Personnel Management shall provide information to the U.S. Employment Service concerning opportunities to participate in competitive examinations. In addition, the conference substitute provides that each agency notify the OPM and the U.S. Employment Service of vacant positions in the agency which are in the competitive service and the Senior Executive Service and which are open to be filled by individuals outside the Federal Service. The conferees intend that an agency notify all U.S. Employment Service offices when there are vacant positions in an agency headquarters office. If a position in a regional office is vacant, the agency may notify all USES offices; however, notice to the USES offices in the region is sufficient.

TITLE IV

THE SENIOR EXECUTIVE SERVICE

SCOPE OF COVERAGE

Agency exclusion

The Senate bill excludes a Government corporation, the General Accounting Office, the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency and the National Security Agency from the scope of coverage of the Senior Executive Service. In addition, the Senate bill provides that the President may exempt an agency or unit whose principal function is the conduct of foreign intelligence or counterintelligence activity.

The House amendment is similar in that it provides an exemption for the same agencies which are named in the Senate bill; however, the House amendment does not limit the exemption for other agencies which conduct foreign intelligence or counterintelligence activity to those for which the activity is the principal function. In addition, the House amendment specifically includes the Administrative Office of the U.S. Courts and the Government Printing Office.

The conference substitute in section 3132(a) (1) is the same as the Senate bill.

Position exclusion

The Senate bill excludes Foreign Service Officers and certain positions in the Drug Enforcement Administration from the Senior Executive Service.

The House amendment excludes administrative law judge positions under section 3105 of title 5 United States Code and contains a broader

exemption for the Foreign Service by exempting all positions in the Foreign Service.

The conference substitute in section 3132(a)(2) combines the provisions of both the Senate bill and House amendment by exempting administrative law judges, positions in the Drug Enforcement Administration which are excluded from the competitive service under section 201 of the Crime Control Act of 1976, and positions in the Foreign Service of the United States.

Senior Executive Service positions

The Senate bill defines a "Senior Executive Service position" as one in which the employee directs the work of an organizational unit, is held accountable for the success of specific line or staff programs or projects, or supervises the work of employees other than personal assistants. In addition, the Senate bill includes individuals who monitor the progress of the organization toward goals and periodically evaluate and make appropriate adjustments to such goals, or exercise other important policymaking or executive functions.

The House amendment differs in that it does not include this latter category of individuals who monitor the progress of the organization or exercise policymaking or executive functions.

The conference substitute in section 3132(a)(2) includes individuals who monitor progress toward organizational goals and periodically evaluate and make appropriate adjustments to such goals, or who exercise important policymaking, policy-determining or other executive functions. Thus, the conferees agreed that the Senior Executive Service should include senior Government managers and other individuals who may not have direct management or supervisory responsibilities but occupy important policymaking, policy-determining or other executive positions in an agency.

Limitation on the Senior Executive Service

A. *Establishment of Minimum of Career Reserved Positions.*—The Senate provides that the number of career reserved positions in the SES may not be less than the number of positions which were authorized to be filled through competitive civil service appointment prior to the date of enactment. The Senate bill also provides that the Director of OPM may authorize a lesser number of career reserved positions upon determination that it is necessary to designate a position as a general position because: (A) it involves policymaking responsibilities requiring the advocacy or management of programs of the President and support of controversial aspects of such programs; (B) it involves significant participation in the major political policies of the President; or (C) it requires the SES executive to serve as a personal assistant of, or advisor to, a presidential appointee.

The House amendment contains no such requirement establishing a floor on career reserved positions.

The conference substitute in section 3133(e) adopts the Senate provision regarding the floor for career reserved positions, with an amendment that provides that the number of career reserved positions in the SES may not be less than the number of positions which, prior to enactment of the bill, were authorized to be filled through competitive civil service examination. The effect of this change from the original Senate wording is to allow a group of about 700 positions, which technically are filled through competitive appointment, but not through competitive examination, to be excluded from the career reserved floor.

B. Prior Service in Civil Service.—The House amendment provides that not more than 30 percent of the individuals serving at any time in SES positions may have served less than an aggregate of 5 years in the civil service, unless the President certifies to the Congress that the limitation would hinder the efficiency of the Government. The Senate bill contained no such limitation regarding the composition of the SES.

The conference adopted in section 3392(a) (2) the House provision with certain changes. The conference substitute provides that not more than 30 percent of the SES positions authorized may be filled by individuals who do not have 5 years of continuous service in the civil service immediately prior to their appointment of the SES, unless the President certifies to Congress that the limitation would hinder the efficiency of the Government.

C. Limitation on Executive Positions.—The House amendment repeals the specific authority of agencies to establish supergrade positions and provides that the total number of such positions, plus the SES, shall not exceed 10,920. This section also repeals the authority of agencies to establish professional and scientific positions outside of the General Schedule. In addition, the House amendment provides that, within 6 months of the date of enactment, the Director of OPM must determine the total number of executive level positions in the executive branch which are outside the SES, that this determination must be published in the Federal Register, and the number of such positions may not exceed the number which is published. By January 1980, the President is required to submit a plan to Congress for authorizing executive level positions. The plan must include the number of positions necessary and a justification.

The Senate bill differs from the House bill in that it only repeals preexisting authority for agencies to establish and provide for the rate of pay for positions designated to be in the SES.

The conference substitute in section 414 is similar to the House bill except that it retains the existing authority of legislative and judicial branch agencies under section 5108 of title 5, United States Code to establish positions outside the supergrade pool and, therefore, the substitute reduced the number of positions in the pool to 10,777. In addition, the conference substitute provides that future adjustments to the Federal Bureau of Investigation's supergrade allocation will be made by the President rather than the Director of the Office of Personnel Management.

It was the understanding of the conference, after assurance given by spokespersons for the President, that the administration has no current intention of reducing the number of supergrade positions for the Federal Bureau of Investigation or the Drug Enforcement Administration.

D. Limited Term and Limited Emergency Appointees.—The Senate bill and the House amendment provide for limited term and limited emergency appointments to the SES. The Senate bill and the House amendment both provide that the total number of noncareer appointees to the SES in all agencies shall not exceed 10 percent of the total number of SES positions authorized for all agencies. Neither the House nor the Senate bill makes clear whether the limited term and limited emergency appointments are within the 10 percent noncareer limitation.

The conference substitute in section 3134(e) provides that the total

number of limited term and limited emergency appointments may not exceed 5 percent of the total number of SES positions, thus, together with the 10 percent limitation on noncareer appointees, placing a ceiling of 15 percent on the potential number of noncareer, limited term and limited emergency appointees who may be in the SES at any given time.

Effective date of the Senior Executive Service

The Senate bill provides that 9 months after the date of enactment the Senior Executive Service will become effective except that the provisions relating to conversion of positions will become effective on the date of enactment and the provisions relating to the establishment of a minimum number of career reserved positions will become effective 120 days after the date of enactment.

The House amendment provides for an initial two year experimental application of the Senior Executive Service under which positions would be designated, authorized, and filled in only three executive departments designated by the Director of the Office of Personnel Management. Under the House amendment, the Senior Executive Service would become fully effective two full fiscal years following the date of enactment unless Congress adopts a concurrent resolution disapproving its continuance.

The conferees believe that the Senior Executive Service should be fully implemented and become operational on a Government-wide basis as early as is practicable following the date of enactment of the Civil Service Reform Act. Therefore, the conference substitute in section 415 provides that the Senior Executive Service will become effective nine months after the date of enactment except that the provisions relating to conversion in section 413 will become effective upon enactment, and the provisions of section 3133(e), relating to career reserved positions, will become effective by July 1, 1979, and the provisions of section 414(a), relating to supergrade positions, will become effective 180 days after enactment. The conference substitute also provides that 5 years from the effective date of the Senior Executive Service Congress may, by concurrent resolution, disapprove its continuance.

The conference substitute, therefore, establishes a program which is not in any way experimental in nature. The conferees felt that a limited or experimental application of the Senior Executive Service would impair the flexibility of the President and the agencies in managing Government programs, could substantially undermine its effectiveness, and would indicate a lack of congressional commitment to its success. Therefore, the conferees stress that they believe the Senior Executive Service to be an integral and permanent part of the civil service reforms and expect that it will be implemented rapidly by the Director of the Office of Personnel Management and that the number of agencies which are initially excluded from its application will be minimized in order that there be the widest possible pool of executive resources available from which to select talent to meet the needs of individual agencies. The conferees believe that after 5 full years of implementation sufficient information will be available on the effectiveness of this program and that Congress should retain the right to disapprove its continuance in the event of failure to meet its mission or abuse of the discretion granted to the Office of Personnel Management and the agencies.

Compensation for SES executives

1. *Pay Cap.*—The House amendment provides that the aggregate amount of compensation received in salary, awards and performance pay may not exceed 95 percent of the annual rate payable for level II of the Executive Schedule. The Senate bill does not establish a pay cap.

The conference substitute in section 5383(b) provides that the aggregate amount of compensation received in salary, lump sum payments and performance pay may not exceed the annual rate payable for level I of the Executive Schedule.

2. *Awards.*—The Senate bill provides that the receipt of a meritorious rank entitles an individual to receive an annual lump sum payment of \$2,500 for a period of 5 years; and receipt of the rank of Distinguished Executive to receive an annual lump sum payment of \$5,000 for a period of 5 years. The Senate bill also provides that no more than 5 percent of the members of the SES may be appointed to the rank of Meritorious Executive in a calendar year, that not more than 15 percent of the active duty members of the SES may hold the rank of Meritorious Executive, and that not more than 1 percent of the active duty members of the SES may hold the rank of Distinguished Executive.

The House amendment limits one-time lump sum payments to \$2,500 for Meritorious Rank and \$5,000 for the Distinguished Rank. The House amendment further provides that in any fiscal year, the number of career appointees awarded the rank of Meritorious Executive may not exceed 5 percent of the SES and the number of career appointees awarded the rank of Distinguished Executive may not exceed one percent.

The conference substitute in section 4507(e) provides for a lump sum payment of \$10,000 for the rank of Meritorious Executive and \$20,000 for the rank of Distinguished Executive. It provides that in any fiscal year the number of career appointees awarded the rank of Meritorious Executive may not exceed 5 percent of the SES and the number of career appointees awarded the rank of Distinguished Executive may not exceed 1 percent of the SES.

3. *Early Retirement.*—The House amendment provides for early retirement for those removed from the SES for less than fully successful performance. The Senate bill contains no such provisions.

The conference substitute in section 412 adopted the House amendment regarding early retirement.

4. *Comparability.*—The Senate bill gives the President discretionary authority to grant comparability pay increases to SES executives when such increases are given to other employees in the General Schedule. The House amendment specifically mandates that SES executives be given the same comparability increases given to other General Schedule employees.

The conference substitute is in section 5382(c) the same as the Senate bill.

5. *Sabbaticals.*—The Senate bill provides that an agency head may grant leave with half pay and full benefits to a career executive for a sabbatical period not exceeding 12 months or full pay and full benefits for 6 months. The House amendment provides that the head of an agency may grant a sabbatical with full pay and benefits for a period of 11 months. The Head of the agency may also authorize such travel

and per diem costs as the head of the agency determines to be essential for the study or experience of the sabbatical.

The House amendment further provides that any career appointee who is granted a sabbatical must agree, as a condition of accepting the sabbatical, to serve in the Civil Service for 2 consecutive years after his return from the sabbatical. If the person fails to carry out this agreement the appointee shall be liable to the United States for payment of all expenses (including salary) of the sabbatical. The Senate bill contains no such provision.

The conference substitute in section 3396(c) is the same as the House amendment.

TITLE V

MERIT PAY AND CASH AWARDS

COMPARABILITY PAY

The Senate bill grants discretion to the OPM, after consultation with the Office of Management and Budget, to determine the extent to which pay adjustments under the pay comparability system shall be extended to employees covered by merit pay. The House amendment directs that employees under the merit pay system be given the same annual comparability pay adjustments granted to all other Federal employees.

The conference substitute in section 5402 provides that employees covered by the merit pay system shall be given half of the amount of annual pay comparability adjustments, but allows the OPM discretion to either pass along additional portions of the full adjustment to all employees under the merit system or to use available funds for performance-related salary increases. The committee understands that all eligible managers may not be placed under merit pay until October 1, 1981.

TITLE VI

RESEARCH, DEMONSTRATION AND OTHER PROGRAMS

SCOPE OF COVERAGE

Agency exclusion

The Senate bill excludes a Government corporation, the General Accounting Office, the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, and the National Security Agency from the scope of coverage of title VI. In addition, the Senate bill provides that the President may exempt an agency or unit whose principal function is the conduct of foreign intelligence or counterintelligence activities. The House amendment is similar; however, it does not limit the exemption for agencies which conduct foreign intelligence or counterintelligence activity to those for which the activity is the principal agency function.

The conference substitute in section 4701(a) adopts the Senate provision.

Positions excluded

The Senate bill excludes Foreign Service Officers and certain positions in the Drug Enforcement Administration from coverage under chapter 47. The House amendment has no comparable provision.

The conference substitute in section 4701(b) excludes only those positions in the Drug Enforcement Administration which are excluded from the competitive service under section 201 of the Crime Control Act of 1976. It does not exclude Foreign Service officers.

Preconditions for demonstration projects

The Senate bill provides that the OPM, before entering into any agreement to conduct a demonstration project, must: (1) have notified, at least 6 months previously, the Congress and any employee who may be affected by the project; (2) have consulted with such affected employees; and (3) have provided Congress with a report on the proposed demonstration project at least three months in advance.

The House amendment provides in addition to advance notification, that a demonstration project may not be undertaken unless the plan has been approved by each agency involved; a copy has been submitted to each House of Congress; and the plan is not disapproved by either House of Congress during the first period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to each House.

The conference substitute in section 4703(b) adopts the Senate provisions regarding notification and omits the congressional veto provision of the House.

VETERANS PREFERENCE

Research and demonstration projects

The Senate bill provides that no research and demonstration projects instituted by OPM may waive laws relating to veterans preference in creating experimental conditions for demonstration purposes. The House amendment contains no such provision.

The conference substitute adopts the House provision on this point. It was felt that the legislation contains enough other protections against abuse of research and demonstration project authority that the rights of veterans would be adequately protected without requiring the Senate prohibition.

STATUS OF MEMBERS OF THE FEDERAL LABOR RELATIONS AUTHORITY

The Senate specifically states that any member of the Authority and the General Counsel may be removed by the President (section 7203 (c) and (g)). The House amendment provides for removal in both cases only after a hearing, and only for "misconduct, inefficiency, neglect of duty, or malfeasance in office" (section 7104 (b) and (f)).

The Senate recedes with respect to the members of the Authority. They will be removable only for cause. The conference report follows the Senate bill, however, with respect to the General Counsel, who will serve at the pleasure of the President.

ENFORCEMENT AND REVIEW OF ORDERS OF THE FEDERAL LABOR
RELATIONS AUTHORITY

A. JUDICIAL ENFORCEMENT OF THE DECISIONS OF THE FEDERAL LABOR
RELATIONS AUTHORITY

1. House section 7123(b) authorizes the Authority to petition any appropriate U.S. Court of Appeals for the enforcement of any order of the Authority, and for temporary relief or restraining order pend-

ing review. The Senate bill contained no comparable provision. The Senate recedes.

2. House section 7123(d) authorizes the Authority to petition any U.S. District Court to obtain appropriate temporary relief or a restraining order when it receives an unfair labor practice complaint. There is no comparable Senate provision. The Senate recedes.

B. JUDICIAL REVIEW OF THE DECISIONS OF THE FEDERAL LABOR RELATIONS AUTHORITY

The Senate bill made reviewable in court decisions of the Authority concerning unfair labor practices, including awards of arbitrators relating to unfair labor practices. Otherwise, the Senate provides that all decisions of the Authority are final and conclusive, and not subject to further judicial review except for questions arising under the Constitution. (Section 7204(l); section 7216(f); section 7221(j).) The Senate provides that decisions of arbitrators in adverse action cases would be appealable directly to the court of appeals or court of claims in the same manner as a decision by the MSPB (section 7221(b)).

In the House bill, unfair labor practice decisions are appealable as in the Senate. In addition, all other final decisions of the Authority involving an award by an arbitrator, and the appropriateness of the unit an organization seeks to represent are also appealable to the courts (section 7123(a)). Under the House bill decisions by arbitrators in adverse action cases are first appealable to the Authority before there may be an appeal to the court of appeals.

In the case of arbitrators awards involving adverse actions, the conferees elected to adopt the approach in the Senate bill. The decision of the arbitrator in such matters will be appealable directly to the court of appeals (or court of claims) in the same manner as a decision by MSPB.

In the case of those other matters that are appealable to the Authority the conference report authorizes both the agency and the employee to appeal the final decision of the Authority except in two instances where the House recedes to the Senate. As in the private sector, there will be no judicial review of the Authority's determination of the appropriateness of bargaining units, and there will be no judicial review of the Authority's action on those arbitrators awards in grievance cases which are appealable to the Authority. The Authority will only be authorized to review the award of the arbitrator on very narrow grounds similar to the scope of judicial review of an arbitrator's award in the private sector. In light of the limited nature of the Authority's review, the conferees determined it would be inappropriate for there to be subsequent review by the court of appeals in such matters.

ISSUES BETWEEN AGENCIES AND LABOR ORGANIZATIONS SUBJECT TO NEGOTIATION OR CONSULTATION RIGHTS

A. SPECIFIC AREAS EXCLUDED FROM NEGOTIATIONS

Both bills specified certain matters on which the parties may not negotiate under any circumstances and certain other matters on which the agency may, in its discretion, negotiate. The following are among the differences in the bills:

1. The Senate (section 7218(a)(2)(E)) prohibits negotiations on the methods and means by which agency operations are to be con-

ducted. The House permits—but does not require—the agency to negotiate on such matters (House section 7106(b)(1)). The Senate recedes. The conferees wish to emphasize, however, that nothing in the bill is intended to require an agency to negotiate on the methods and means by which agency operations are to be conducted.

There may be instances where negotiations on a specific issue may be desirable. By inclusion of this language, however, it is not intended that agencies will discuss general policy questions determining how an agency does its work. It must be construed in light of the paramount right of the public to as effective and efficient a Government as possible. For example, the phrase “methods and means” is not intended to authorize IRS to negotiate with a labor organization over how returns should be selected for audit, or how thorough the audit of the returns should be. It does not subject to the collective bargaining agreement the judgment of EPA about how to select recipients for the award of environmental grants. It does not authorize the Energy Department to negotiate with unions on which of the research and development projects being conducted by the Department should receive top priority as part of the Department’s efforts to find new sources of energy. Furthermore, an agency can, in providing guidance and advice to bargaining representatives, instruct them to approach any negotiations involving methods and means with careful attention to the impact any resulting agreements may have and under no circumstances agree to language impacting adversely on the efficiency and effectiveness of agency operations. Such guidance, and any requirement placed on negotiators to consult with higher authority before agreeing to any language concerning methods and means would not conflict with the conference report nor constitute evidence of an unfair labor practice.

In sum, the conference report fully preserves the right of management to refuse to bargain on “methods and means” and to terminate bargaining at any point on such matters even if it initially agrees to negotiations.

2. Senate section 7215(d) permits the agency in its discretion to negotiate on “the number of employees in an agency.” House section 7106(a)(1) prohibits negotiations on this issue under any circumstances. The Senate recedes.

3. Senate section 7218(a)(2)(D) requires the agency to retain the right to “maintain the efficiency of the Government operations entrusted to such officials.” The House has no comparable wording. The Senate recedes. The conferees do not intend thereby to suggest that agencies may not continue to exercise their lawful prerogatives concerning the efficiency of the Government.

4. House section 7106(a)(2)(B) requires the agency to retain the right to make determinations with respect to contracting out work. There is no comparable Senate wording. The Senate recedes.

B. EFFECT OF SUBSEQUENTLY ADOPTED RULES

Senate section 7218(a)(1) stated that in the administration of all matters covered by the collective bargaining agreement the officials and employees shall be governed by any future laws and regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual, and any subsequently published agency policies and regulations required by law or by the regulations of appropriate authority. The House amendment does not contain this provision.

Instead, House section 7116(a) (7) makes it an unfair labor practice for an agency

* * * to prescribe any rule or regulation which restricts the scope of collective bargaining or which is in conflict with any applicable collective bargaining agreement.

The conference report authorizes, as in the Senate bill, the issuance of governmentwide rules or regulations which may restrict the scope of collective bargaining which might otherwise be permissible under the provisions of this title. As in the House, however, the Act generally prohibits such governmentwide rule or regulation from nullifying the effect of an existing collective bargaining agreement. The exception to this is the issuance of rules or regulations implementing section 2302. Rules or regulations issued under section 2302 may have the effect of requiring negotiation of a revision of the terms of a collective bargaining agreement to the extent that the new rule or regulation increases the protection of the rights of employees.

C. GOVERNMENTWIDE RULES OR REGULATIONS

The Senate has no provision governing consultation on Governmentwide rules or regulations. House section 7117(d) gives any labor organization "which is the exclusive representative of a substantial number of employees" national consultation rights with respect to such rules or regulations whenever it affects "any substantive change in any condition of employment." The procedures for consultation are similar to those which govern national consultation rights in other areas. The conferees adopted the House provision.

RIGHTS AND DUTIES OF LABOR ORGANIZATIONS AND AGENCIES

A. WITHOLDING OF DUES

Both Senate section 5231 and House section 7115(a) authorize an agency to deduct dues from the pay of members of a labor organization. The Senate makes the obligations of the agency to deduct dues from members of an exclusively recognized labor organization dependent upon its agreement to do so as part of a negotiated agreement. House section 7115(a) states that the agency shall make such deduction whenever it receives from an employee in the appropriate unit a written assignment authorizing it. Further, the House specifies that the allotment shall be made at no cost to the exclusively recognized labor organization or the employee. The Senate recedes.

B. RIGHT OF LABOR ORGANIZATION TO ATTEND MEETINGS BETWEEN MANAGEMENT AND AN EMPLOYEE

House sections 7114(a) (2) and (3) give a labor organization that has been certified as the exclusive representative the right to be present at the employee's request at any investigatory interview of an employee by an agency if the employee reasonably believes that the interview may result in disciplinary action against the employee. In addition, the House bill requires the agency to inform the employee of his right of representation at any investigatory interview of an employee concerning "misconduct" which "could reasonably lead" to suspension, reduction in grade or pay, or removal. The Senate bill contains no comparable provision.

The conferees agreed to adopt the wording in the House bill with an

amendment deleting the House provision requiring the agency to inform employees before certain investigatory interviews of the right to representation, and substituting a requirement that each agency inform its employees annually of the right to representation. The conferees further amended the provision so as to give the labor representative the right to be present at any examination of an employee by a representative of the agency in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee. The conferees recognize that the right to representation in examinations may evolve differently in the private and Federal sectors, and specifically intend that future court decisions interpreting the right in the private sector will not necessarily be determinative for the Federal sector.

C. EXPRESSION OF PERSONAL VIEWS

Senate section 7216 (g) states that the expression of

* * * any personal views, argument, opinion, or the making of any statement shall not constitute an unfair labor practice or invalidate an election if the expression contains no threat of reprisal or force or promise of benefit or undue coercive conditions.

The House bill contains no comparable provision.

The House recedes to the Senate with an amendment specifying in greater detail the types of statements that may be made under this section. The provision authorizes statements encouraging employees to vote in elections, to correct the record where false or misleading statements are made, or to convey the Government's views on labor-management relations. The wording of the conference report is intended to reflect the current policy of the Civil Service Commission when advising agencies on what statements they may make during an election, and to codify case law under Executive Order 11491, as amended, on the use of statements in any unfair labor practice proceeding.

D. ILLEGAL STRIKES OR PICKETING

Senate section 7217 (e) provides that any labor organization which "willfully and intentionally" condones any strike, work stoppage, slow-down, or any picketing of an agency that interferes with an agency's operations shall, upon an appropriate finding by the Authority, have its exclusive recognition status revoked. There is no comparable House provision.

The conference report adopts the Senate wording with an amendment. As agreed to by the conferees the provision will not apply to instances where the organization was involved in picketing activities. The amendment also specifies that the Authority may impose disciplinary action other than decertification. This is to allow for instances, such as a wildcat strike, where decertification would not be appropriate. In cases where the Authority finds that a person has violated this provision, disciplinary action of some kind must be taken. The authority may take into account the extent to which the organization made efforts to prevent or stop the illegal activity in deciding whether the organization should be decertified.

PROCEDURES GOVERNING COMPLAINTS OR GRIEVANCES SUBJECT TO
COLLECTIVE BARGAINING AGREEMENTS

A. EXCLUSIVITY OF GRIEVANCE PROCEDURE

Senate section 7221 (a) provides that, except for certain specified exceptions, an employee covered by a collective bargaining agreement must follow the negotiated grievance procedures rather than the agency procedures available to other employees not covered by an agreement. House section 7121(a) does not limit the employee to the negotiated procedures in the case of any type of grievance.

The House recedes.

B. ARBITRATOR'S AWARDS ON MATTERS THAT COULD HAVE BEEN APPEALED
TO MSPB

1. Senate section 7221 (h) establishes procedures the arbitrator must follow when considering a grievance involving an adverse action otherwise appealable to the MSPB. In these instances the arbitrator must follow the same rules governing burden of proof and standard of proof that govern adverse actions before the Board. The House contains no comparable requirement. The conferees adopted the Senate provision in order to promote consistency in the resolution of these issues, and to avoid forum shopping.

C. SCOPE OF GRIEVANCE PROCEDURES

The Senate provides that the coverage and scope of the grievance procedures shall be negotiated by the parties (section 7221 (a)). House section 7121(a) does not authorize the parties to negotiate over the coverage and scope of the grievances that fall within the bill's provisions but prescribes those matters which would have to be submitted, as a matter of law, to the grievance procedures. The conference report follows the House approach with an amendment. All matters that under the provisions of law could be submitted to the grievance procedures shall in fact be within the scope of any grievance procedure negotiated by the parties unless the parties agree as part of the collective bargaining process that certain matters shall not be covered by the grievance procedures.

D. SUITS IN DISTRICT COURT

House section 7121 (c) authorizes any party to a collective bargaining agreement to directly seek a District Court order requiring the other party to proceed to arbitration rather than referring the matter to the Authority. The Senate has no comparable provision. The House recedes. All questions of this matter will be considered at least in the first instance by the Authority.

ADDITIONAL AMENDMENTS

1. Senate section 7210(h) authorizes OPM to intervene in Authority proceedings and to request the Authority to reopen and reconsider a decision by the Authority. The House bill contains no comparable provision.

The conferees agreed to delete the specific provision in the Senate bill. However, this is not intended in any way to reduce the ability of the OPM or any other person to petition for intervention before the Authority or to petition for reconsideration by the Authority of its decisions.

2. Senate section 7213(b) requires that the views of an organization be "carefully considered." The House requires that the agency "consider" the views or recommendations of the organization, and further, that the agency shall provide the labor organization a written statement of the reasons for taking whatever final action it finally adopted (House section 7113(b)). The conferees adopt the House provision with the understanding that the required written statement of reasons need not be detailed. The conferees adopted similar House language in section 7111(d) with the same understanding.

3. Senate section 7218(b) provides that negotiations on procedures governing the exercise of authority reserved to management shall not unreasonably delay the exercise by management of its authority to act on such matters. Any negotiations on procedures governing matters otherwise reserved to agency discretion by subsection (a) may not have the effect of actually negating the authority as reserved to the agency by subsection (a). There are no comparable House provisions.

The conference report deletes these provisions. However, the conferees wish to emphasize that negotiations on such procedures should not be conducted in a way that prevents the agency from acting at all, or in a way that prevents the exclusive representative from negotiating fully on procedures. Similarly, the parties may indirectly do what the section prohibits them from doing directly.

4. Senate subsection (d) states that arbitration or third-party fact finding with recommendations to assist in the resolution of an impasse may be used by the parties only when "authorized or directed by the Panel." House subsection 7119(b) states that after voluntary arrangements prove unsuccessful, the parties may agree to a procedure for binding arbitration, rather than to require the services of the Federal Service Impasses Panel, "but only if the procedure is approved by the Panel." The Senate recedes.

5. The House provides that if no exception to an arbitrator's award is filed with the Authority, the award "shall be final and binding" (section 7122(b)). The Senate contained no comparable provision. The conferees adopted the House provision. The intent of the House in adopting this provision was to make it clear that the awards of arbitrators, when they become final, are not subject to further review by any other authority or administrative body, including the Comptroller General.

6. Both the House and Senate authorize negotiations except to the extent inconsistent with law, rules, and regulations (Senate sections 7215(c) and 7218(a); House sections 7103(a)(12)(14) and 7117(a)(1), (2), and (3)). The Senate specifically states that this included policies set forth in the Federal Personnel Manual. The House contained no comparable wording.

The conference report follows the House approach throughout this section and other instances where there are similar differences due to the Senate reference to policies, as well as rules and regulations. The conferees specifically intend, however, that the term "rules or regulations" be interpreted as including official declarations of policy of an agency which are binding on officials and agencies to which they apply.

The right of labor organizations to enjoy national consultation rights will also include such official declarations of policy which are binding on officials or agencies.

7. House section 7102 guarantees each employee the right to form, join, or assist any labor organization, or to refrain from any such activity. The Senate in addition provides that "no employee shall be required by an agreement to become or to remain a member of a labor organization, or to pay money to an organization." The conferees adopt the House wording. The conferees wish to emphasize, however, that nothing in the conference report authorizes, or is intended to authorize, the negotiations of an agency shop or union shop provision.

CERTAIN COLLECTIVE BARGAINING AGREEMENTS

Section 704(d) of the House bill provides certain savings clauses for employees principally in agencies under the Department of the Interior and the Department of Energy who have traditionally negotiated contracts in accordance with prevailing rates in the private sector of the economy and who were subject to the savings clauses prescribed in section 9(b) of Public Law 92-392, enacted August 19, 1972.

The Senate contains no comparable provision.

The conference report adopts the House provision with an amendment.

As revised, section 704(d) overrules the decision of the Comptroller General in cases number B-L89782 (Feb. 3, 1978) and B-L9L520 (June 6, 1978), relating to certain negotiated contracts applicable to employees under the Department of the Interior and the Department of Energy. This section also provides specific statutory authorization for the negotiation of wages, terms and conditions of employment and other employment benefits traditionally negotiated by these employees in accordance with prevailing practices in the private sector of the economy.

Section 704(d) (1) authorizes and requires the agencies to negotiate on any terms and conditions of employment which were the subject of negotiations prior to August 19, 1972, the date of enactment of Public Law 92-392. Section 704(d) (1) may not be construed to nullify, curtail, or otherwise impair the right or duty of any party to negotiate for the renewal, extension, modification, or improvements of benefits negotiated.

Section 704(d) (2) requires the negotiation of pay and pay practices in accordance with prevailing pay and pay practices without regard to chapter 71 (as amended by this conference report), subchapter IV of chapter 53, or subchapter V of chapter 55, of title 5, United States Code, in accordance with prevailing practices in the industry.

TITLE VIII

GRADE AND PAY RETENTION

Title VIII of the House amendment provides pay and grade retention for certain Federal employees who have been subject to reductions in grade as a result of grade reclassification actions or reductions in force due to reorganizations or other factors. Under the amendment, an employee whose position is reclassified to a lower grade would be entitled to retain the previous higher grade of his position so long as

he continues to serve in that position. An employee who is reduced in grade as a result of a reduction in force will be entitled to retain his grade for 2 years and his pay indefinitely thereafter. The employee's retained grade will be used for purposes of pay, retirement, and eligibility for promotion or training, but not for purposes of reduction-in-force retention. This amendment also provides for retroactive coverage in cases of reductions in grade which occurred between January 1, 1977 and the effective date of title VIII. The House also provides that the termination of benefits may not be appealed to the OPM. The Senate bill contains no such provision.

The conference substitute contains the provisions of title VIII of the House amendment except that the authorized period of grade retention in reclassification cases is limited to 2 years as in the case of reduction-in-force actions. Under the conference substitute, employees who are reduced in grade either as a result of reclassification actions or reductions in force will be entitled to retain their previous higher grades for a period of 2 years, and thereafter will be entitled to retain their existing rates of pay in those cases where the existing rate of pay exceeds the maximum rate of the new grade. The conference substitute adds language to make clear that the actual grade of the employee's position, and not the employee's retained grade, will be used for purposes of determining whether the employee is covered by the merit pay system applicable to supervisors and managers. Thus, an employee who is reduced from a GS-14 nonsupervisory position to a GS-13 supervisory position will retain the GS-14 grade but will be subject to the pay increase and cash award provisions of the merit pay system.

ROBERT N. C. NIX,
MO UDALL,
JIM HANLEY,
WILLIAM D. FORD,
WILLIAM CLAY,
PAT SCHROEDER,
EDWARD J. DERWINSKI,
JOHN H. ROUSSELOT,
GENE TAYLOR,
Managers on the Part of the House.
ABRAHAM RIBICOFF,
TOM EAGLETON,
LAWTON CHILES,
JIM SASSER,
MURIEL HUMPHREY,
CHARLES H. PERCY,
JACOB JAVITS,
TED STEVENS,
CHARLES MCC. MATHIAS, Jr.,
Managers on the Part of the Senate.

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PROCEEDINGS IN THE HOUSE OF REPRESENTATIVES
FROM THE CONGRESSIONAL RECORD

NOTE.—Statements or insertions which are not spoken by the Member on the floor will be identified by the use of a “bullet” symbol, i.e., ●.

[From 123 Cong. Rec. E 333
(daily ed. Jan 26, 1977):]

**FEDERAL LABOR-MANAGEMENT
RELATIONS**

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 26, 1977

Mr. CLAY. Mr. Speaker, on January 4, 1977, I introduced H.R. 13, the Federal Service Labor-Management Act of 1977. This bill would establish by law a system whereby Federal employees may join a labor union, participate in its management, and bargain collectively on matters affecting the conditions of their employment.

Since 1962, Federal labor-management relations have been governed primarily by a series of Executive Orders. During the past 15 years the Federal labor-management program has developed rapidly and there is an important need for comprehensive legislation which would govern this important area.

A well-balanced labor relations program will increase the efficiency of the Government by providing for meaningful participation of employees in the conduct of business in general and the conditions of their employment.

Mr. Speaker, I would not suggest that H.R. 13 represents the embodiment of all that is perfect in the area of Federal labor-management relations. It does however, in my judgment, address many of

[From 123 Cong. Rec. E 334
(daily ed. Jan 26, 1977):]

the key areas of labor-management relations. The bill is strongly endorsed by Federal employees through their elected leaders.

I am hopeful that public hearings will soon be convened in order to carefully consider how, if at all, this bill may be improved. I look for my colleagues to actively participate in this process. I am hopeful that many will join me when I reintroduce this bill within the next few weeks.

A summary of the bill's major provisions and a sectional summary follow:

SUMMARY

Establishes the rights of employees to join or not to join an employee organiza-

tion, to participate in its management, and to bargain collectively over conditions of employment.

Establishes the Federal Labor Relations Authority consisting of three members who are appointed by the President and confirmed by the Senate with responsibility for taking leadership in the establishment of Federal labor-management relations policy and administering the provisions of the law.

Establishes within the Authority the Federal Service Impasses Panel, whose members, subject to the review of the Authority, are empowered to investigate and make findings and recommendations for the resolution of collective bargaining impasses. Authorizes the Federal Mediation and Conciliation Service to assist in negotiation impasses.

Provides the means whereby a labor organization shall be granted exclusive recognition of a bargaining unit by securing a majority vote of those employees participating in the election; dues check-off; and payment of representation fee by non-member employees of the bargaining unit.

Establishes a Federal Personnel Policy Board whose members are appointed by the Authority and are responsible for acting upon Federal personnel policies and regulations which affect the conditions of employment of more than one agency's employees.

States the rights and duties of both labor and management, ensuring that each is free to conduct certain business without interference from the other; requires negotiation in good faith by both parties; establishes standards of conduct for labor organizations; and grants national consultation rights to unions which represent a substantial number of agency employees.

Provides for establishment of negotiated grievance procedures, including binding arbitration of grievances, subpoena powers to Authority, and conditions under which judicial review is available to either party.

Provides for resolution of unfair labor practices.

Provides that an employee against whom an adverse action is proposed is entitled to 30 days written notice, relevant evidence, pre-termination hearing, transcript, and written decision.

Authorizes such sums as may be necessary for the implementation of this Act.

SECTIONAL SUMMARY

Section 1. Names the Act the "Federal Service Labor Management Act of 1977".

Section 2. Amends Subpart F of Part III of title 5, U.S.C. as follows:

SUBCHAPTER I—GENERAL PROVISIONS

Section 7101. Findings.

Declares that employee participation through their own labor organizations, in the matters affecting conditions of employment is in the public interest.

Section 7102. Employees' Rights.

Establishes the rights of employees to join or not to join an employee organization, to

participate in its management, and to bargain collectively over the terms and conditions of employment.

Section 7103. Definitions: Application.

Defines for purposes of this chapter, the terms "person", "employee", "labor organization", "Authority", "Panel", "Board", "agreement", "grievance", "supervisor", "management official", "collective bargaining", "confidential employee", "conditions of employment", "professional employee", "agency", "exclusive representative", "fire-fighter", and "educational employee"; excludes managers and supervisors from participation in management of labor organization and an employee when such activity would result in an apparent conflict of interest.

Section 7104. Federal Labor Relations Authority.

Establishes the Federal Labor Relations Authority whose three members are Presidentially appointed with the advice and consent of the Senate and serve 5-year rotating terms; requires an annual report to the President for transmittal to the Congress; and provides for the appointment of a General Counsel by the President with the advice and consent of the Senate.

Section 7105. Powers and Duties of the Authority.

Provides that the Authority shall provide leadership in establishing Federal labor-management relations policy, adopt an official seal, establish its principal office in the District of Columbia, and appoint staff; authorizes the Authority to delegate certain powers to its Regional Directors and an administrative law judge, subject to the review of Authority; provides for travel expenses; and empowers and directs Authority to prevent any violations of this Act.

SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

Section 7111. Exclusive Recognition of Labor Organizations.

Grants exclusive recognition to a labor organization which secures majority vote in lawful elections within an appropriate unit, subject to certain prohibitions; establishes petitioning authority for elections; states requirements and procedure for petitioning the Authority; authorizes certification of a labor organization as an exclusive representative; authorizes Authority to determine community of interest in establishing the bargaining unit; provides for membership in the bargaining unit; excludes certain managers, supervisors, confidential employees, personnel employees engaged in other than clerical duties, employees involved in the administration of this Act, security and intelligence duties, and in a bargaining unit in which a majority of the professional employees oppose membership within the labor organization; provides for the consolidation of two or more units into a single larger unit; the submission of names of officers, by-laws, statement of objectives, etc. to Authority; and waiving the right of hearing for consent election.

Section 7112. National Consultation Rights.

Grants national consultation rights to a labor organization which has been granted exclusive recognition below the agency level and provides that such organization shall be advised of proposed changes in conditions of employment and afforded an opportunity to present its own views and for consideration by the agency prior to its taking final action.

Section 7113. Representation Rights and Duties.

Establishes for labor organizations the right of exclusive representation of all employees within the bargaining unit, provides that the organization and agency shall negotiate in good faith, and describes the obligations of both agency and organization; Civil Service Commission policies which relate to more than one agency shall be subject to the consideration of the Board; if it relates to employees in the collective bargaining unit, it shall be subject to negotiation if policies affect the conditions of employment. If the agency is without exclusive recognition, the issue shall be decided by the Authority. Establishes a Federal Personnel Policy Board to consider personnel policies and regulations whose members are designated by the Authority representing equally labor and management.

Section 7114. Allotments to Representatives.

Provides for dues check-off; requires payment of "representation fee" by non-member employees within bargaining unit; describes unfair labor practices of agency and labor organization; authorizes and fixes the procedure whereby the Authority may prevent an agency or labor organization from engaging in an unfair labor practice—complaints, hearing procedures, etc.

Section 7117. Negotiation Impasses: Federal Service Impasses Panel.

Authorizes the Federal Mediation and Conciliation Service to assist in negotiation impasses; establishes Federal Service Impasses Panel within Authority whose members are appointed by the Authority for rotating terms; staff; right of Panel to investigate impasses, make findings and recommendations, conduct hearings and take binding action.

Section 7118. Standards of Conduct for Labor Management.

Requires that labor organization seeking to represent or representing employees maintain democratic procedures, prohibit conflict of interest among its members, and maintain fiscal integrity.

SUBCHAPTER III—GRIEVANCES, APPEALS AND REVIEWS

Section 7119. Appeals from Adverse Decisions.

Entitles employees to appeal adverse decisions to Civil Service Commission which, after investigation, is required to submit its findings and recommendations to employee and administrative authority which shall take the action recommended by the Commission.

Section 7120. Grievance procedures.

Requires that negotiated agreements provide for grievance procedures which are fair, simple, expeditious and include the right of labor organization to present and process grievances; to be present when any grievances are adjusted; and for court action should either party refuse to proceed to arbitration.

Section 7121. Exceptions to Arbitral Awards.

Either party may file an exception to arbitrator's award; Authority may modify award if it is contrary to laws or regulations, procured by fraud or partiality of arbitrator, or should arbitrator exceed his authority.

Section 7122. Judicial Review.

Aggrieved party may seek judicial review of final order of the Authority on basis of record within 60 days; Authority or either party may petition the Circuit Court of Appeals for enforcement of final order; and empowers the court to grant relief for unfair labor practices.

SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS**Section 7131. Reporting Requirements for Standards of Conduct.**

Requires that labor organization adhere to reporting requirements for standards of conduct under the National Labor Relations Act and provides that the Secretary of Labor may revoke these provisions if he finds that the purposes of this Act would be served.

Section 7132. Official Time.

Authorizes official time to be granted to employee representatives of labor organizations for conduct of negotiations; provides that internal business shall be conducted by representatives during non-duty hours; and requires Authority to determine whether official time shall be granted.

[From 123 Cong. Rec. E 335
(daily ed. Jan. 26, 1977):]

Section 7133. Subpoenas.

Empowers Authority to issue subpoenas to secure testimony or evidence; provides for court enforcement of subpoenas; witness fees; grants immunity to subpoenaed witnesses; fixes penalties for persons interfering with the duties of the Authority.

Section 7134. Compilation and Publication of Data.

Requires that the Authority maintain a record of its proceedings and that its files be available to the public.

Section 7135. Funding.

Authorizes appropriation of such sums as may be necessary.

Section 7136. Issuance of Regulations.

Requires the Authority, the Federal Mediation and Conciliation Service, and Panel to issue rules and regulations to implement this Act.

Section 7137. Continuation of Existing Laws and Recognitions, Agreements and Procedures.

Provides for the continuance of existing agreements and renewal of recognitions of organizations which represent managers and

supervisors in private sector; prior policies established by previous Executive Orders which deal with Federal labor-management relations; and modifies and repeals inconsistencies in existing law and provides that this Act shall take precedence.

Section 3. Amends section 5596(a) of title 5 U.S.C. to provide back pay, leave, seniority and attorney's fees to current employees affected by unwarranted personnel policies and lump sum payments to former employees affected by such practices.

Section 4. Strikes out Chapter 75 of title 5 U.S.C.; makes technical changes in Subchapters III and IV, and strikes out Subchapters I and II and inserts the following:

SUBCHAPTER I—CAUSE AND PROCEDURE**Section 7501. Definitions.**

Defines "employee" and "adverse action" for purposes of this Subchapter.

Section 7502. Cause.

Provides that agency may take adverse action against an employee to promote the efficiency of this service.

Section 7503. Procedure.

Provides that employees against whom an adverse action is proposed is entitled to 80 days written notice, relevant evidence, pre-termination hearing, transcript, and written decision; empowers hearing examiner to issue subpoenas; provides for judicial enforcement of subpoenas; makes finding subject to judicial review; provides that parties may modify this procedure as part of a collective bargaining agreement; and makes conforming changes in the analysis of Chapter 75 and Chapter 72 of title 5 U.S.C.

Section 5. Makes conforming changes in Chapter 77 of title 5 U.S.C.

Section 6. Makes conforming changes in Subchapter II of Chapter 71 of title 5 U.S.C.

Section 7. Makes technical and conforming changes to Sec. 5315 title 5 U.S.C.

Section 8. Provides that if any provision of this Act is declared invalid, the remainder shall not be affected.

Section 9. Provides that the effective date of this Act shall be 120 days after its enactment or on October 1, 1977, whichever comes later, except that sections 7104, 7105, and 7136 shall take effect on the date of enactment or on October 1, 1977, whichever comes later.

[From 123 Cong. Rec. E 5566
(daily ed. Sept. 14, 1977):]

**LABOR MANAGEMENT RELATIONS
FOR FEDERAL EMPLOYEES****HON. WILLIAM (BILL) CLAY**

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 14, 1977

Mr. CLAY. Mr. Speaker, today, with the cosponsorship of my distinguished colleague from Michigan—Mr. WILLIAM FORD, I have introduced a bill which

would establish by law a labor-management relations program for Federal employees. Our bill incorporates the basic features of two similar bills which were introduced earlier in this session—H.R. 13, which I introduced on January 4, and H.R. 1589, which Mr. Ford introduced on January 10.

The Subcommittee on Civil Service, which I am privileged to chair, has conducted 6 days of public hearings on labor-management legislation. The subcommittee received testimony from 12 witnesses.

Regretfully, because the Civil Service Commission has not yet determined its position on this issue, the subcommittee has not had the benefit of its views. While I am hopeful that we will have the benefit of the administration's views before this legislation reaches the floor of the House of Representatives, I believe that this issue is too important to wait upon the administration to complete its "study."

The existing Federal labor-management relations program is overly biased in favor of management, the scope of bargaining is so limited as to render it virtually meaningless, the procedure for the resolution of impasses and disputes is unwieldy and overly drawn out.

The bill which I have introduced today with my colleague, Mr. WILLIAM D. FORD, addresses these issues in a manner which is effective, fair, and balanced.

While my colleague and I may differ in our respective approach to some details of this bill, Mr. Speaker, we are united in its basic thrust. We have each made some modifications in our original approach to this issue. We may need to resolve other differences in our approach. We are however united in our determination to provide a balanced impartial approach to labor-management relations for Federal employees.

The major provisions of our bill, as we introduced it are as follows:

Finds that it is in the public interest to establish by law the right of federal employees to bargain collectively over the terms and conditions of their employment and provides federal employees with the right to join or not to join a labor organization, to participate in its management, and to bargain collectively over the terms and conditions of their employment. (Sections 7101, 7102)

Establishes a Presidentially-appointed three-member Federal Labor Relations Authority with responsibility for administering the provisions of the law. (Sections 7104, 7105)

Provides that labor organization may secure exclusive representation by election; for

agency shop; and for dues check-off by (1) exclusive representative, (2) an organization holding a 10% membership base if no other group holds exclusivity, and (3) an alternate labor organization, should the employee choose to do so. (Sections 7111, 7113, 7116)

Provides for the negotiation of grievance procedures (except employment discrimination and political rights), with binding arbitration and judicial review. An employee who pursues grievances and appeals by the statutory appeals mechanism may select his/her own representative. (Sections 7103(A) (16), 7121, 7122, 7123, 7124)

Provides for the resolution of impasses through third-party intervention—Federal Services Impasses Panel—and binding arbitration; authorizes the assistance of the Federal Mediation and Conciliation Service. (Section 7119)

Establishes a seven-member Employee Pay and Benefits Council which negotiates pay and other major money-related fringe benefits with the President's agent (Chairman of the Civil Service Commission, Director of Office of Management and Budget, and Secretary of Labor) and provides for presidential alternatives and Congressional disapproval of recommendations. (Sections 7114, 7115)

Provides official time for contract negotiations, negotiation of ground rules, and processing of grievances. (Section 7132)

Provides an employee against whom an adverse action is proposed with 30 days written notice, relevant materials and pretermination hearing. (Section 7503)

Provides for the prevention and resolution of unfair labor practices and standards of conduct for labor and management. (Sections 7117, 718, 7120)

[From 124 Cong. Rec. E 1547
(daily ed. Mar. 22, 1978):]

A CRITICAL LOOK AT THE ADMINISTRATION'S PLANS TO REVAMP THE CIVIL SERVICE SYSTEM

HON. WILLIAM F. WALSH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 22, 1978

● Mr. WALSH. Mr. Speaker, I have many reservations about the administration's recently announced proposals to revamp the Civil Service Commission. Congress must look very carefully at these proposals, especially in light of

[From 124 Cong. Rec. E 1548
(daily ed. Mar. 22, 1978):]

recent criticism by the chairman of the House Service Subcommittee that the administration's figures on how many Federal workers are fired each year because of incompetence is drastically understated. Backers of this reorganization plan have said only 226 Federal workers were fired in 1977. Yet investigation by the House subcommittee showed that in fiscal year 1976 alone, 17,000 Federal workers were relieved of duty because of poor performance. Surely that number did not decrease so drastically last year.

Because of this discrepancy, we in Congress must look at this plan with a sharp and thorough eye, and with this in mind, I submit the following article as food for thought. It was written by Vincent Connery, president of the National Treasury Employees Union.

Old Hickory came to the White House more than 100 years ago and brought with him the "spoils system."

With their coonskin caps and deerhide boots, the supporters of Andy Jackson soon found jobs throughout our still fledgling Government, while the clerks, bookkeepers, and tariff collectors from the opposition party were thrown into the streets.

That was patronage in its rawest, most blatant form. Today, the world is much more sophisticated and so are those who fish to resurrect the spoils system. Nothing simple for them; instead we have an inch-thick report which has been submitted to the President by Dwight Ink and his personnel management project.

Taken together, the 125 recommendations contained in the "Ink Report" would restructure the personnel system from top to bottom, paving the way for absolute presidential domination of the Federal Government and its employees. To accomplish this, the task force proposed sweeping changes in the hiring rules, the job protections accorded employees and managers, compensation practices, and the role of unions in the Federal Government.

* * * * *

No one would suffer more, however, than rank-and-file employees. Promotions would be few and far between, with vacancies being filled by the party faithful. While they would still be technically eligible for step increases, em-

ployees would find them very scarce. Supervisors would be encouraged to deny employees step increases, and these same individuals would be evaluated on the basis of how few they recommended. Of course, the lower the number, the higher the supervisor's evaluation.

In addition, the Ink Task Force urges a series of proposals to reduce the wages and fringe benefits of bargaining unit employees and to eliminate quality step increases. The task force recommendations also make it easier to fire employees by relaxing the standard for dismissal and by forcing them to prove why they should be allowed to keep their jobs. Currently, the burden of proof in an adverse action is on management; under the task force proposals it would be shifted to the employee. Once an employee has been removed from the rolls, there is nothing to prevent filling that position with someone who has proved their loyalty to the administration.

Simply stated, the Ink Task Force report is a clever scheme, cloaked in pious pronouncements, to politicize the entire Federal workforce, while driving down the pay and fringe benefits of the rank-and-file. Campaign supporters of the President will find it much easier to be hired, to move quickly through the ranks, and then find their ultimate reward as a manager receiving bonuses for their outstanding loyalty. In the meantime, other Federal workers will face a shrinking paycheck and will be haunted by the constant threat of dismissal to make room for one of the "chosen."

Predictably, the Ink Task Force proposed the creation of a new agency, called the Merit Protection Board that is supposed to prevent all of this from happening. However, the members of the Board will be appointed by the President and they will report directly to him. More importantly, with the free reign that the task force gives to Presidential appointees, throughout the Government, the Board members would be powerless to stand against what would be a horde of political roughriders.

Just think, it was only a few months ago that the President's lobbyists were telling Congress that law enforcement officers, as well as those engaged in audits, inspections, and administering grants, should be excluded from Hatch Act reform for fear of overly politicizing the "Federal bureaucracy." Those on the Ink Task Force certainly did not share this concern. Their proposals would not only wipe out any Hatch Act protections, it would reward employees for actively

supporting the administration and penalize those who did not.

In order to remove as many obstacles as possible to the politicizing of the Federal workforce, the Ink Task Force report seeks to narrowly restrict the role of Federal employee unions. Matters which are not negotiable would be removed from the bargaining table. For example, under Executive Order 11491, unions can negotiate contract provisions requiring that current employees receive first consideration for higher level vacancies. Under the Ink recommendations, this would be forbidden. The President's people would get the jobs.

This effort to strap Federal unions is not surprising. After all, strong, active unions are an anathema to political control of Federal employees. However, using a smoke screen to cloak their true intentions, the task force has proposed such things as independent Federal Labor Relations Authority, an agency shop, a consultative board to discuss revisions in the Federal Personnel Manual and binding arbitration of removal actions.

Even here, however, the Ink Task Force is disingenuous. Upon close examination, the independent Labor Relations Authority turns out to be not so independent, with its members reporting to the President, just as they do now, and sharing the same office space with his personnel advisors. With regard to the agency shop, everyone knows that it is a virtual certainty that Congress would refuse to approve the necessary legislation to implement this concept.

At first blush, the expansion of the grievance procedure to include removal actions seems like a big step forward. But, in reality, it is no more than a hollow promise. By lowering the standard for dismissal and by forcing em-

[From 124 Cong. Rec. E 1549
(daily ed. Mar. 22, 1978):]

ployes to prove their innocence, Federal workers would be denied due process, while arbitrators would be so restricted it would be nearly impossible for them to rule on behalf of employees.

As far as the creation of a union board to review FPM supplements, all I can say is that 7 years of meaningless dialog on the Federal Employees Pay Council clearly demonstrates the futility of any consultative procedure. Sitting on such a board would simply constitute a dubious right to talk at someone who is already locked into a course of action.

Naturally, among the 125 recommendations there are a few proposals that would improve the current system. But make no mistake, the task force report, if adopted, would seriously harm Federal employees. In effect, it would turn the clock back to the days of Old Hickory when job security and fairness were unknown and Federal unions did not exist.

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A wide open road is being paved for massive political chicanery and all in the name of civil service reform. This must leave the spirit of Andrew Jackson chuckling and right proud.●

[From 124 Cong. Rec. H 5248
(daily ed. June 9, 1978):]

CIVIL SERVICE REFORM

(Mr. DERWINSKI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Speaker, I would like to advise the Members that I am surprised by the gentleman from New York (Mr. CONABLE) and the gentleman from California (Mr. LAGOMARINO), who will follow me. They have comments critical of the President. My comments are in support of the President.

Specifically, I support the President's Civil Service Reform program, and I wish to point out to the House that it is being torn apart in the Committee on Post Office and Civil Service. I wish the Democrats would give their beloved President some proper support.

Mr. CONABLE. Mr. Speaker, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from New York.

Mr. CONABLE. I thank the gentleman for yielding.

Mr. Speaker, I support the President, to the extent that he is advocating a tax cut. I hope the Congress will not scuttle it.

Mr. DERWINSKI. Mr. Speaker, this may be a great day for the President.

Mr. Speaker, President Jimmy Carter must feel like the manager of a star-laden team which has more than its share of troubles in producing victories. He has tried a variety of starting pitch-

ers who have had difficulty locating the strike zone. He has watched in dismay as signals flashed from the sidelines have been routinely ignored. Worse still, his political moundsmen have shown a penchant for the balk.

The lack of action on the President's sound and sensible plan to reform and reorganize the Federal civil service system adds credence to the suspicion many of the players on his own congressional team are more interested in political commercials than in solid and substantive legislation. Instead of rallying to the President's support for his courageous action in attempting to make the Federal bureaucracy more responsive and responsible to the taxpayers, members of his party have been busy crafting a series of mischievous amendments. In the process, good legislation, which should be moving swiftly through Congress, has been languishing in the House Post Office and Civil Service Committee.

Republican members of the committee were ready to begin a markup of the President's legislation weeks ago. At a White House meeting, we gave the President our word we would provide the fullest possible cooperation in the expeditious consideration of the legislation.

We stand by that pledge. We agree with the President there is a genuine need for a new emphasis on increasing Government efficiency by placing a new emphasis on the quality of performance by Federal workers. Even the workers themselves have been frustrated by the inefficiency of the system.

Meanwhile, committee Democrats have been caucusing for about a month on a nonstop basis searching for ways to position themselves against the President.

The President's plan will encourage competent workers to improve the system. It is good government; it is good politics; it is good for the taxpayers; and it is long overdue. There can be no excuse for attempting to inject partisanship into what should be and is a strictly nonpartisan matter.

As the ranking Republican on the House Post Office and Civil Service Committee, I reaffirm my pledge to work with the President to overcome the irresponsibility of members of his own party.

[From 124 Cong. Rec. H 7105
(daily ed. July 20, 1978):]

CIVIL SERVICE REFORM

The SPEAKER pro tempore. Under a previous order of the House the gentleman from Illinois (Mr. DERWINSKI) is recognized for 5 minutes.

● Mr. DERWINSKI. Mr. Speaker, in assessing major battle damage to his high-priority civil service reform legislation, President Carter today should be grateful the bill no longer is in the clutches of a band of hypocritical Democrats on the House Post Office and Civil Service Committee. The deliberate damage in committee to this much-needed legislation can be repaired when it moves onto the House floor, but it is going to require some positive action by the President.

He must make it clear that the mischievous and crippling amendments to his legislation are completely unacceptable. Then, he must rally the House leadership to help him repair the damage done by members of his own party. Then, conscientious Democrats, who place good government ahead of petty politics, working with Republicans can produce meaningful and responsible civil service reform.

What happened in committee was a brazen display of political hypocrisy by a group of Democrats who ignored their President and the public. Instead, they responded with Pavlovian precision to the demands of greedy union bosses who see gold and more power in the maintenance and perpetuation of a bloated and inefficient bureaucracy.

In adding legislation which emasculates the Hatch Act, committee Democrats made it clear they want a civil service system which would be subject and subservient to politics. The section of the President's bill dealing with the senior executive service has been made meaningless, and the labor-management title has been expanded to benefit labor unions at the expense of sound managerial flexibility. The final insult to the President was the committee action to include in the reform bill the costly firefighter legislation which he already has vetoed.

It is obvious the irresponsible band of shortsighted committee members have transformed what should be a nonpartisan issue into highly partisan and unworkable legislation.

The committee's one proper act came when it released the President's bill from bondage.●

[From 124 Cong. Rec. E 4150
(daily ed. July 28, 1978):]

THE CAREER WOMAN IN GOVERNMENT: WHAT IS HER FUTURE?

HON. GLADYS NOON SPELLMAN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, July 28, 1978

● Mrs. SPELLMAN. Mr. Speaker, there is a great deal of interest and emphasis, these days on "upward mobility" for women, both in government and in the private sector. For this reason, I would like to share with my colleagues a recent speech by Alan K. Campbell, Chairman of the U.S. Civil Service Commission, before the National Council of Career Women. Mr. Campbell outlined the reform legislation now before the Congress and commented on the measures the Commission was taking or drafting, to make the Federal career service more "hospitable" to the talents of women. The National Council of Career Women is a nonprofit membership organization providing career guidance and development for women in order to make them better prepared for "upward mobility."

The speech follows:

THE CAREER WOMAN IN GOVERNMENT: WHAT IS HER FUTURE?

I very much appreciate the opportunity to talk with you about the future of career women in government.

* * * * *

* As you know, we began to examine the personnel system a year ago, and reform legislation is now before Congress. Hearings have been completed in both the House and the Senate. With markup now in progress, we have every expectation that we will see a bill reported well before the session ends.

But before I outline that legislation, let me highlight some measures we are already taking, or drafting, to make the Federal career service more hospitable to the talents of able women, to get women and minorities out of the "basement of public service," and increase their numbers at all levels.

The first of these is the Presidential Management Intern Program. Our purpose is to attract outstanding young men and women.

[From 124 Cong. Rec. E 4151
(daily ed. July 28, 1978):]

well educated and committed to public management. They bring to government new

graduate degrees in public management at a time when creative management is sorely needed.

On completing their two-year internships, they may receive competitive civil service status. They start at GS-9, and are eligible for promotion during their internships. Close to 1,000 highly qualified people were nominated for the first year of the program, and 250 were selected. It is particularly gratifying that 46 percent of the finalists are women.

These interns, I might add, are in great demand, for there are more billets than the 250 who can be hired in a given year.

Another promising new opportunity is a graduate co-op education (or work-study) program extending the existing undergraduate program to graduate and associate degree students. It could provide as many as 10,000 internship-like positions yearly. Students are paid for career-related work assignments in Federal agencies while still in college. If they meet certain requirements, they may enter the career service non-competitively. This program will open still more doors for women in the public service.

We have done extensive work to develop a Special Emphasis Program, in which agencies will be authorized to appoint women and minorities through special procedures in an occupation where they are underrepresented. The program is clearly experimental, and if it does not produce good results it will be abandoned. We feel experimentation is necessary, however, because current procedures have not resulted in a Federal work force that appropriately reflects the nation's diversity.

The plan would permit a variety of selection methods, providing competition on the basis of education, experience, and performance. Those selected would, in effect, be taking a two-year on-the-job performance test. If successful, they will enter the career service.

The plan is positive and innovative. However, there are things it would not do:

It would not create new jobs, or set up parallel systems outside the personnel mainstream . . . rather, candidates will occupy regular positions which are temporarily designated for these so-called Schedule A jobs.

It would not choose candidates on non-merit factors, such as race, color, creed, sex, national origin, or handicap . . . appointments under the excepted authority would be open to all candidates.

I'd like to point out that the Special Emphasis Program is designed for hiring new employees. In no way is it a replacement for upward mobility. Nevertheless, women already in Federal jobs could compete through special methods and be selected for higher grade positions.

Let me briefly mention Upward Mobility, which began to work in a meaningful way with passage of the EEO Act of 1972.

Its basic principle is that some employees in dead-end jobs, GS-9 and below, have the potential for more rewarding positions, but

not the qualifications. How do we tap this potential?

Target jobs must be identified, the employee must have counseling, there must be training to get the employee qualified for the better job, and, finally, each participant's progress must be carefully evaluated.

Participants in the Upward Mobility Program are predominantly women since most of the dead-end jobs are held by women, and the program has helped them. From 1972 through 1975, an estimated 60,000 employees moved to career occupations, some reassigned, some promoted. And in 1976 alone, the latest year for which we have solid information, over 70,000 were either promoted or reassigned to new careers.

What about mobility for the mid-level woman?

Just as there is a difficult gap to be bridged at the GS-4 through 9 range, another stopping point for women is at the GS-11 through 13 levels.

Women who reach the "full performance" (formerly journeyman) level of their jobs, and are excellent technicians in their fields, find that they are not being considered for promotion to management jobs. I have just asked the Commission's Federal Women's Program, working with our Bureau of Training and an interagency task force, to map out a meaningful career development ladder for such women.

We expect these positive steps not to undermine merit, but enhance it—a concept that has clearly been violated in a system which has 92 percent white males and 3 percent women at its top levels.

* * * * *

The two legislative instruments which we're proposing are the Civil Service Reorganization Plan, or Reorganization Plan 2, which went to Congress today, and the Civil Service Reform Act of 1978, submitted to Congress on March 2.

The Reorganization Plan would split the Civil Service Commission into three agencies, namely:

The Office of Personnel Management which would help the President manage government's human resources, as does the Office of Management and Budget in managing government's finances.

The Merit Systems Protection Board which would be an independent agency to hear employee appeals, empowered to punish violators or abusers of the system.

The Federal Labor Relations Authority which would pull together several programs, and function for Federal workers such as the National Labor Relations Board does for private sector workers.

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[From 124 Cong. Rec. E 4152
(daily ed. July 28, 1978):]

Whatever measures the Congress approves, I can assure you that we will persevere in our drive to rebuild and modernize the civil service system. We count on your support.●

[From 124 Cong. Rec. E 4293
(daily ed. Aug. 3, 1978):]

LABOR-MANAGEMENT RELATIONS FOR FEDERAL EMPLOYEES

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 3, 1978

● Mr. CLAY, Mr. Speaker, when H.R. 11280, the Civil Service Reform Act of 1978, is considered by the House, I understand that an amendment may be offered which would significantly narrow the scope of issues over which employees may bargain with agency management. My views on title VII in general were adequately expressed in supplemental views of myself, Mr. FORD of Michigan, Mr. HEFTTEL, Mr. MICHAEL O. MYERS, Ms. SCHROEDER, Mr. SOLARZ, and Mr. CHARLES H. WILSON of California, which are a part of the committee report (95-1403) of the bill. I do, however, want to support the balanced approach which the committee took in dealing with scope of bargaining in title VII.

Originally, title VII of the bill provided that employees could bargain over everything except that which is prohibited by law—pay, money-related fringe benefits, retirement, and so forth. The administration wanted to retain, for all practical purposes, the existing practice which hearings before the Subcommittee on Civil Service conclusively demonstrated was overly narrow, management-oriented, confusing, and antiquated.

The committee wisely adopted a balanced approach to these divergent points of view. While I opposed the approach in committee, it does strike an acceptable middle ground in this complex issue. Thus, employees still cannot strike, cannot bargain over pay, and cannot have an agency shop as they may in the private sector.

On the other hand, the committee has preserved for agency managers the right to keep off of the bargaining table those prerogatives which the committee believes are essential for them to manage

effectively. Specifically, a labor organization cannot bargain with agencies over:

First. Its mission, budget, internal security, or personnel necessary to conduct its work;

Second. Its direction of its employees;

Third. Its assignment of work, contracting out, or personnel necessary to conduct its work; and

Fourth. Those actions necessary in the event of a national emergency.

Further, while the bill provides that governmentwide regulations are negotiable, it permits the Federal Labor Relations Authority to make them non-negotiable if the Government can prove a "compelling need" for uniformity in all agencies. Under this arrangement, the Government could not remove an issue from the bargaining table by merely issuing a regulation.

Were an amendment to narrow the scope of bargaining approved by the House, an agency with an innocuous regulation that each of its male employees must wear a tie while on official duty could invoke that regulation to bar the issue from negotiation with an employee representative.

Mr. Speaker, title VII of H.R. 11280 strikes a careful and judicious approach to labor management relations in the Federal sector. The issues over which employees may bargain are already modest and very limited. The committee, while it has not adopted the far-reaching approach that I prefer, has adopted a position which moves slightly beyond existing practice.

I urge my colleagues to support the committee position on labor-management relations and to oppose any crippling amendments which may be offered on the floor of the House.●

[From 124 Cong. Rec. H 8155 (daily ed. Aug. 9, 1978):]

HOUSE RESOLUTION 1201—TO DISAPPROVE REORGANIZATION PLAN NUMBERED 2

Mr. BROOKS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H. Res. 1201) to disapprove Reorganization Plan Numbered 2 transmitted by the President on May 23,

1978; and pending that motion, Mr. Speaker, I ask unanimous consent that debate on the resolution be limited to not to exceed 1 hour, the time to be equally divided and controlled by the gentleman from New York (Mr. HORTON) and myself.

* * * * *

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H. Res. 1201) with Mr. AMMERMAN in the chair.

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Mr. BROOKS. Mr. Chairman, Reorganization Plan No. 2 of 1978 is the structural framework of President Carter's proposed civil service reform. It deals entirely with organization, not with the policy reforms that the President is seeking, and which are addressed in separate legislation that will be coming before the House shortly.

I emphasize this distinction because while the policy reforms have stirred up a lot of controversy and will be the subject of much debate when they come to the floor, the reorganization plan has met with little or no opposition. Our committee has recommended unanimously that the pending resolution disapproving the plan be defeated, which is the upside-down procedure we have to follow to approve a plan under the reorganization authority we have given to the President.

We did have requests from the Post Office and Civil Service Committee that we hold up the reorganization plan until the reform legislation had been enacted. We did get the administration to delay submitting the plan for as long as it could, but once the plan was submitted, the 60-day clock started running and the plan will now take effect automatically at the end of this week unless the House or Senate reject it.

Although the plan is designed to provide the organizational structure to carry out the proposed civil service reforms, not only can it stand alone, it will produce necessary and desirable changes by itself in the existing Federal personnel system.

The primary purpose of the reorganization plan is to change the Civil Service Commission. That agency has

[From 124 Cong. Rec. H 8156
(daily ed. Aug. 9, 1978):]

had so many duties and functions added to it over the 110 years of its existence that its original purpose has become obscured and it is now called on to play many conflicting roles.

The Commission would be replaced by a Merit Systems Protection Board, which would give Federal employees an independent, impartial board to protect them against abuses of the merit system. The board would be bipartisan, with it three members appointed by the President and confirmed by the Senate.

The managerial functions of the Civil Service Commission would be taken over by a new executive branch agency, the Office of Personnel Management, headed by a director appointed by the President and confirmed by the Senate. The President, as Chief Executive, would thus have an administrative arm, directly responsible to him, to develop and administer Federal personnel policy.

A third new agency created by the plan is the Federal Labor Relations Authority, which would be responsible for administering Federal labor-management policy. It would be a bipartisan board with three members appointed by the President and confirmed by the Senate, and it would take over functions now handled by Executive order on a part-time basis. The authority would have a general counsel to investigate and prosecute complaints of unfair labor practices.

Those are the essential features of the plan, Mr. Chairman. Its purpose is to correct long standing organizational deficiencies that have greatly reduced the effectiveness and credibility of the Civil Service Commission and helped undermine the morale of Federal workers. It will also strengthen merit protection for Federal employees, improve personnel management, and provide an effective framework for labor-management relations. These are all worthwhile objectives, separate and apart from the policy reforms we will be debating later, and I urge support for the plan.

Mr. HORTON. Mr. Chairman, I yield myself 10 minutes.

Mr. Chairman, I rise in opposition to House Resolution 1201 and in support of Reorganization Plan No. 2 of 1978.

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The plan in outline is simple. The Civil Service Commission would be abolished and would be replaced by two separate agencies—first, an Office of Personnel Management, to advise the President, develop personnel programs, and administer central personnel programs, and second, a Merit Protection Board headed by a bipartisan panel of three members to investigate and review claims of merit abuses and grievances and to adjudicate appeals. Investigation and prosecution of political abuses and merit system violations will be conducted by a presidentially appointed special counsel within the Board.

The plan would also establish an independent Federal Labor Relations Authority in the executive branch for central administration of the labor relations program now vested in a number of entities. The Federal service impasses panel will be continued as a distinct organizational entity within the authority to resolve negotiating impasses between Federal employee unions and agencies.

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[From 124 Cong. Rec. H 8157
(daily ed. Aug. 9, 1978):]

Mr. STEERS. Mr. Chairman, I want to first thank the chairman of the full Committee on Government Operations, the gentleman from Texas (Mr. Brooks) for calling my office Friday and alerting me to the fact that this resolution would be coming up shortly. I regret that I am in total opposition to the view taken by the gentleman from Texas (Mr. Brooks) and to the position taken by my esteemed colleague, the gentleman from New York (Mr. Horton).

Second, I want to tell the House that the delegates to the American Federation of Government Employees Convention in Chicago voted overwhelmingly to withdraw any and all prior support that their national organization had given to the Carter administration's proposals to "reform the civil service system."

In addition, apparently expressing strong dissatisfaction with the President's proposals in this and other areas, the convention voted to censure Mr. Carter, as stated in a motion that read in part as follows:

Whereas, his actions since his inauguration have clearly demonstrated that he has lied not only to Federal workers but to the Amer-

ican people as a whole, therefore be it resolved that this body censures Jimmy Carter, President of the United States, for his blatant lies to Federal workers and the American people. * * *

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[From 124 Cong. Rec. H 8158 (daily ed. Aug. 9, 1978):]

● Mr. HARRIS. Mr. Chairman, I am opposed and will vote against the bill before us today that will abolish the Civil Service Commission and create in its place the new Office of Personnel Management, the Merit System Protection Board, and the Federal Labor Relations Authority.

* * * * *

I believe there is merit in separating the dual but conflicting roles the Commission now has, that is the role of manager of employees and employee defender. No agency can effectively handle such conflicting responsibilities, and clearly there is a need for an independent body to adjudicate employee complaints, a nonpartisan, impartial body that the employee can look to for fair treatment and justice.

However, H.R. 11280 is the vehicle which delineates the new agencies' functions and responsibilities. What we seem to be doing today is setting up three new but empty boxes.

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In short, under the popular slogan of "civil service reform," this Congress is close to producing civil service chaos.

The Federal employee should be assured fair treatment and personnel decisions should be made on the basis of merit.

The taxpayer deserves a government in which decisions are made based on justice, not politics.

This has been my goal and will continue to be my goal as we strive to make Government work better for our citizens.●

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The CHAIRMAN. The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 1201

Resolved, That the House of Representatives does not favor the Reorganization Plan Numbered 2 transmitted to the Congress by the President on May 23, 1978.

Mr. BROOKS. Mr. Chairman, I move that the Committee do now rise and report the resolution back to the House with the recommendation that the resolution be not agreed to.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. BROWN of California) having assumed the chair. Mr. AMMERMAN, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the resolution (H. Res. 1201) to disapprove Reorganization Plan No. 2 transmitted by the President on May 23, 1978, had directed him to report the resolution back to the House with the recommendation that the resolution be not agreed to.

The Clerk reported the resolution.

The SPEAKER pro tempore. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the yeas appeared to have it.

Mr. HORTON. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 19, nays 381, not voting 32, as follows:

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[From 124 Cong. Rec. E 4497 (daily ed. Aug. 10, 1978):]

TITLE VII OF CIVIL SERVICE REFORM BILL

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 10, 1978

● Mr. CLAY. Mr. Speaker, H.R. 11280, the President's civil service reform bill will soon be debated on the House floor.

Several of my colleagues and I fought for a fair, balanced, effective and strong labor-management relations program which is encompassed in title VII of H.R. 11280.

The committee considered and rejected several proposals put forth by the administration which would have essentially gutted our efforts and left the labor-management relations program totally

management-oriented with little attention focused on Federal employees.

In the final analysis, the committee struck a middle ground on the issue of collective bargaining for Federal employees.

I want to share with my colleagues the point by point actions taken by the committee during consideration of title VII. The areas include: Coverage, removability, union security, scope of bargaining and management rights, scope of grievance/arbitration procedures, judicial involvement, and official time.

Coverage.—The committee print provided that exceptions to the bill's coverage may be made only by the FLRA and only on an individual basis. The FBI, CIA, NSA, Foreign Service, and other agencies were specifically excluded from coverage in the Administration's proposal. The Administration proposal further provided the agency head with the unilateral discretion to suspend the program for national security, investigative, internal audit purposes, or when non-domestic activities would serve the national interest. By voice vote, the committee adopted a compromise amendment which excluded intelligence and national security agencies from the bill's coverage and which provided that the FLRA, upon application of agency heads, could grant additional exceptions from the bill's coverage for internal security and intelligence units.

Removability.—The committee print restricted the President's authority to remove the members of the FLRA and the Impasses Panel, and the General Counsel of the FLRA. The Administration proposal originally placed no restrictions on the President's authority to remove these persons from office. During committee consideration, the Administration agreed to the removal of members of the FLRA only for cause. The committee adopted by voice vote a compromise amendment which provided that members of the FLRA and Impasses Panel may be removed by the President only for cause and that the General Counsel of the FLRA serves at the pleasure of the President. This provision is consistent with the provisions of the National Labor Relations Board. The Administration proposal was rejected by the committee on a voice vote.

Union security.—The committee print provided for an agency shop if, after the election of an exclusive representative, a majority of employees voting in a special authorization election, voted for one. The Administration proposal prohibited involuntary contributions to employee organizations, but authorized the negotiation of free, voluntary dues withholding by agencies. By a roll call vote of 16-9, the committee adopted a compromise amendment which deleted the agency shop provision but retained the authorization of voluntary dues withholding at no cost to the union. The Administration proposal was rejected by the committee on a roll call vote of 15-10.

Scope of bargaining and management rights.—The committee print included within the scope of bargaining all personnel policies, practices and matters affecting working conditions of employees. These regulations would also be subject to collective bargaining, unless the FLRA determined that a "compelling need" existed to remove these matters from negotiation.

Presently, regulations issued by agencies (Civil Service Commission, Office of Management and Budget, Department of State, for example) which apply to other agencies, take away the authority of these affected agencies to negotiate matters which are otherwise subject to collective bargaining.

The "compelling need" test that President Ford made applicable to agency regulations in 1975 is thus moved up to Government-wide regulations. This provision on the one hand insures management the flexibility to issue uniform regulations covering terms and conditions of employment on Government-wide levels. On the other hand, it would ensure that employees are not deprived of their legitimate right to bargain over the terms and conditions of their employment, except where a genuine or "compelling" need to do so exists.

The Administration proposal retained virtually the same scope of bargaining as the Executive Order; it is retained a strong management rights clause; Government-wide regulations and personnel policies were barred from negotiations; and agency regulations were not subject to negotiations if a "compelling need" was proven to the FLRA by the agency.

The committee adopted, by a roll call vote of 14-10, a compromise amendment expanding the management rights clause to include as nonbargainable issues the number of employees in an agency, and agency authority to direct employees and to determine the methods, means and personnel by which agency operations will be conducted. Agencies could not, as at present, unilaterally remove issues from bargaining by merely issuing agency regulations.

The Administration proposal was rejected by the committee on a roll call vote of 16-9.

Scope of grievance/arbitration procedures.—The committee print provided for negotiated grievance/arbitration procedures on virtually all matters except discrimination and political activity issues. Employees could choose between the negotiated and statutory grievances procedures and could be awarded attorneys' fees and interest on back pay awards.

Under the Administration's proposal, grievance procedures would include statutory appeals but would not cover "examination, certification and appointment, suitability, classification, political activities, retirement, life and health insurance, national security, or the Fair Labor Standards Act"; and, back pay awards would not include attorneys' fees.

The committee adopted by voice vote a compromise amendment which narrowed the scope of the negotiated grievance arbitra-

tion procedure in the committee print to exclude retirement, and life and health insurance, and to include discrimination complaints. An aggrieved employee in a discrimination complaint may pursue his or her complaint under the applicable provisions of the Civil Rights Act of 1964 as amended and regulations which may be issued by the Equal Employment Opportunity Commission. The Administration proposal was rejected by the committee by a roll call vote of 16-9.

Judicial involvement.—The committee adopted the language contained in the committee print which provided that most decisions and orders of the FLRA are subject to judicial review and enforcement. The Administration proposal, which was rejected by the committee on a voice vote, would limit judicial review to only those issues in which there is a Constitutional question, and made no provision for judicial enforcement of FLRA actions.

Official time.—The committee print provided for unlimited official time for the processing of grievances and the preparation and actual negotiation of contracts. The committee adopted by voice vote a compromise amendment which provided unlimited official time only for the preparation and actual negotiation of contracts. The Administration proposal was to retain existing practice. This proposal was defeated on a voice vote.

Mr. Speaker, title VII, as approved by the Committee on Post Office and Civil Service, represents a realistic approach to the issue of collective bargaining in the Federal sector.

I urge my colleagues to uphold title VII and reject any weakening amendments which would only serve to gut this title. ●

[From 124 Cong. Rec. E 4509
(daily ed. Aug. 10, 1978):]

FEDERAL LABOR-MANAGEMENT RELATIONS

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 10, 1978

● Mr. CLAY. Mr. Speaker, the House will soon consider H.R. 11280, the President's civil service reform bill.

Title VII of H.R. 11280 establishes a statutory labor-management relations program for Federal employees. It provides for the right to collective bargaining for Federal employees, an independent Federal Labor Relations Authority

(FLRA), the resolution of disputes by the intervention of neutral, independent, third parties, and judicial review and enforcement of the decisions and orders of the FLRA.

During full committee markup on H.R. 11280, the committee overwhelmingly rejected proposals, sponsored by the administration. The reason for this was that the administration's proposals would have merely preserved the status quo in labor-management relations. The administration sought only to codify the Executive order under which the existing labor-management program has operated. The committee did not believe that these proposals went far enough—they would only serve to continue a program which is management-oriented, narrow in its scope, and ineffective in meeting the needs of agency managers and employees alike.

In summary, title VII as approved by the committee establishes and provides for the following:

It is in the public interest for federal employees to bargain collectively, to organize a labor organization, and to participate in its management.

A presidentially-appointed three-member Federal Labor Relations Authority (FLRA) with responsibility for administering the law, and for the appointment of a General Counsel within the FLRA whose responsibilities include investigation of allegations of unfair labor practices.

A labor organization may secure exclusive representation by a majority vote of those voting within an appropriate bargaining unit and for voluntary dues withholding at no cost to the union upon election of an exclusive representative.

The scope of bargaining includes, consistent with Federal law, matters which are subject to Government-wide rules or regulations unless the FLRA determines otherwise on the basis of a "compelling need" for uniformity of such rules or regulations. A management rights clause retains certain managerial prerogatives for the Government.

The negotiation of grievance procedures (except retirement, life and health insurance and political rights), with the employee entitled to representation, binding arbitration and judicial review. An employee may choose between the negotiated or the statutory appeals procedure.

The resolution of impasses through the intervention of neutral, independent third parties—Federal Services Impasses Panel, binding arbitration, and the Federal Mediation and Conciliation Service.

Judicial review and enforcement of final decisions and orders of the FLRA involving unfair labor practices, awards by an arbitrator, or appropriate unit determinations.

Official time for contract negotiations.

The prevention and resolution of unfair.

labor practices and standards of conduct for labor and management.

In approving title VII of H.R. 11280, the committee adopted an evolutionary, balanced approach to the improvement of the Federal labor-management relations program. When the National Labor Relations Act was enacted in 1935, Federal employees were excluded from its coverage. In 1962 however, the late President John F. Kennedy, in recognition of the growing need, established a formal labor relations program for the Federal work force. That program was refined by President Nixon's Executive Order 11491 which, as amended, has been the foundation of the Federal labor-management relations program.

Executive Order 11491 was a milestone in its time. Today almost 60 percent or 1.2 million of all Federal employees are represented by 86 different employee organizations in over 3,500 bargaining units.

The committee believes that the growth of the Federal work force and changes in our time dictate that labor-management relations in the Federal sector must become more in step with the 1970's—recognizing that there are nevertheless differences between the public and the private sector.

During 1977, the Subcommittee on Civil Service, which I am privileged to chair, conducted exhaustive public hearings on labor-management relations—receiving testimony from over 40 witnesses in the course of 5 days of public hearings. Testimony was overwhelmingly in support of the thrust of the committee's legislation because the existing program was susceptible to the whims of an incumbent President, limited in its scope, management-oriented, and lacking in the opportunity for judicial review of decisions of the Federal Labor Relations Council.

Although the administration belatedly came forth with a statutory labor-management proposal, their program would have done little more than codify the Executive order. The committee's efforts to reconcile some of the differences between its position and the viewpoint of the administration were exhaustive but—notwithstanding long and involved efforts—the administration's concessions to the committee were so insignificant as to render them virtually meaningless.

Title VII, as approved by the committee, is based upon H.R. 9094, for which

public hearings were held on September 15, 1977 (Serial No. 95-31). Earlier, public hearings were held on related labor-management legislation on April 21, 1977 and May 3, 5, 10, 1977 (Serial No. 95-30).

A committee print of title VII was used for markup purposes. That print was similar to H.R. 9094 except that it first, did not grant agency shop automatically upon election of an exclusive representative; a second election was required for [From 124 Cong. Rec. E 4510 (daily ed. Aug. 10, 1978):]

agency shop; second, contained no provision for an "alternative labor organization;" third, a management rights clause was added; and fourth, there was no provision for the negotiation of pay and other major money related fringe benefits.

The administration's labor-management proposal was similar to Executive Order No. 11491, under which the existing labor-management relations program is operated, with two exceptions: First, it established an independent full-time Federal Labor Relations Authority as the successor to the Federal Labor Relations Council; and second, it permitted agencies and unions to negotiate most grievance and arbitration matters which may now be appealed only under statutory procedures.

Title VII, as approved by the committee, represents a balanced, impartial approach to resolving the principle differences between two points of view—the print which, in some respects, would adopt in the Federal sector many practices which are prevalent in the private sector and the administration proposal which, for all practical purposes, would simply codify Executive Order No. 11491 with its confused, management-oriented, duplicative, antiquated approach to labor-management relations.

I urge my colleagues to support the committee version and reject any weakening amendments which may be offered during the House's consideration of title VII of the bill.●

[From 124 Cong. Rec. H 8451
(daily ed. Aug. 11, 1978):]

**PROVIDING FOR CONSIDERATION
OF H.R. 11280, CIVIL SERVICE RE-
FORM ACT OF 1978**

Mr. MEEDS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1307 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 1307

Resolved, That upon the adoption of this resolution it shall be in order to move, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11280) to reform the civil service laws. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Post Office and Civil Service now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be read for amendment by titles instead of by sections, and all points of order against said substitute for failure to comply with the provisions of clause 7, rule XVI are hereby waived, except that it shall be in order when consideration of said substitute begins to make one point of order that titles IX and X would be in violation

[From 124 Cong. Rec. H 8452

(daily ed. Aug. 11, 1978):]

of clause 7, rule XVI if offered as a separate amendment to H.R. 11280 as introduced. If such point of order is sustained, it shall be in order to consider said substitute without titles LX and X included therein as an original bill for the purpose of amendment, said substitute shall be read for amendment by titles instead of by sections and all points of order against said substitute for failure to comply with the provisions of clause 7, rule XVI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendments in the nature of a substitute made in order by this resolution. The previous question shall be considered as ordered

on the bill and amendments thereto final passage without intervening motion except one motion to recommit with or without instructions.

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Mr. MEEDS. Mr. Speaker, House Resolution 1307 is the rule providing for the consideration of the bill H.R. 11280, the Civil Service Reform Act. This is a standard open rule, providing for 1 hour of general debate. It contains one waiver for section 402(a) of the Budget Act, the section that requires bills authorizing budget authority for a fiscal year to be reported prior to May 15 preceding that fiscal year. The Budget Committee has no objection to granting the waiver.

In addition, there is a waiver of clause 7, rule XVI, the germaneness rule, for titles I-VIII and title XI of this bill. The germaneness waiver is necessary to protect this committee amendment in the nature of a substitute from points of order that might otherwise lie against a few provisions in the substitute that were not in the original bill.

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Mr. HARRIS. If the gentleman will yield further, it is difficult for the gentleman from Virginia to understand why we would waive points of order with respect to certain titles and not waive points of order with respect to other titles. There are titles to the bill, and I refer the gentleman to title VIII, which is an addendum to the bill, which may be subject to the same points the gentleman made, and yet we waive points of order with respect to that title. Is this correct procedure, to waive points of order with regard to certain provisions which may be subject to germaneness points of order and not to others?

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(Mr. LOTT asked and was given permission to revise and extend his remarks.)

Mr. LOTT. Mr. Speaker, the gentleman from Washington, I think, has adequately explained the rule.

I would like though to emphasize a few points. First it is a 1-hour basically open rule. It does waive section 402(a) of the Budget Act, as the gentleman from Washington noted, but there is no problem from the Budget Committee standpoint since this is a matter dealing with the May 15 deadline. The bill is to be

read by titles instead of by sections.

I want to emphasize primarily the point the gentleman from Washington has been discussing with the gentleman from Virginia with respect to clause 7, rule XVI of the permanency rule. It is waived against the entire committee substitute with one exception. In the beginning of the consideration of the substitute, it shall be in order to make one point of order that titles IX and X would not be germane to the bill if introduced or offered as a separate amendment. If the point of order should be sustained, this means the committee substitute minus titles IX and X will be up for consideration.

Title IX is the Hatch Act repeal and title X includes the work reduction for Federal firefighters.

I think in answer to the question of the gentleman from Virginia, actually in my opinion there was not a need to waive points of order against other parts of the bill. Probably we could have come to the floor with just a straight open rule. There was some possible question with regard to title VIII and possibly title VII because of some expansion of the subject matter, but probably points of order would not be sustained against either one of these, but there was a clear indication that a point of order could be made against the Hatch Act provisions and the firefighter provisions.

As the gentleman knows, I voted for the Federal firefighters reduction of work hours inclusion in this bill and there may be some meritorious argument on the part of the gentleman that a point of order would not be proper against this title.

ice reform. Therefore, with me, it is a matter of keeping one's eye on the ball.

Mr. Speaker, I would like to take back my time, if I may, and proceed to talk a little bit about why the Committee on Rules took the action they did.

If any games were being played, in my opinion, they were played in the Committee on Post Office and Civil Service. This rule is an attempt to try to clean up the mess made in the Post Office and Civil Service Committee. All of the Members know, I am sure, by now that this is one of the administration's "must" bills. I think it is to the President's credit that he is trying to do something about civil service and the need for reform. I did not. As a matter of fact, I eventually voted against reporting this bill out of the Committee on Post Office and Civil Service; but we all know that something needs to be done on civil service reform. This is the vehicle we can work on it with.

The meat of the idea is good. We have added, as I said before, a lot of appendages to what we started out with in the Committee on Post Office and Civil Service. We made substantial changes in the veterans' preference, which I think is a mistake. I think we have gone too far. I think it really is a situation where we are breaking a commitment which we made to the veterans of this country. Under the changes in the bill we are saying to the World War II veterans and to our Korean veterans and even to a few Vietnam veterans, "We are going to change the rules now. You are not going to be entitled to this veterans' preference."

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[From 124 Cong. Rec. H 8453 (daily ed. Aug. 11, 1978):]

Mr. CLAY. I do not know how the gentleman can conclude that they would cause problems when both titles IX and X passed this House by overwhelming majorities, in spite of the fact that the gentleman from Mississippi did not support either.

Mr. LOTT. They are two subjects which this House has already considered; but in this instance, we are trying to consider civil service reform. We are trying to do something that is very badly needed for this country. The administration is supporting it. I think that the majority of this House and the Congress as a whole would like to have civil serv-

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[From 124 Cong. Rec. H 8454 (daily ed. Aug. 11, 1978):]

However, basically there are some good ideas in this legislation. It would provide for the codification of the merit system principles for civil service employees; a more efficient method of evaluating job performance and of resolving personnel disputes; establishment, on an experimental basis, of the senior executive service.

This is something which has been around since the 1950s. Several Presidents have proposed this idea, going back, I think, to proposals made by the Hoover Commission. The senior executive service is something we should take a look at. Maybe it should be done on an

experimental basis.

I think if we take out the Hatch Act addition on a point of order, and take out the Federal firefighters amendment on a point of order or by a vote subsequently on the floor, and if we can make changes in the veterans' preference, make a decision as to the senior executive service, and make changes in title VII, we will have a bill with which we could go forward and which this whole House can vote for so that the Senate can take it up, hopefully, very quickly in September. Then we will have some genuine civil service reform.

Let me conclude, before I yield, by making this further point. I would like to commend the gentleman from Arizona (Mr. UDALL) for the fine job he has done in the Committee on Post Office and Civil Service. I thought a couple times maybe things slipped away from us, but we have a very independent minded committee. The gentleman was trying to lead the committee through a real "mine field" during the debate on the bill. The gentleman was leading the fight for the administration in many instances when he did not even agree with the administration position; so I think the gentleman is to be commended for coming in and doing this great job.

Although I spoke in jest of the gentleman from Illinois (Mr. DERWINSKI), I want to say that he has done an outstanding job.

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Mr. ANDERSON of Illinois. Mr. Speaker, I rise in support of this rule and the bill it makes in order—the Civil Service Reform Act of 1978. This is a 1-hour, open rule which waives section 402(a) of the Budget Act—the requirement that bills be reported prior to May 15th—and waives the germaneness rule against the committee substitute, except for titles IX and X which deal with the Hatch Act and the Federal Firefighters Basic Workweek.

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The central elements of the President's reform plan have been retained in the bill before us today. These include:

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Establishment of a new program for labor-management relations, allowing employees to bargain through their

unions with agency management on issues other than wages and fringe benefits;

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[From 124 Cong. Rec. H 8456 (daily ed. Aug. 11, 1978):]

(Mr. CLAY asked and was given permission to revise and extend his remarks.)

Mr. CLAY. Mr. Speaker, I rise in opposition to this rule. My opposition basically falls into three categories. First, I resent the thuggish, alley tactics employed by the administration on members of the Rules Committee to set the stage for deleting two titles of this bill. They pressured not only the members of the House Post Office and Civil Service Committee, but also the members of the Rules Committee. Cabinet members called members of the Post Office Committee and also members of the Rules Committee. We have had a tremendous amount of pressure from people in the armed services, generals calling to make sure that the administration got what it wants. X Members of Congress have called, and yesterday even a little paper-boy encouraged me to go along with the President's proposal.

Second, Mr. Speaker, I resent the unbelievable climate of urgency in which this bill and the rule was considered. A system which has taken over 80 years to develop is now being proposed that we destroy in a matter of 80 days. To be truthful with the Members, nobody in this House or in the administration really knows exactly what this bill is all about, what is in it, or how it will impact on Federal employees.

We saw this same kind of urgency displayed some 10 years ago when we rushed through the Postal Reform Act. That was going to be the great panacea. It was going to solve and resolve all the problems in our Postal System, and it too was the legislative centerpiece of the President at that time.

Third, Mr. Speaker, I oppose this rule because I resent the arbitrary, capricious, and inconsistent manner in waiving points of order for certain titles, and not for certain other titles.

Mr. Speaker, this rule if approved will allow points of order against titles IX and X as being nongermane, while waiving points of order against title VIII, which is of more questionable germane-

ness than titles IX and X. Title IX, the Hatch Act reform, is obviously an integral part of civil service reform. Notwithstanding that some of us may differ on the merits of title IX, I contend that it is germane. The issue is emotional and controversial, but still germane. Section 1206 of H.R. 11280 charges the special counsel of the Merit Systems Protection Board with the responsibility to investigate allegations of improper political activities by Federal employees. Federal employees in that context include certain Federal, civilian, and postal employees, as well as certain State and local officers and employees.

Because the special counsel's authority is so broad that it extends to these employees, inclusion of title IX is appropriate. Title IX belongs within the context of this bill.

Although the House approved this legislation in the last two Congresses by overwhelming margins, it has become increasingly clear that the other body will not act on Hatch Act reform this year. I offered my amendment in committee in order to insure that both Houses of Congress had the opportunity to work their will in considering reform of the Hatch Act.

Many of us have worked hard and long in pressing for passage of this and other legislation in recent years, only to see it languish and die in the other body.

Mr. Speaker, the issue of full political participation for Federal employees and protection of the public interest should be addressed here and now. I have worked long and hard to produce a civil service reform bill that balances the rights of management and workers. The bill recommended by the administration was too management oriented. The committee bill is a great improvement over the President's bill. An essential part of this balancing is title IX—Hatch Act reform.

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[From 124 Cong. Rec. H 8457
(daily ed. Aug. 11, 1978):]

Mr. Speaker, this rule should be defeated. A Democratic President who claims this piece of legislation to be the centerpiece of his legislative program ought to sit down with the Democrats of this Chamber—as opposed to sitting down with the leaders of the U.S. Chambers of Commerce—and propose a bill

that will in effect protect the basic rights of Federal employees.

I urge defeat of the rule.

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[From 124 Cong. Rec. H 8458
(daily ed. Aug. 11, 1978):]

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HARRIS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 357, nays 18, not voting 57, as follows:

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[From 124 Cong. Rec. H 8460
(daily ed. Aug. 11, 1978):]

CIVIL SERVICE REFORM ACT OF 1978

Mr. UDALL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11280) to reform the civil service laws.

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[From 124 Cong. Rec. H 8461
(daily ed. Aug. 11, 1978):]

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 11280, with Mr. DANIELSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Is there objection to dispensing with the first reading of the bill?

Mr. BAUMAN. Mr. Chairman, reserving the right to object to dispensing with the first reading of the bill, can the gentleman from Arizona tell the Committee what the schedule for the rest of the afternoon might be?

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Arizona.

Mr. UDALL. As I told the gentleman from Maryland and other colleagues it would be part of my purpose, based on arrangements and discussions with the gentleman from Missouri (Mr. CLAY) and other Members who are concerned with this bill, that we complete general debate in order under the rule and at the conclusion of the general debate, without reaching points of order or amendments, I will move that the Committee do now rise, and we would conclude the bill at another time.

I had promised the leadership to try to get through the bill today and I thought we had some hope of doing that until these events occurred.

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[From 124 Cong. Rec. H 8462
(daily ed. Aug. 11, 1978):]

The CHAIRMAN. Without objection, the further first reading of the bill will be dispensed with.

There was no objection.

The CHAIRMAN. Under the rule, the gentleman from Arizona (Mr. UDALL) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. DERWINSKI) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Chairman, I yield myself such time as I may consume.

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

Mr. UDALL. Mr. Chairman, this is a major bill, and it is one on which the Committee on Post Office and Civil Service has worked long and hard.

Mr. Chairman, the bill we are considering today is the most comprehensive reform of the civil service laws ever presented to the House. It relates to practically every aspect of civil service employment in the U.S. Government—appointment, veterans' preference, pay, classification, labor relations, political rights, the organization of agencies in the executive branch responsible for administering the civil service system, and insuring fairness and equity for employees, and a host of other issues which we have deliberated for the last 5 months.

Chairman NIX introduced the President's proposal on civil service reform on March 3. Following that, our committee conducted 13 days of public hearings in March, April, and May. More than 200 witnesses, representing all facets of public life in this country, testified before our committee. Following those hearings, our committee met for 10 days to mark up this legislation. Some 77 amendments were considered and finally, on July 19, by a vote of 18 to 7, the committee ordered the bill reported with a committee amendment.

This bill is divided into 11 titles. It is designed to resolve some of the major problems which the President and many Members of Congress believe hinder Federal agencies from functioning effectively under the civil service system.

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Title VII establishes a new labor-management relations program. Rather than enacting into law the skeleton outline of the Executive order on labor-management relations, the committee has approved what we believe is a fair and responsive program. We have attempted to navigate a course which gives Federal employees greater rights in labor relations than they have heretofore enjoyed. At the same time we have preserved the rights of management to run the shop. I believe the time has simply come for Federal employees to enjoy some, if not all, of the same rights which employees in the private sector have had since 1935. We do not permit bargaining over pay and fringe benefits, but on other issues relating to an employee's livelihood, we do permit collective bargaining between Federal employee unions and agency management. To those who claim the Government will simply go up in smoke if this labor provision is adopted, let me refer you to those who said the world would go up in smoke if the Waggonner Act were approved, or the Social Security Act, or the medicare bill, all of which have contributed so much to improve the quality of American life.

Title VIII incorporates the provisions of the Nix bill on downgrading of Federal employees. This legislation has already been reported out of our committee, but we believe that because of the lateness of the hour, action by the Senate might not be possible. The administration supports the enactment of title VIII.

Title IX incorporates the provisions of the Hatch Act reform, which previ-

ously passed the House and is now pending in the Senate. I am sure there will be others who will address that issue at greater length.

Title X incorporates the provisions of the firefighters' work week bill, which previously passed both Houses but was vetoed by the President.

On both of these issues I think it is fair to say that if the House approves this bill with these provisions intact, there is some doubt that the Senate would be willing to go to conference. I personally supported and voted for both of these bills as separate legislation, and I have nothing but high regard for my colleagues from Missouri and Virginia who are their sponsors, but their inclusion could jeopardize the possibilities for enactment of the civil service reform bill this year.

Title XI includes miscellaneous and technical provisions, including a decentralization of government study proposed by my colleague from Iowa, Mr. LEACH.

Mr. Chairman, I believe the committee has worked out a very good bill. It gives the administration most of what it wants. It gives our friends in labor a positive program to achieve many of the rights which other citizens have enjoyed for decades. It improves the protection

[From 124 Cong. Rec. H 8463
(daily ed. Aug. 11, 1978):]

for employees and it provides for the establishment of a new system of high level management which I believe is necessary.

I urge my colleagues to support the committee amendment.

Mr. DERWINSKI. Mr. Chairman, I yield myself such time as I may consume. (Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, as we proceed into the critical phase of amending and shaping this legislation I hope Members on both sides of the aisle will keep an objective eye on what should be our ultimate goal—that is, the enactment of honest and unbiased civil service reform.

This legislation offers the Members of the House the opportunity to reinvigorate a Federal civil service merit system that, during its 95-year lifespan, has become immune to effective management.

It is my strong personal opinion that civil service reform is a nonpartisan is-

sue and that reform is good Government. I hope that feeling is shared by my colleagues.

While I voted in committee to report this legislation to the floor, in the interest of promoting a sound concept, there are parts of the committee-reported bill I strongly oppose, and would like to sketch out these areas so that when we get to the amending process we will have a better idea of the key issues.

The most damaging addition to the bill is title IX which contains the language of H.R. 10, a bill emasculating the Hatch Act and opening the door to politicization of the civil service system. The inclusion of this title is contrary to the concept of reform legislation.

In his message transmitting his civil service reform legislation to the Congress, President Carter declared one of his major objectives was "to strengthen the protection of legitimate employee rights." A fundamental right of employees under the civil service merit system is to be free from and protected against political coercion. Repeal of the Hatch Act, as proposed in title IX destroys that protection. The ability of the civil service to perform in an efficient and unbiased manner would be seriously impaired by title IX.

The administration opposes the inclusion of title IX in this legislation and so I urge all of my colleagues to join in opposing and rejecting title IX, or any modification of it.

My Democratic colleagues should be particularly concerned with the addition of title X to the bill, which is a gratuitous slap at the President. This title contains the provisions of H.R. 3161, a bill reducing the basic workweek of Federal firefighters which President Carter vetoed less than 2 months ago and returned to the Congress with a strong message of rejection.

The firefighters' workweek legislation has nothing to do with civil service reform. It is a bill that cannot stand on its own merit and adding it to this bill is simply a move to complicate House consideration of essential reform legislation.

The language in this bill diluting the veterans' preference laws should also be rejected.

The fundamental thinking behind the veterans' preference laws, which date from 1865, is to compensate those who served our Nation honorably in time of war by providing qualified applicants with certain preference in appointment. These laws also grant preference for re-

tention rights during a reduction in force.

The title dealing with the senior executive service was caught in, and became the victim of, one of the many crossfires in committee. To limit the SES to a 2-year experimental program in just three agencies, and the committee amendment does, is to dilute legitimate reform. The senior executive service is a cornerstone of this legislation, and I urge support of an amendment to restore the bill to its original purpose as recommended by the administration.

The labor-management provisions of the bill, in title VII, expand considerably the scope of bargaining beyond that established under Executive Order 11491, the Executive order which presently governs labor-management relations in the Federal sector.

Under the committee bill, Federal employees unions will have the right to negotiate such management-oriented issues as promotion standards, job classification, and reduction-in-force standards and procedures.

I suggest to those who are interested in true reform that it is important to correct title VII so that it essentially conforms with the Executive order, as originally proposed, and supported by the administration.

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[From 124 Cong. Rec. H 8464
(daily ed. Aug. 11, 1978):]

Mr. HANLEY. Mr. Chairman, I do not believe there is a question at all that congressional attention to the civil service system is long overdue. Unfortunately, expediency has been the order of the day, as opposed to responsibility. Earlier, the gentleman from California (Mr. CHARLES H. WILSON)—and I do not see him here at the moment—asked: Is it fair to say that some games have been played?

I would respond to Mr. WILSON in the sense, yes and indeed, virtually every game has been played from three-card Molly right on through a good shell game. Unfortunately, the subject matter has become completely confused, distorted. Early on, I committed myself to civil service reform if done in a responsible way. I urged the President that in recognition of the scope of this undertaking, whereas we are about to turn around the system that has been in order for better

than 100 years, let us be a bit more deliberate. Let us, hopefully, effect decent compromises with dissident entities. I urged that we take the remaining months in this Congress and do the spadework, setting a target for early on in the 96th Congress, at which time we would commit ourselves to civil service reform as an absolute priority. At that time, we would have welded together a highly responsible package, something that would have pre-

[From 124 Cong. Rec. H 8465
(daily ed. Aug. 11, 1978):]

vented the occurrence in Chicago this week at the AFGE convention, an upheaval that was totally unnecessary had the executive branch been somewhat more deliberate.

The civil service reform issue just about blew that association apart. As opposed to supporters, the President now has dissenters, and that is most unfortunate.

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[From 124 Cong. Rec. H 8466
(daily ed. Aug. 11, 1978):]

(Mr. CLAY asked and was given permission to revise and extend his remarks.)

Mr. CLAY. Mr. Chairman, there has been a great deal of discussion and attention focused on the President's civil service reform bill. Many of us have devoted untold hours to make this legislation a true reform bill. H.R. 11280 which is now before the House is such a bill—it gives the administration the flexibility it has sought for management while at the same time providing certain basic and necessary rights for Federal employees.

The two sections of the bill which I want to address specifically are title VII, providing for a strong Federal labor-management relations program which is long overdue, and title IX, providing for reform of the Hatch Act. These are two basic elements which go hand in hand when we talk about reforming the entire Federal civil service system.

Title VII of H.R. 11280 establishes a statutory labor-management relations program for Federal employees. It provides for the right to collective bargaining for Federal employees, an independent Federal labor relations authority (FLRA), the resolution of disputes by the

intervention of neutral, independent, third parties, and judicial review and enforcement of the decisions and orders of the FLRA.

The Post Office and Civil Service Committee with title VII has adopted an evolutionary, balanced approach to the improvement of the Federal labor-management relations program. When the National Labor Relations Act was enacted in 1935, Federal employees were excluded from its coverage. In 1962, however, the late President John F. Kennedy, in recognition of the growing need, established a formal labor relations program for the Federal work force. That program was refined by President Nixon's Executive Order 11491 which, as amended, has been the foundation of the Federal labor-management relations program.

Executive Order 11491 was a milestone in its time. Today almost 60 percent or 1.2 million of all Federal employees are represented by 86 different employee organizations in over 3,500 bargaining units.

The growth of the Federal work force and changes in our time dictate that labor-management relations in the Federal sector must become more in step with the seventies—recognizing that there are nevertheless difference between the public and the private sector.

During 1977, the Subcommittee on Civil Service which I chair conducted exhaustive public hearings on labor-management relations—receiving testimony from over 40 witnesses in the course of 5 days of public hearings. Testimony was overwhelmingly in support of the thrust of the committee's legislation because the existing program was susceptible to the whims of an incumbent President, limited in its scope, management oriented, and lacking in the opportunity for judicial review of decisions of the Federal labor relations council.

Although the administration belatedly came forth with a statutory labor-management proposal. Their program would have done little more than codify the Executive order. The committee's efforts to reconcile some of the differences between its position and the viewpoint of the administration were exhaustive but—notwithstanding long and involved efforts—the administration's concessions in the committee were so insignificant as to render them virtually meaningless.

Title VII, as approved by the committee, represents a balanced, impartial approach to resolving the principle differences between two points of view, the

print which—in some respects—would adopt in the Federal sector many practices which are prevalent in the private sector and the administration proposal which, for all practical purposes, would simply codify Executive Order 11491 with its confused, management oriented, duplicative, antiquated approach to labor-management relations.

I want to assure my colleagues that title VII takes a middle ground—retaining management rights which are necessary to function with flexibility and effectiveness. On the other hand, the committee bill will not permit agencies to unilaterally remove any issue from bargaining simply by issuing a regulation.

I also want to assure my colleagues that there is nothing in this bill which allows Federal employees the right to strike, to have an agency shop, or to negotiate over pay and money-related fringe benefits.

I urge my colleagues to reject any weakening amendments.

Mr. Chairman, another provision of the bill which the Members will be hear-

[From 124 Cong. Rec. H 8467

(daily ed. Aug. 11, 1978):]

ing a great deal about today is title IX. Title IX, as everybody by now knows, provides for reform of the Hatch Act. Earlier, during the debate on the rule, I addressed why I strongly believe title IX is germane and appropriate. In addition, the committee supported my position by adopting my amendment by a vote of 13 to 10.

Title IX is virtually identical to H.R. 10, the Federal Employees' Political Activities Act of 1977, which passed the House on June 7, 1977, by a vote of 244 to 164. The only major difference is that title IX designates the special counsel of the Merit Systems Protection Board as the enforcing authority and the Board as the adjudicatory authority. This change reflects the fact that H.R. 11280 takes into account that the Civil Service Commission is being superceded by the Merit Systems Protection Board and the Office Personnel Management.

There has been a great deal of speculation and discussion as to why I sought to amend the civil service reform bill to include modification of the Hatch Act. I want to address this issue here and now.

Although both the committee and the House approved this legislation last year, it became increasingly clear to me that the other body would not act on Hatch

Act reform this year. In offering the amendment in committee it was my hope it would help to insure that both Houses of Congress have the opportunity to work their will in considering reform of the Hatch Act.

My intention has never been to gut the civil service reform bill by offering my amendment. I reject the thinking of critics who say that modifying the Hatch Act within the context of civil service reform will inject too much politics into the system. There is no greater priority for Federal employees than broadening the extent to which they may participate in political activities while strengthening protections to both the public and employees against coercion and improper political activities.

Extending constitutional rights of free speech and association to Federal employees is an integral part in the reform of the entire civil service system.

I urge my colleagues to defeat any motion which may be offered during today's debate which seeks to delete title IX from H.R. 11280.

I urge my colleagues to support H.R. 11280, the President's civil service reform bill, as reported out of the House Post Office and Civil Service Committee.

Mr. UDALL. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Michigan (Mr. FORD), a member of our committee.

(Mr. FORD of Michigan asked and was given permission to revise and extend his remarks.)

Mr. FORD of Michigan. Mr. Chairman, today, we are considering the President's civil service reform bill. I have supported the administration's efforts to bring more accountability to the management of Government programs through the creation of a senior executive service and by streamlining the appeals process for grievances. In order to maintain a fair balance, however, between these increased management prerogatives and flexibility and the legitimate rights of Federal employees, a progressive labor-management program is essential.

In view of this need to achieve a balanced bill and at the urging of the administration, Congressman CLAY, as the chairman of the Subcommittee on Civil Service, and Congressman SOLARZ, as a member of the full committee, joined me in an effort to arrive at a compromise labor-management section to this bill. Title VII of the committee print, which I strongly supported, was the result of

those efforts with assistance of the committee's Democratic caucus and would have insured a proper balance between the competing interests of management and flexibility and employee rights. While we made major concessions in the committee print, there was only insignificant movement by the administration from its initial proposal.

Title VII, as approved by the committee, is based upon H.R. 9094, a bill sponsored by Mr. CLAY and myself, for which public hearings were held on September 15, 1977 (serial No. 95-31). Earlier, public hearings were held on related labor-management legislation on April 21, 26, 1977 and May 3, 5, 10, 1977 (serial No. 95-30).

A committee print of title VII was used for markup purposes. That print was similar to H.R. 9094 except that it: First, did not grant agency shop automatically upon election of an exclusive representative; a second election was required for agency shop; second, contained no provision for an "alternative labor organization"; third, a management rights clause was added; and fourth, there was no provision for the negotiation of pay and other major money related fringed benefits.

The administration's labor-management proposal was similar to Executive Order 11491, under which the existing labor-management relations program is operated, with two exceptions: First, it established an independent full-time Federal Labor Relations Authority (FLRA) as the successor to the Federal Labor Relations Council; and second, it permitted agencies and unions to negotiate most grievance and arbitration matters which may now be appealed only under statutory procedures.

Title VII, as approved by the committee, represents a balanced, impartial approach to resolving the principal differences between two points of view—the print which, in some respects, would adopt in the Federal sector many practices which are prevalent in the private sector and the administration proposal which, for all practical purposes, would simply codify Executive Order 11491 with its confused, management-oriented, duplicative, antiquated approach to labor-management relations.

The Udall compromise amendments that passed in committee, while modifying title VII even further, are still a step, although a modest step forward in providing protections for legitimate employee rights. Any further cutbacks in

title VII, however, would seriously threaten our efforts to achieve this equilibrium.

Collective bargaining is not new to the Federal Government. Under Executive orders, 58 percent of the work force has been organized into exclusive bargaining units, and agreements have been negotiated covering 89 percent of those organized. Though the Civil Service Commission tells us that the Federal labor movement can be traced back to the 19th century, the modern era began in 1962, when Executive Order 10988 was issued. Since that time, there have been several changes in the order. However, the basic thrust and intent remains the same. The system as it now exists still contains the inherent shortcomings that come from being created, governed, and administered by management alone. To continue to tinker with the Executive order system is to delay the obvious: What is now needed in the Federal Government is a labor-relations program based upon legislation.

I have been quite frankly surprised with the rhetoric and hysteria that has accompanied consideration of title VII. It is not a radical departure from the present system, but is a small, incremental step forward.

As the sponsor of H.R. 1589, the Federal Employees Labor Relation Act of 1977, the predecessor to H.R. 9094, which provided for the negotiation of pay and fringe benefits; the negotiation of all agency regulations; and automatic agency shop; and a limited right to strike (based on Canadian law)—all of which, I might emphasize, have been deleted from title VII—I can assure Members that expansion in the scope of bargaining in title VII has been a very modest, incremental step that comes nowhere near the scope of bargaining that most States permit for public employees or that we permit for postal workers.

In fact, this incremental approach was followed by President Ford in 1975, when he amended the Executive order governing Federal labor-management relations to permit negotiation of agency regulations, unless a compelling need existed. Under this amendment an agency could not take an item, that is otherwise negotiable, off the bargaining table by simply issuing a regulation, unless there was a "compelling need" to do so.

However, higher level agencies, such as the Civil Service Commission (the Office of Personnel Management under this bill), can now issue regulations that re-

move the ability of agencies to bargain over items, even if they wish to do so. The Udall compromise simply takes the "compelling need" test, and moves it upstairs, applying it to Government-wide regulations of the Office of Personnel Management. Even if there is no compelling need for that regulation, the regulation still stands. All title VII does is to say—if the matter that the regulation is the subject of is otherwise negotiable, labor and management must sit down and talk about it in good faith. They need not necessarily agree.

Much of the criticism directed at the Federal Government concerns the size and unmanageability of the executive branch. This situation is merely aggravated by the existence of a centralized monolithic personnel body imposing uniform standards that cut across every

[From 124 Cong. Rec. H 8468
(daily ed. Aug. 11, 1978):]

level and location in the Federal Government. Such a system fails to take into account the divergent working conditions and needs of different agencies and offices around the Nation. The compelling need test in title VII would in no way hamper the ability of these agencies to issue necessary Government-wide regulations. It would insure, however, that employees would not be deprived of their legitimate right to bargain over the terms and conditions of their employment, except where a genuine need to so exists. Local managers then and the democratically elected employee representatives would be given the flexibility to engage in open discussions and to attack their problems at the local level—when it is appropriate to do so—with greater logic and efficiency than the present system allows. This in turn helps to promote better government for all citizens.

Even if there is no "compelling need" for a regulation, the item may not be the subject to negotiation because it has been excluded by the statutory management rights clause in title VII. Title VII's management rights clause still bars a wide range of subjects from the negotiation process. Management would retain the right to determine the mission, budget, internal security, or personnel necessary to conduct its work; to direct its employees; to assign work, to contract out or take actions necessary in the event of national emergencies. And I might further point out that no matters that are governed by statute (such as pay, money-

related fringe benefits, retirement, and so forth) could be altered by a negotiated agreement.

Statutory management rights clauses are totally alien to the private sector. They are part of the negotiation process. And I suspect that in the Federal sector that management rights clauses even stronger than this statutory one may be negotiated—particularly since Federal unions do not have the bargaining chip, the negotiation table to threaten a “withholding of employment.”

One of the central elements of a fair labor relations program is effective, impartial administration. Title VII provides for the creation of an independent and neutral Federal labor relations authority to administer the Federal labor management program and subjects the decisions of the authority to judicial review. Currently, the Federal labor-management program is administered by the Federal Labor Relations Council which is composed of three administration officials, the Secretary of Labor, the Chairman of the Civil Service Commission, and the Director of the Office of Management and Budget, none of whom can be considered neutral. In addition, the decisions of the Council are not subject to judicial review.

The Federal labor relations authority, patterned after the NLRB, would insure that the administration of this program is free from bias toward either party. Impartiality is guaranteed by protecting authority members from unwarranted “Saturday night” removals. The administration during committee markup eventually changed its position from supporting removal of authority members at the President’s sole discretion and accepted removal for cause only.

By providing for judicial review of the authority’s decisions, similar to that provided under the National Labor Relations Act, the right of both sides to receive an impartial decision is further strengthened, while making the authority more accountable for its actions. Judicial review is one of the primary benefits of a statutory program over an Executive order, and to limit such review also limits the advantages of codification.

Title VII would permit agencies and unions to negotiate grievance and arbitration procedures to cover most, but not all, matters which may now be appealed only under statutory procedures under the Executive order. Binding arbitration has been permitted for grievances (as opposed to statutory appeals) since

President Nixon issued his Executive order in 1969. It has worked well as an expeditious, credible and cost-effective means of dispute resolution. Thus, title VII does not represent a change, but rather an extension of the well-tested provisions of the Executive order. The committee print would simply extend the coverage of arbitration procedures somewhat further than the administration has proposed.

From the management’s point of view, arbitration provides a businesslike approach to grievance and appeals handling. The union, which must decide whether to arbitrate, can serve as an effective screening device in frivolous, costly grievances. Further, the arbitration process is more efficient, less time consuming, and less formal than the statutory appeals system. Finally, the costs of arbitration (which tend to average about \$840 per case, excluding attorneys fees) are generally—though not always—shared equally by the union and agencies, rather than by the taxpayer who bears the burden under the statutory appeals process. The more issues we can arbitrate, rather than going through the statutory appeals process, the more money we can save the public.

Classification appeals would also be subject to the negotiated arbitration procedure under title VII. The fact that pay and classification are nonnegotiable makes this provision important, because it would assure that questions relating to classifications are equitably resolved. For a Federal employee, it is his or her classification that determines their grade level and ultimately how much they earn.

The present classification appeal procedure is a unilateral procedure. Title 5, section 5112(b) of the United States Code provides that an employee may appeal to the Civil Service Commission at any time and the Commission will review the appropriateness of the classification. The procedure does not provide for a hearing before the Commission or for any outside third party review.

The failure to provide for these minimal procedural guarantees has placed the credibility of the classification appeal system in doubt. Because pay is a function of classification the Civil Service Commission has a vested interest in holding grades down. (Under the administration’s proposal, this will be intensified, since the Office of Personnel Management, headed up by one politically appointed Director, will replace the Civil Service Commission, which at least in,

theory is a more neutral body. Fair and unbiased decisions could not be expected to be rendered by one of the parties to the dispute.) Thus, employees would be very skeptical of the decisions rendered by this special interest group.

Title VII would provide for procedural guarantees and eliminate the inherent conflict of interest that now exists. It can afford an employee the right to test the accuracy of their classification through the grievance procedure, just like any other personnel matter, with arbitration as a final step. It is a fair system and one which can keep the faith between management and employees. It is especially important that we bring impartiality into the classification appeal process since we have excluded pay from the negotiation process.

Finally, the administration has already recognized the competency of arbitrators to consider classification issues. Under their proposal when an employee is reduced in grade they can challenge that action as an adverse action through the negotiated grievance procedure. Thus, title VII is not proposing anything which is radically out of the ordinary. It is merely extending the grievance procedure to include grievances concerning upgradings as well as the downgradings which are covered by title VII proposed by this committee and the President.

During committee markup, I offered an amendment to add a new provision, section 704(c), which is intended to preserve the scope of collective bargaining heretofore enjoyed by certain trade and craft employees. This includes certain trade and craft employees of the Department of the Interior, and those trade and craft employees in units or portions of units, transferred, effective October 1, 1977, from the Department of the Interior to the Department of Energy. This provision is required because of two recent rulings by the Comptroller General which invalidated certain collectively bargained provisions and held that specific legislative authorization is necessary for these employees to continue to negotiate such provisions in accordance with prevailing private industry practice. Decisions Nos. B-189782 (February 3, 1978) and B-191520 (June 6, 1978).

Certainly, we should not now be narrowing the preexisting collective bargaining practices of any group of Federal employees. This provision of the bill would have the effect of overruling the two Comptroller General decisions,

and would adopt his own suggestion for specific legislative authorization. The provision would specifically authorize the continuation of prior collective bargaining practices, and would allow these employees, whom Congress already sought to protect in the savings provision of 1972 wage board reform law, to continue to negotiate their terms and conditions of employment in accordance with the prevailing practice principle. I do not intend to expand nor contract the scope of bargaining that existed prior to the Comptroller General decisions. In

[From 124 Cong. Rec. H 8469
(daily ed. Aug. 11, 1978):]

the past, these employees have negotiated wages, pay practices, and other practices in accordance with the prevailing practice principle. This has produced some of the most stable and effective collective bargaining in the history of public employee labor relations. It has enabled the Federal Government to procure and retain qualified craft employees who otherwise might choose employment in private industry, by insuring that they will enjoy comparable terms and conditions of employment.

It is not the intent of this provision to interfere with the current system of providing the employees in question with retirement benefits, life insurance benefits, health insurance benefits, and workmen's compensation. Those benefits would not become negotiable and would continue to be paid to those employees exclusively pursuant to the Federal statutes in effect.

For over 16 years now, Federal public employee organizations have shown themselves to be responsible parties in the Federal government's labor-management program. Even President Ford recognized the maturing of employee organizations, when he amended the Executive order in 1975. The bill reported by the committee also recognizes the progress we have made in labor-management relations in the Federal sector. A close and dispassionate reading of title VII should indicate that it is only a modest, but we feel vitally important step forward.

I ask my colleagues to support the progressive, but responsible approach the committee has produced in title VII.

Mr. DERWINSKI. Mr. Chairman, I yield 5 minutes to the gentleman from Iowa (Mr. LEACH).

(Mr. LEACH asked and was given permission to revise and extend his remarks.)

Mr. LEACH. Mr. Chairman, I would like to compliment the gentleman from Pennsylvania (Mr. NIX) for his even-handed leadership of the committee. This will be a fitting cap to a fine career in this body.

I would also like to compliment the gentleman from Arizona (Mr. UDALL) who with great statesmanship has supported positions he has not always agreed with, and the gentleman from Illinois (Mr. DERWINSKI) (who has continued to support Executive flexibility during an administration not controlled by his party.

The bill before us is in essence bipartisan. The approach of the Carter administration follows broadly the efforts of the last two Republican administrations. But the fact that the House is now able for the first time to consider the measure reflects above all on the legislative leadership of Mr. UDALL and Mr. DERWINSKI. Their achievement in getting this bill to the House floor cannot be underestimated.

Mr. Chairman, I would like briefly to touch on five amendments I offered in committee, two of which were accepted and three of which I intend to offer for further consideration on the House floor.

* * * * *

Second, I was disappointed that the committee failed to approve a provision clarifying the ethics obligations which the Federal Government should require of its employees at all levels. The rejected amendment would have prohibited Federal employees, or unions representing such individuals, from soliciting gifts, favors or related items—either for the Federal employee or the employee's family—from any person, corporation or group which may be substantially affected by the performance or nonperformance of the employee's official duties or the official functions of the agency for which the employee is working. Although our committee has approved ethics legislation dealing with Government officials, most of that legislation does not extend to the rank and file membership of the Federal work force. The majority of the concepts embodied in the rejected amendment are contained in existing Executive Order 11222 and ought, in my judgment, to be incorporated into statute.

Finally, I was distressed that the committee refused to ratify a proposal which,

if adopted, would provide for expeditious suspension procedures for federally employed air traffic controllers who deliberately engage in job actions now barred by law or executive order. To permit a limited number of Federal employees to hold the innocent taxpaying public hostage, by slowing down or stopping air transportation, should not be tolerated, and prompt action should be taken to deal with such action, within reasonable guidelines protecting the employee. To permit such abuses of the public trust to continue is unconscionable.

It is my hope that the full House will give careful consideration to the merit of these mandatory provisions and will take affirmative action to strengthen the bill and thereby enhance the integrity and responsiveness of the Federal bureaucracy.

Mr. QUAYLE. Mr. Chairman, will the gentleman yield?

Mr. LEACH. I am happy to yield to my colleague, the gentleman from Indiana (Mr. QUAYLE).

(Mr. QUAYLE asked and was given permission to revise and extend his remarks.)

Mr. QUAYLE. Mr. Chairman, I thank my colleague, the gentleman from Iowa (Mr. LEACH) for yielding to me.

Mr. Chairman, I take this opportunity to express my support for civil service reform as a first step to making Government more responsive and effective. During the course of this debate I hope that we can make improvements in this bill, H.R. 11280, that will help bring bureaucracy under control and give the executive branch the tools it needs to carry out its mandate from the people.

Through the adoption of Reorganization Plan No. 2 by a vote of 381 to 19 on Wednesday, the House has gone on

[From 124 Cong. Rec. H 8470
(daily ed. Aug. 11, 1978):]

record in support of the President in his pledge to reform and reorganize the civil service. The reorganization plans create the mechanism through which reform can be achieved. Now we must face the challenging task of giving the new Office of Personnel Management, the Merit System Protection Board, and the Federal Labor Relations Authority the necessary tools to accomplish real reform.

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[From 124 Cong. Rec. H 8475
(daily ed. Aug. 11, 1978):]

Mr. UDALL. Mr. Chairman, I have no further requests for time, and I yield back the remainder of my time.

The CHAIRMAN. All time for general debate has expired.

Mr. UDALL. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the chair, Mr. DANIELSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that the Committee, having had under consideration the bill H.R. 11280, to reform the civil service laws, had come to no resolution thereon.

[From 124 Cong. Rec. E 4802
(daily ed. Sept. 6, 1978):]

AMENDMENTS TO CIVIL SERVICE
REFORM ACT

HON. PARRIN J. MITCHELL

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 6, 1978

● Mr. MITCHELL of Maryland. Mr. Speaker, I have introduced into the RECORD three proposed amendments on H.R. 11280.

Mr. Speaker, the first amendment which I have introduced to H.R. 11280, the Civil Service Reform Act, establishes that employees should not waive statutory rights by pursuing negotiated procedure rights.

I have submitted this particular amendment because I believe that the intent of the Congress in defining "conditions of employment" in section 7103 (A) (14) is unclear.

Since we have all studied the bill, or at least I suppose I can safely presume so, we know that section 7103(A) (14), page 315, defines "conditions of employment" as meaning personnel policies, practices, and other matters whether established by rule, regulation, or otherwise; however, policies, practices, and matters relating to discrimination, prohibited political activities, and policies specifically provided for by Federal statute are excluded from the concept of conditions of

employment.

It is obvious that this definition is intended to exclude certain matters from the negotiated provisions. However, inasmuch as precedent under the National Labor Relations Act will be important in determining how chapter VII will be interpreted, it is submitted that providing exceptions to the definition of "conditions of employment" simply leaves a gaping hole in the intent of Congress.

It is generally recognized that there are three types of bargaining subjects; namely, mandatory subjects, prohibited or illegal subjects, and permissive subjects. By defining "conditions of employment" to eliminate racial discrimination, political activities, and matters specifically provided for by Federal statute, Congress has not prohibited a labor organization and an agency from bargaining concerning such subjects. In other words, they would be permissive subjects and thus it would not be unlawful for an agency and a labor organization to negotiate with respect to a clause pertaining to them.

With the negotiation, an issue would arise concerning whether or not employees must follow the negotiated grievance procedure in resolving their complaints regarding this clause, or whether they would be free to use the statutory procedures. I am not so concerned that the employees would have rights in both areas. That is quite clear. However, it is not clear that they would have remedies in both areas. While it is suggested that at least in the area of title VII discrimination, employees have remedies in both areas, with respect to political activities and matters specifically provided for in Federal statute, dual remedies are not so guaranteed.

My amendment is specifically designed to hopefully prevent the possibility that the courts will misinterpret the intent of the Congress in this matter. It should be clearly stated that employees will have the right to pursue remedies other than remedies provided in the negotiated procedure in any instance where there is an overlap between the negotiated procedures and those provided by Federal statute. Further, it should be provided that employees will have the right to pursue their statutory remedy and their negotiated procedures remedy in all cases. To impose exceptions would be to defeat the purpose of the intent.

There may be a question that such an

amendment as the one which I have proposed would result in duplication. To that, let me respond by saying that such duplication is not uncommon where dual rights are provided by Congress. For example, in many cases, employees who claim racial discrimination must pursue their administrative remedies through a hearing, and these same employees get a full blown trial in court if they lose at the agency level.

In this vital matter, it is of the utmost importance that we in Congress make our intent very clear. We must undoubtedly show that in all cases, the employee will have a right to utilize both the statutory and negotiated procedures.

Mr. Speaker, my second amendment to H.R. 11280, the Civil Service Reform Act, is a genuine reflection of my belief that the right of an employee to select a representative of his own choosing should be protected in all respects.

If we refer to section 7114(A) (2) of the bill, dealing with representation rights and duties, we will note that the following appears:

The rights of an exclusive representative under the preceding provisions of this subsection shall not be construed to preclude an employee from being represented by an attorney or other representative, other than exclusive representative, of the employee's own choosing in any appeal action under procedures other than procedures negotiated pursuant to this chapter.

This section is indicative of the fact that in view of the proposed expanded scope of bargaining, an exclusive representative would be able to negotiate with respect to virtually every aspect of the employee's working conditions mandatory negotiated procedures required to be followed in resolving claims of violation, thus placing the employee in a position where his total rights as a Federal employee would be contingent upon the good faith with which the exclusive representative handled his claim. It is my fear that this would place many employees, particularly minority group employees, in a position where the exclusive representative would control their fate.

As you all probably know, in January, 1977, I sponsored H.R. 2722, a bill relating to collective bargaining representation of postal employees. If I may, I would like to briefly touch on a few of my findings while working with this legislation.

The experience with what happened in the postal service raises serious doubts

as to whether or not minorities are being protected by the predominately white exclusive representative where all procedures must be handled through the negotiated grievance procedure. Thus, prior to the Postal Reorganization Act minorities composed approximately 19 percent of the working force in the Post Office. In a recent survey, it was cited that this number has dwindled to 16 percent with a special note that this statistic is based upon an expanded definition of minorities which includes many individuals who are not black. Let me further state that in addition, in the mail-handlers craft of the postal service the minorities have lost in excess of 8,000

[From 124 Cong. Rec. E 4803
(daily ed. Sept. 6, 1978):]

jobs since the enactment of the Postal Reorganization Act.

It is quite clear that this pattern of systematically removing minorities from gainful employment in the postal service came about when the so-called craft unions were given the power by the courts pursuant to language provided by Congress, to be the "exclusive union" of postal employees. Consequently, it is sad but true that the interests of the blacks and minorities in the postal service simply has not been protected by the so-called craft unions.

It is my concern that this very same thing could easily occur in the Federal service unless there is adequate language to protect the right of the employee to select a representative who will protect his interest and not allow the agency to further the cause of "institutional racism."

As originally envisioned by President Kennedy the Federal employee occupied a position substantially different from that of the private sector employee. Thus, President Kennedy gave to Federal employees the right to be represented in every respect of his or her employment relationship, even under negotiated procedures, by a representative of his own choosing so that the Federal employee when adversely acted upon by an agency would not be able to claim that he did not have the representation that was best for him or her as opposed to the best for the Federal service or best for a particular organization.

I believe that my amendment which on page 332, would strike out line 14 and all that follows down through line 7 on page 333, and insert "(d) The processing of any grievance of any employee under

a procedure negotiated under this chapter shall not preclude the employee from pursuing any right provided to him by or under any other provision of law," would be appropriate to protect employees against weak, corrupt, ineffective, biased, or otherwise unsatisfactory representation.

Mr. Speaker, the third amendment I have introduced to H.R. 11280, the Civil Service Reform Act, will I hope lend greater clarity to the meaning of a "labor organization" as it is defined in section 7101(4) (A) of the bill. Of course I realize that we are going to have organizations that do not fit into this definition. These types are very clearly cited in that section of the bill which I seek to amend. However, although I do not believe that the definition of a labor organization in H.R. 11280 is intended to exclude "exclusive representatives," this cautious step certainly cannot hurt.

My amendment, which simply inserts on page 292, line 22, after "organization," the following: "(Other than an exclusive representative as defined in paragraph (16) (B) of this section)," is strictly a technical one to assure that none of our Nation's 86 labor organizations holding exclusive recognitions will be adversely affected by the definition of a "labor organization" as has been cited in H.R. 11280.

It is imperative that the language in section 7103(4) (A) be amended in order to eliminate any question that may be raised with concern for whether or not the large number of labor organizations which are smaller than the giants are organizations "limited to special interest objectives." By amending this language we can remove all doubts that organizations such as the National Alliance of Postal and Federal Workers which were founded out of the discriminatory practices of several white controlled unions would not be regarded as organizations "limited to special interest objectives" merely because they are gravely concerned with the fight against racial and other discrimination.

With regard to the connotation of a "special interest objective," let me just briefly add that because of the absence of a clear definition in this area, the enactment of the Civil Service Reform Act, would leave the courts and the Federal Labor Relations Authority with the task of determining which organization is and which is not a chapter VII labor organization. Thus, it is entirely possible that by simply indicating that an establish-

ment is a "special interest" organization, the Federal Labor Relations Authority could eliminate the structure.

Let me reiterate that I do not believe that the intent of the Civil Service Reform Act's definition of a "labor organization" is to exclude exclusive representatives. However, I do believe that at this point, it is feasible to be cautious in this area so that by no means of interpretation can these structures be placed outside the realms of labor organization status. ●

[From 124 Cong. Rec. E 4822
(daily ed. Sept. 6, 1978):]

CIVIL SERVICE REFORM ACT

HON. NEWTON I. STEERS, JR.

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 6, 1978

● Mr. STEERS. Mr. Speaker, for the benefit of my colleagues, I am inserting amendments, and accompanying explanations, to the civil service reform bill expected to be considered by the House of Representatives tomorrow.

* * * * *

[From 124 Cong. Rec. E 4823
(daily ed. Sept. 6, 1978):]

[Pay Rates]

Amendment: H.R. 11280

OFFERED BY MR. STEERS

Page 148 strike out lines 12 through 24 and insert in lieu thereof the following:

(b) (1) Section 5314 of title 5, United States Code, is amended by inserting at the end thereof the following new paragraph:
"(67) Director of the Office of Personnel Management".

(2) Section 5315 of such title is amended by inserting at the end thereof the following new paragraph:

"(122) Deputy Director of the Office of Personnel Management."

(3) Section 5316 of such title is amended by inserting at the end thereof the following new paragraph:

"(144) Associate Directors of the Office of Personnel Management (5)."

Page 166 strike out line 24 and all that follows down through line 12 on Page 166 and insert the following:

(C) (1) Section 5315 of title 5, United

States Code, is amended by adding at the end thereof the following new paragraph:

"(123) Chairman of the Merit Systems Protection Board".

(2) Section 5316 of such title is amended by adding at the end thereof the following new paragraphs:

"(145) Members, Merit Systems Protection Board.

"(146) Special Counsel of the Merit Systems Protection Board."

(3) (A) Paragraph (17) of section 5314 of such title is hereby repealed.

(B) Paragraph (66) of section 5315 of such title is hereby repealed.

(C) Paragraph (99) of section 5316 of such title is hereby repealed.

Page 300, line 6, strike out "Senate" and insert in lieu thereof the following: "Senate, and shall be paid at an annual rate of basic pay equal to the maximum annual rate of basic pay currently paid, from time to time, under the General Schedule."

Page 347, strike out lines 5 through 8 and insert in lieu thereof the following:

(e) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(147) Members, Federal Labor Relations Authority (2)".

EXPLANATION

The purpose of this amendment is to lower the level of compensation of officers and members of the Office of Personnel Management, Merit System Protection Board and the Federal Labor Relations Authority.

Both H.R. 11280 and Reorganization Plan Number 2 call for the creation of a number of new top-level appointed positions in the civil service system; increasing the number of top level management positions in the system from 3 to 11. Of these positions, the lowest salary level—for those of the five Associate Directors of the MSPB, Vice Chairman of the MSPB, Member of the MSPB, and Special Counsel of the MSPB—is fixed at the rate of compensation of Executive level IV, or \$50,000 each. In addition, the Director of the OPM is compensated at the rate of Executive level II, \$57,500; both the OPM Deputy Director and the Special Counsel of the MSPB are compensated at Executive level III are, \$52,500. These positions will add \$417,500 to the salary outlays for top level appointees.

In addition, the creation of the Federal Labor Relations Authority, will add three new highly paid positions: The Chairman, at Executive level II, \$52,500 and two Members, at Executive level IV, \$50,000.

In light of the President's recent proposal to put a cap on Federal pay, it is appropriate that we follow his suit and reduce the levels of compensation for these new positions. ●

[From 124 Cong. Rec. H 9278
(daily ed. Sept. 7, 1978):]

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 11280, with Mr. DANIELSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on August 11, 1978, all time for general debate on the bill had expired.

Pursuant to the rule, the Clerk will now read by titles the committee amendment in the nature of a substitute recommended by the Committee on Post Office and Civil Service now printed in the reported bill as an original bill for the purpose of amendment.

The Clerk proceeded to read the bill.

POINT OF ORDER

Mr. MEEDES. Mr. Chairman, I make a point of order against titles IX and X, based on their violation of clause 7, rule XVI, in that they are nongermane to the bill before us.

Title IX deals with two groups of em-

[From 124 Cong. Rec. H 9279
(daily ed. Sept. 7, 1978):]

ployees not covered in the original bill. It includes postal workers and District of Columbia employees. There is much precedent which indicates that we have classes of subjects not covered by the basic proposition before us, which renders the new material nongermane. That is precisely what title IX does by adding two new subjects.

Title X, on the other hand, introduces new subject matter, the pay of firefighters that is not covered in the original bill. Title X deals exclusively with hours of work and wages of firefighters, while the original bill deals with the institution of the merit system within the system. Where hours or wages are included, it is only incidental to the basic of these titles should be stricken for the proposition of the merit system, so both above reason, and for the added reason that neither proposition amends the original bill. Rather, both seek to amend existing and basic law.

The CHAIRMAN. The gentleman from Washington (Mr. MEEDES) makes a point of order against titles IX and X.

Mr. CLAY. Mr. Chairman, I rise in opposition to this point of order.

For the life of me, I cannot understand how and why title IX should be treated in this discriminatory manner.

The facts are fairly obvious—and the

connections between Hatch Act reform and the rest of H.R. 11280 are quite strong—

* * * * *

Mr. Chairman, it is inconceivable to me that this bill, which touches on virtually every aspect of civil service, should have political activities and firefighters singled out for this kind of shabby treatment. Title IX is virtually identical to H.R. 10, the Federal Employees Political Activities Act of 1977, which passed this House on June 7 of last year by a vote of 264 to 164.

Mr. Chairman, I think that it is unfortunate that the kind of heavy-handed activity and pressure is taking place to combine both title IX and title X into the same point of order as permitted by the rule. Personally, I resent that kind of heavy-handed activity on the part of the leadership of this House and on the part of the administration of this Nation.

Mr. Chairman, I urge that the point of order not be sustained.

Mr. HARRIS. Mr. Chairman, I rise in opposition to the point of order.

The CHAIRMAN. The Chair recognizes the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, the point of order under the rule applies to titles IX and X, and comes before this House in a most unusual, and indeed a peculiar, way that the Chair perhaps would have to rule against the germaneness of one title that will be germane, because it is connected in the rule to another title that the Chair may consider non-germane.

* * * * *

If in fact we were to deal with the whole civil service system, dealing with a particular part of that system, that is the firefighters and their work rules is a particular matter within that system. Therefore, I would urge the Chair to overrule the point of order and hold title X as germane.

The CHAIRMAN. The gentleman from Washington makes a point of order against titles IX and X of the committee amendment in the nature of a substitute recommended by the Committee on Post Office and Civil Service, on the grounds that those titles would not have been germane if offered as an amendment to the bill H.R. 11280, as introduced.

As indicated by the gentleman from

Washington, the special order providing for consideration of this measure, House Resolution 1307, allows the Chair to entertain a point of order on the basis stated by the gentleman, that titles IX and X would not have been germane as a separate amendment to H.R. 11280 in its introduced form.

The bill as introduced and referred to the Committee on Post Office and Civil Service, although broad in its coverage of reform proposals within the competitive service and in the executive branch of the Government, is limited to merit system principles and personnel management within the civil service of the U.S. Government. Title IX of the [From 124 Cong. Rec. H 9280 (daily ed. Sept. 7, 1978):]

committee amendment is designed to characterize and to protect appropriate political activities of employees of the District of Columbia and Postal Service as well as civil service employees, by amending the Hatch Act. The Chair agrees with the argument of the gentleman from Washington that the amendment would add an entirely new class of employees to that covered by the bill, and for that reason is not germane.

Accordingly the Chair sustains the point of order.

Pursuant to the rule the Clerk will now read by titles the substitute committee amendment without titles IX and X, recommended by the Committee on Post Office and Civil Service, now printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read the bill.

Mr. UDALL (during the reading).

Mr. Chairman, I ask unanimous consent to dispense with further reading of section 2, and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. CHARLES H. WILSON of California. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk continued the reading of the bill.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of section 3; and that it be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection

to the request of the gentleman from Arizona?

Mr. CHARLES H. WILSON of California. Reserving the right to object, Mr. Chairman, this is an extremely important bill that some Members are trying to pass through in this Congress. I think it is extremely important that those of us who are here on the floor know what is in this bill.

There have been many agreements made in connection with parts of the bill with members of the committee who are extremely concerned about labor provisions and about other provisions affecting this new section by which they are going to destroy the civil service system which we have known for so many years.

Mr. Chairman, I do not think that this is something we should take so lightly. That is the reason I am asking that the bill be read. I think it is important enough to every member of this committee that we do have this bill read and that we understand what is in it.

Therefore, Mr. Chairman, I am going to have to continue to object.

The CHAIRMAN. Objection is heard. The Clerk will read.

The Clerk continued to read.

POINT OF ORDER

Mr. CHARLES H. WILSON of California. Mr. Chairman, I have a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I know the Clerk is not deliberately skipping some of these lines. He must be getting tired, but he is beginning to go a little fast over some of these lines. I think that all of the lines should be read.

The CHAIRMAN. The Chair will state that the Chair observes that the Clerk is proceeding in regular order.

The Clerk will read.

The Clerk continued to read.

Mr. DERWINSKI (during the reading). Mr. Chairman, I have been impressed by the attention of the House, so therefore, I would ask unanimous consent that the remainder of the title be considered as read, printed in the Record, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. CHARLES H. WILSON of California. Mr. Chairman, reserving the right to object, right up to now I have been very impressed with the principles of this

bill, and it sounds pretty good so far, but I have to have the rest of it read, I will say to the gentleman from Illinois (Mr. DERWINSKI), because there may be something in here that is going to change my opinion about it. I think right up to now it sounds beautiful, but I will have to object.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. CHARLES H. WILSON of California. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank the gentleman for yielding. Is it not possible for the gentleman to read by himself?

Mr. CHARLES H. WILSON of California. The gentlewoman is certainly correct. I think the gentlewoman understands what is going on here.

Mrs. FENWICK. If the gentleman will yield, I honestly do not.

Mr. CHARLES H. WILSON of California. I object to the legislation, and I am using the rights that are guaranteed to me as a Member of this body to exercise my opposition to the legislation. It has been done on the gentlewoman's side; it has been done on our side.

Mrs. FENWICK. If the gentleman will yield further, I know. Will the gentleman, though, consider that the people's time is involved here. Our time is short until we are supposed to adjourn, and we are not unpaid volunteers; we are paid public servants.

Mr. CHARLES H. WILSON of California. I realize that.

Mrs. FENWICK. I think we should be using our time in the most effective way for the public benefit.

Mr. CHARLES H. WILSON of California. If the Speaker will pull this bill off the calendar, we can proceed with the important business of the Congress. I do not think this bill is so important that it has to be passed in this Congress.

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. CHARLES H. WILSON of California. I yield to the gentleman from New York.

Mr. BIAGGI. I thank the gentleman for yielding.

I would like to comment in response to the gentlewoman from New Jersey. We are aware of our responsibilities, and we are aware of the people's concerns, and we are aware that there are many people in this country in government employment who would rather not have this bill see the light of day. We are exercising whatever legitimate tactic is made avail-

able to us through parliamentary procedure. To impugn the conduct that is procedural and proper, in my judgment, is strictly out of order, and I think it is unfortunate.

Mrs. FENWICK. I resent very much the fact that the gentleman from New York suggests that I impugn anything. I merely asked if we could not proceed in a more orderly manner.

The CHAIRMAN. All Members will suspend. The gentleman from New York (Mr. BIAGGI) will suspend, and all other Members will suspend.

The Chair will state that the time is under the control of the gentleman from California (Mr. CHARLES H. WILSON).

Mr. CHARLES H. WILSON of California. Mr. Chairman, still reserving the right to object, I would like to say to the gentlewoman from New Jersey (Mrs. FENWICK) that she is absolutely correct in any observation that she makes. That does not offend me at all at this point.

Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk continued to read.

POINT OF ORDER

Mr. CHARLES H. WILSON of California (during the reading). Mr. Chairman, I again make a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I think the Clerk forgot to read line 6 on page 142. I recognize the burden placed upon him; however, I must have all of the lines read, if I can.

The CHAIRMAN. The Clerk will read line 6 on page 142, commencing with line 6, "through affirmative action * * *"

The Clerk concluded the reading of title I.

* * * * *

[From 124 Cong. Rec. H 9284
(daily ed. Sept. 7, 1978):]

Mr. UDALL. Mr. Chairman, I move to strike the requisite number of words.

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

Mr. UDALL. Mr. Chairman, under the direction of the leadership in just a few minutes I am going to try to get an agreement on limitation of time and vote on this simple and uncomplicated amendment. Before we do that, I want to

kind of advise my colleagues where I think we are going on this legislation and what I see as being at stake. The clock is running on all of us. The elections are not too many weeks away, and adjournment time is coming rapidly upon us. We have got a whole load of the public's business to dispose of—tax legislation, energy, all the rest.

I chatted with the Speaker a moment or two today. The load is horrendous. I think it is incumbent upon all of us to make this a proud time of the House and act with dispatch on important legislation between now and the time we adjourn.

There is broad support for this bill. I do not think there is any question in anybody's mind that if we took a vote on final passage at this time, it would pass by a very large margin, possibly 2 to 1 or better. It has broad support among labor management people and business groups. It will give perhaps a little bit of ability to manage.

A group of us met with the Vice President today, and he told us about the President going off to Bonn to the Economic Summit. One of the things he could do, he could do administratively, and the frustration of all Presidents was there. He asked one of the bureaus—and I will not name which one—to give him a report in 60 days where he could get a fight going on inflation. When he asked for it, their response was, we are not ready yet. The President wrote a handwritten note to the director of that agency and said, "I am going to Bonn and want to take this with me. Will you have it ready when I come back?" The report came back from the bureau saying, "You don't really need it, and we probably won't be able to do what you want us to do." That type of thing has frustrated Presidents from time immemorial.

The American people are angry at the inexpressiveness of the Federal Government, and we are trying to give the President the tools with which to make this executive branch work.

Here we are with two eminent colleagues—and I love them both—the gentleman from California (Mr. CHARLES H. WILSON), and the gentleman from Missouri (Mr. CLAY) on the committee who do not want a bill. They are sincere about it. They do not want a bill this year. They are using procedures in the House rules and threatening to continue to use them. But I want the Members of the House to know what is at stake here.

We heard a charge here by the gentleman from California that we are acting hastily. Let me give you some of the history. The bill was introduced on March 3, had 13 long days of hearings. We heard from every segment all over this country. It was suggested by some that the Democratic members of the committee ought to get our act together. We met day after day and night after night, haggling over every section of the bill, and came up with the consensus of our party. The committee went to markup day after day, in night sessions, over a period of from June 21 to July 19. We finally got a bill. It was voted out by a big bipartisan consensus. The gentleman from Illinois (Mr. DERWINSKI); and a lot of good people on the other side helped bring it out by a vote of 18 to 7. There was general debate on August 11. Everybody has had time to study the amendments. Dozens of them are printed in the Record now. This is our President's major domestic bill, a bill our Speaker and the majority leader have given high priority to before the House. It is not going to go away. There is another body down at the other end of this building whose members can talk and decide what priorities and legislative schedules we will have, but this bill is going to be acted on in this session.

One of our options in scheduling is to [From 124 Cong. Rec. H 9285 (daily ed. Sept. 7, 1978):]

go tomorrow, quit at 3:30. The other option that will give the Members an idea of the importance of this legislation is that all suspensions are going to be knocked off on Monday. We will work on this bill all day Monday. We will stay Monday night to finish it. A lot of people are going to get hurt by having suspensions taken off of the calendar on Monday. I have some business on the Suspension Calendar. I think everybody has a stake in processing those important bills before we leave here. Some of them require conferences with the Senate.

So I would simply appeal to my colleagues who have strong feelings about this bill to work with us and let the legislative process work.

We are not going to shut off any Member. We have serious amendments to consider. There are a lot of amendments pending, and we want to give full consideration to them and then either vote them up or down.

Let me say to the Members, particu-

larly my friends on this side, let us not go home having to say that the President and the Democratic Congress cannot even act in 6 or 8 months on this major piece of legislation to give us some flexibility and some management direction in the executive branch. This is a fine thing that we could take home to our constituents as one accomplishment of this Congress.

Mr. Chairman, I ask unanimous consent that all debate on the pending Harris amendment and all amendments thereto do now cease.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. BAUMAN. Mr. Chairman, reserving the right to object, will the gentleman from Arizona (Mr. UDALL) tell us what the program will be for tomorrow, since he has already indicated what might happen?

Mr. UDALL. Mr. Chairman, if the gentleman will yield, if we have some expression of cooperation, I think we might finish this bill tomorrow. We will come in at 10, and we could be out of here by 3 o'clock. Unless I have those assurances, I am going to accept the offer of the leadership to put the bill off until Monday.

In that event, the suspension calendar is going to be bumped, and then we will be in here on Monday and go as late as need be to finish this bill on Monday. That is our option.

Mr. Chairman, I would prefer to proceed tomorrow in an expeditious kind of way and decide these things on their merits. But if we are going to be forced to read every line and every section of a 300-page bill, considerable time will be taken.

Mr. BAUMAN. Mr. Chairman, let me assure the gentleman that I will be glad to cooperate with him.

Mr. UDALL. The gentleman from Maryland (Mr. BAUMAN) is always cooperative.

Mr. BAUMAN. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. HARRIS. Mr. Chairman, reserving the right to object, I listened carefully to my colleague, the distinguished vice chairman of the committee, when he made his comments, and I wondered if my colleague would be kind enough to tell me this: The gentleman did not men-

tion the amendment, and I was wondering if he is for it or against it.

Mr. Chairman, may the RECORD show that my colleague, the gentleman from Arizona (Mr. UDALL), put his thumb down toward the floor in a gesture meaning that he opposes the amendment, I assume.

Mr. UDALL. Mr. Chairman, if the gentleman will yield, I told the Member that was my position, for the reasons stated by my friend, the gentleman from Michigan (Mr. FORD), and for those stated by that great Hart, Schaffner and Derwinski clothing firm.

Mr. HARRIS. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. UDALL. Mr. Chairman, I move that all debate on the pending Harris amendment and all amendments thereto do now cease.

The CHAIRMAN. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The motion was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. HARRIS).

The question was taken; and on a division (demanded by Mr. HARRIS) there were—ayes 11, noes 57.

So the amendment was rejected.

Mr. UDALL. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. DANIELSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 11280) to reform the civil service laws, had come to no resolution thereon.

* * * * *

PARLIAMENTARY INQUIRY

(Mr. CHARLES H. WILSON of California asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. CHARLES H. WILSON of California. Mr. Speaker, I was a little disappointed to hear my good friend, the gentleman from Arizona (Mr. UDALL), state what his plans would be in the event those of us who oppose the civil service reform legislation continue to utilize the House rules to take advan-

tage of whatever we have to do to hold up the legislation.

The gentleman made an implied threat that if we do not let him go ahead tomorrow with the bill, he will arrange to have all the suspensions removed from the calendar on Monday, and then we will work until some unlimited time on Monday night.

I would like to know, Mr. Speaker, what the calendar is for tomorrow and what the program is, and I think the Members of the House are entitled to know.

The SPEAKER. Is the gentleman making a parliamentary inquiry?

Mr. CHARLES H. WILSON of California. Mr. Speaker, I make such a parliamentary inquiry, yes.

The SPEAKER. The Chair will advise the gentleman at the present time that the bill that we have before us, the civil service reform bill, will be postponed until Monday, and we will go forward with the schedule as scheduled for Friday.

Mr. CHARLES H. WILSON of California. I thank the Speaker.

[From 124 Cong. Rec. H 9357
(daily ed. Sept. 11, 1978):]

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 11280, with Mr. DANIELSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on Thursday, September 7, 1978, the Clerk had read through line 2 on page 144.

Are there any further amendments to title I of the bill?

Mr. HANLEY. Mr. Chairman, I move to strike the requisite number of words.

(Mr. HANLEY asked and was given permission to revise and extend his remarks.)

Mr. HANLEY. Mr. Chairman, as we initiate our deliberation on civil service reform today, it is my fondest hope that this legislation will move relatively smoothly and, without taking up too much time, be voted on in the Chamber at some point late this afternoon.

I would like to respond if I can briefly to some remarks on the part of my dear friend and colleague and manager of the bill, the gentleman from Arizona (Mr. UDALL), going back to Thursday

night, when it was about 9 o'clock and the tempers were not that good. I would have preferred to have responded at that point but logic suggested that it was time to break it up and come back here on Monday and start anew. I have great respect for the gentleman from Arizona, Mo UDALL, and have worked closely with him from the very beginning.

I do believe, however, that the issue of civil service reform has to be put into another perspective. Certainly I know that he did not intend it that way, but the implication was that by virtue of the activity of several members of the committee that this measure was not moving and was slowed down in the committee process.

I would take issue with that implication and I would have to put it this way that any delays that have been attributed to the deliberation of this measure we have to fault the administration itself because from the very beginning the administration insisted upon expediency. As a result, that insistency agonized many, many entities. This was totally unnecessary. The implication the other evening was that everybody embraced this measure and all America was out there waiting for its enactment into law. That is not necessarily the case in its present form.

I would hope very much that certain amendments today will prevail to make this measure more palatable to most Americans.

Few disagree with the necessity for civil service reform. We all agree, and I think that this committee on the whole is committed, to reforming the civil service system. The problem happens to relate to the methodology employed by the White House in pursuit of this legislation.

As a result of which, for instance, the largest union of Federal employees, the American Federation of Government employees, is somewhat unhappy with it. It did not have to be that way. There were compromises that could have been effected.

For instance, the American veterans' community is not happy with the legislation in this present form. It did not have to be this way at this point in time.

I could allude to a number of other entities such as the National Association of Treasury Agents, and many others, who are very unhappy with the bill. All of this was unnecessary if we could have applied sufficient deliberation to the

measure but expediency was the order of the day on the part of the White House and the President, time in and time out, said that we have to have a bill this year. Well, in my judgment, if you are moving in the direction of something as complex and as broad in scope as this measure, certainly, then, it was due a decent foundation and, unfortunately, the measure that we are deliberating never enjoyed that decent foundation.

So we are going to do the best we can this day to make the measure more palatable so that we will be doing justice to the taxpayers and at the same we are not inflicting harm upon that good dedicated Federal employee.

Yes, we do have problems within our personnel complement but they are relatively few and most of the people happen to be very dedicated people who want very much to produce a day's work for a day's pay.

There are aspects of this legislation which could be unfair in this regard and we intend, through the amendment process, hopefully to effect responsible change.

* * * * *

Mr. CHARLES H. WILSON of California. Mr. Chairman, I move to strike the second from the last word.

Mr. Chairman, I do not relish the role of speaking against quick passage of the civil service legislation, H.R. 11280, perceived by many to be a good reform vote in an election year. If the stakes were not so high I suppose that we could just let this one sail by.

To put it quite bluntly most Members of the House seem to feel that anything labeled civil service reform is better than nothing.

* * * * *

I think that it is also important to emphasize that during consideration of this bill all Members should understand that when in some cases Mr. UDALL implies certain support for this legislation he is talking about very different forms of the bill. Indeed this bill now being discussed by Mr. UDALL is not the same one

[From 124 Cong. Rec. H 9358

(daily ed. Sept. 11, 1978):]

approved by the Post Office and Civil Service Committee—there are substantive differences. Contrary to the implication given by Mr. UDALL, the Federal

employee unions do not support this bill.

In summary, I hope that every Member of this House will realize that a bad civil service bill would not simply hurt a few of the local Washington area members with a concentration of Federal employees, it will damage every citizen's contact with every aspect of the Federal Government.

Mr. CLAY. Mr. Chairman, I move to strike the require number of words.

Mr. Chairman, I am pleased to announce that I have received assurances from the President that he will press for consideration and action by the other body on Hatch Act reform prior to adjournment. Accordingly, in view of President Carter's personal assurances of his intent, I deem it unnecessary to continue my effort to attach Hatch Act reform to civil service reform or to further oppose consideration of the reform measure on the House floor.

I applaud the President for his continued support to Hatch Act reform and am delighted by his assurances that he will use the powers of his office to encourage Senate consideration and action prior to adjournment. My efforts were geared to insure Senate consideration of the bill in the forthcoming House-Senate conference on civil service reform. Now, assuming that the President's efforts are successful, I feel a lessened sense of urgency for Hatch Act reform to be a part of civil service reform.

Mr. Chairman, for the consideration of my colleagues I am submitting the following letter from the President of the United States.

THE WHITE HOUSE,
Washington, September 8, 1978.

Hon. WILLIAM CLAY,
Chairman, Subcommittee on Civil Service,
U.S. House of Representatives, Wash-
ington, D.C.

DEAR MR. CHAIRMAN: Early in my administration I proposed to Congress that the Hatch Act provisions affecting the political activities of federal employees be modified.

I was pleased that the House, under your leadership, voted overwhelmingly last year to strengthen the protections of federal employees from political coercion on the job while permitting them to freely exercise their First Amendment rights to participate in the political process. I continue to support Hatch Act reform.

Because I am concerned that the issues surrounding Hatch Act modification and Civil Service reform not become intertwined, I have consistently sought reform of the Hatch Act independent of action on Civil Service reform.

I believe separate consideration of the two bills is the best way to insure that each bill

is eventually passed. This does not reflect any diminution of my commitment to fuller political participation for federal employees while affording necessary protections to the public. It does reflect my belief that the Hatch Act should not be considered together with Civil Service reform.

I share your concern that the Senate has not yet acted upon Hatch Act legislation, and intend to bring this concern to the attention of the Senate leadership. Hopefully, consideration and action will be taken without undue delay—prior to adjournment.

Your efforts on behalf of Hatch Act reform merit the appreciation of all federal employees anxious to exercise their basic political rights. I look forward to continuing our mutual efforts in support of those federal employees.

Sincerely,

JIMMY CARTER.

* * * * *

[From 124 Cong. Rec. H 9370
(daily ed. Sept. 11, 1978):]

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of title II, and that it be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

AMENDMENTS OFFERED BY MR. HANLEY

Mr. HANLEY. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. HANLEY: Page 186, after line 25, insert the following:
"§ 7702. Pretermination hearings

"(a) If an agency gives notice under—
"(1) section 4303(b) (1) of this title of its intention to separate an employee; or

"(2) section 7513(b) (1) of this title of its intention to remove an employee, or to suspend an employee for more than 14 days; such employee may, on or before the 10th day after such employee receives such notice, elect a pretermination hearing under this section in lieu of further proceedings under section 4303 or section 7513 of this title. An election of a pretermination hearing under this section must be made in a writing submitted to the Merit Systems Protection

[From 124 Cong. Rec. H 9371
(daily ed. Sept. 11, 1978):]

Board in accordance with regulations prescribed by the Board.

"(b) Any pretermination hearing elected under subsection (a) of this section shall be

treated as an appeal to the Merit Systems Protection Board under section 7701 of this title, except that—

"(A) such hearing shall be conducted by an administrative law judge appointed under section 3105 of this title and employed by the Board, whose decision shall be final, subject to judicial review under section 7703 of this title as a decision by the Board;

"(B) subsection (d) of such section 7701 shall not apply; and

"(C) no hearing pursuant to such election shall be scheduled before the 14th day after the date of the submission of such election to the Board.

"(2) (A) Subject to subparagraph (B) of this paragraph, an employee who has elected a pretermination hearing under this section shall not be removed or suspended under section 4303 or section 7513 of this title before the issuance of a decision under this section.

"(B) If, on the 90th day after the submission of an election of a pretermination hearing under this section, a decision under this section has not been made in connection with such hearing and the administrative law judge involved determines that such delay was caused primarily by the employee involved, such employee may, after such day, be removed or suspended in accordance with the proposed action on which the election under this section was based, pending a final decision by the administrative law judge under this section.

"(c) This section shall not apply in any case in which—

"(1) there is reasonable cause to believe the employee involved has, in connection with the matter on which the proposed action involved is based, committed a crime for which a sentence of imprisonment may be imposed; or

"(2) a matter affecting the national security is involved.

"(d) The parties to a negotiated collective bargaining agreement may agree to implement or substitute in whole or in part the procedure of this section as part of a collective bargaining agreement, or may agree upon alternative methods of settling matters subject to this section.

"(e) The Merit Systems Protection Board shall prescribe such regulations as are necessary to carry out the purpose of this section.

Page 170, line 8, insert "and, in the case of removal of an employee, subject to section 7702 of this title," after "section,".

Page 179, line 9, insert "and subject to section 7702 of this title," after "Management,".

Page 182, in the matter following line 17, strike out "7702" and insert in lieu thereof "7703", and insert after the item relating to section 7701 the following: "7702. Pretermination hearings.

Page 187, line 1, strike out "§ 7702" and insert in lieu thereof "§ 7703".

Mr. HANLEY (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as

read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. HANLEY. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. HANLEY. Mr. Chairman, I rise

to submit amendments to title II that would streamline the appeal procedure for Federal workers who are discharged or suspended for more than 14 days.

Under the present system, there is a two-step appellate procedure which takes up to 2 or more years to process from the time action is initiated until the final administrative appeal is concluded.

In my judgment it is unconscionable to keep an employee in limbo and most likely out of work for this period of time. Moreover, it is unfair to an agency because if that employee is ordered reinstated after 2 or more years the agency must return the employee to his or her position even though it may have been filled in the interim. This could result in an agency paying two employees to do one job.

Neither the President's proposal nor the committee's bill prevents these inordinate delays. They both perpetuate the two-step appeal procedure without providing for necessary time limits on the appeal process. My amendments, on the other hand, would prevent these foreseeable consequences. For the first time strict time limits would be incorporated into the procedure. They provide that an employee who is the subject of a discharge action or suspension for more than 14 days will receive a notice of charges, be afforded a hearing before the MSPB and be provided a final decision in a maximum of 90 days. This would end the administrative appeal process.

If it is determined that discharge or suspension is warranted the action will be immediately imposed, and the only appeal from the administrative determination is to the Federal courts after the employee is discharged or suspended. This procedure parallels the private sector where collective bargaining agreements provide for one hearing before an arbitrator. The only appeal from binding arbitration is to the courts.

Additionally, unlike the present system

and the one proposed in this bill, my amendments attempt to build into the system a motivation to expedite appeals. The employee is motivated to act expeditiously because if he or she requests a delay or otherwise makes it impossible for the process to be completed within the 90 days, then he or she is removed at the end of the 90-day period. Any further right of the employee to a hearing will be after the discharge or suspension action is imposed. Moreover, the agency is motivated to act promptly because if delay results from a request by the agency or the failure of the MSPB to schedule a timely hearing, the employee remains on the payroll until a decision is rendered.

Based upon private sector experience, I strongly believe that it would be beneficial to all sides to eliminate the present cumbersome layers of appeals. Employees will not have to suffer long periods of uncertainty and unemployment before knowing the disposition of their cases. And agencies will not be faced with staffing problems that result from appealed adverse actions remaining open for so long.

I urge my colleagues to join me in support of these amendments.

During the markup of H.R. 11280 Congressman DERWINSKI alleged that the streamlined appeal procedure would result in increased Government cost. In support of this claim he relied upon the estimates of the Congressional Budget Office which estimated an increased cost of \$2.6 million in fiscal year 1978, \$11.0 million in fiscal year 1979; \$11.6 million in fiscal year 1980, \$12.5 million in fiscal year 1981, and \$13.4 million in fiscal year 1982.

These claims of increased costs based upon the Budget Office estimates are erroneous. Their estimates were based upon H.R. 6225, the pretermination hearing bill ordered reported by the Post Office and Civil Service Committee on January 25, 1978. The streamlined appeal procedure amendment to H.R. 11280 is vastly different than H.R. 6225 thus rendering the Budget Office's analysis inapplicable. It differs on the following basis:

First. These amendments do not expand coverage of the appeal procedure to employees in the excepted service as provided for in H.R. 6225. Thus, the Budget Office estimate of increased costs resulting from additional cases is not applicable.

Second. H.R. 6225 extended coverage to

include the appeal of all suspension actions. These amendments limit coverage to suspensions of more than 14 days.

Third. H.R. 6225 required that appeal cases be heard by Administrative Law Judges instead of hearing examiners. The Budget Office determined this would result in increased salary costs. These amendments eliminate the requirement of Administrative Law Judges, thereby negating the increased salary cost estimates. Under the amendments cases would be heard by hearing examiners of the Merit System Protection Board.

Fourth. Unlike H.R. 6225 these amendments also place a 90-day time limit on the processing of appeals. The Budget Office's estimates were based on employees remaining on the payroll 120 days longer than under the present system. According to Chairman Campbell during the markup session on June 22, 1978, under the present system it takes between 30 to 60 days to remove someone from the payroll. Thus their figures were based on employees remaining on the payroll for between 150 and 180 days. However, under these amendments it would only be 90 days, therefore, the estimates do not apply.

Fifth. The Budget Office does not take into account the fact that these amendments would provide for binding arbitration as a substitute to the Statutory appeal procedure. This could result in a net cost savings to the Government because under such an alternative procedure the unions generally assume one-half the cost. Under the statutory procedure the Government pays the entire cost.

Mr. CLAY. Mr. Chairmap, will the gentleman yield?

Mr. HANLEY. I am delighted to yield to my friend, the gentleman from Missouri.

Mr. CLAY. Mr. Chairman, is this not virtually what passed the subcommittee

[From 124 Cong. Rec. H 9372
(daily ed. Sept. 11, 1978):]

that I chair in the Committee on Post Office and Civil Service?

Mr. HANLEY. Essentially, there was similar dialogue on the committee passed measure and I know that during the course of Committee consideration of this amendment there were some figures provided by OMB which suggested the cost of this concept would be rather

heavy; however, in analysis, the cost provided by the OMB applied to the bill you refer to.

Mr. CLAY. Mr. Chairman, if the gentleman will yield further, so virtually it is the same proposal that passed the subcommittee and the full committee and is now awaiting a rule from the Committee on Rules.

Mr. HANLEY. Well, no; there are substantive differences in the committee-passed bill and this amendment. The cost associated with this amendment is substantively less than the cost associated with that bill.

The CHAIRMAN. The time of the gentleman from New York (Mr. HANLEY) has expired.

(By unanimous consent, Mr. HANLEY was allowed to proceed for 2 additional minutes.)

Mr. CLAY. Mr. Chairman, will the gentleman yield further?

Mr. HANLEY. I yield to the gentleman from Missouri.

Mr. CLAY. Mr. Chairman, I thank the gentleman and I intend to support the amendment.

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this is a major amendment and was debated at some length in the committee and was then rejected by a vote of 10 to 15. There is something very fundamental and very basic at stake here. This amendment goes exactly opposite to the main thrust of what we are trying to do in this bill. Presently, it is pretty hard, one of the premises on which this legislation is founded is that it is too difficult to discharge or discipline inefficient Federal employees.

Now, if one is a Federal employee, the current law is that he can be given 30 days notice and then be terminated. After that, there is an opportunity to come in and have a hearing. The employee is entitled to have a written decision and an appeal may be taken by the employee to an outside appeals authority. This turns it around and says that employee cannot be fired unless you have a hearing before they are fired. It moves in the opposite direction and instead of doing what this bill is trying to do to make it easier to fire incompetent Federal employees, it makes it much more difficult; so it is contrary to the basic purpose of the bill. It will make it even more difficult than it is today to remove an incompetent employee.

There was an estimate by the Con-

gressional Budget Office that it would cost \$63 million. That was an earlier pre-termination bill and I do not know the differences in cost between that one and this one.

Clearly, if we are going to set up a whole new structure and a whole new web of protection for Federal employees against being fired, we are going to have some costs involved.

Mr. HANLEY. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from New York.

Mr. HANLEY. Mr. Chairman, just to clarify the point with respect to the cost of this measure, the dollar figure associated previously was in error. That was the figure of OMB in association with a similar but much heavier measure that had been passed by the committee and is now pending in the Committee on Rules.

So that figure should not at all be associated with this amendment.

The dollar factor is very minimal, and I would repeat what I have already said: That in essence what we would be doing here is we should be applying the concept that is utilized in the private sector where, if that employer for some reason decides he is going to dismiss an employee, in fairness there is a bit of consultation with the employee prior to definitive action. So he calls the gentleman or the gentelady in and says, "For these reasons it appears that termination of your tenure is in order."

In that way we give the individual the benefit of the rationale of the employer. So actually what we are doing here, if we adopt the amendment, is simply concurring with the traditional concept in the private sector in fairness to that employee.

Mr. UDALL. Mr. Chairman, if the gentleman agrees, as I do, that one of the fundamental purposes of this bill is to make it easier and not harder to discharge incompetent employees, then the gentleman's amendment goes directly in the wrong direction.

We have testimony that it takes 152 days now—and that is the average time—to complete this appeals process. The real vice of this amendment is that it would keep this person on the payroll sitting around for that length of time. We would encourage employees who otherwise would go away and accept their discharge to appeal because they are going to get paid, and there they are inflicting their presence on the whole system while

this appeal process is going on.

Mr. Chairman, I think it would be a major mistake to accept this amendment. I strongly urge that it be defeated.

Mr. DERWINSKI. Mr. Chairman, I move to strike the last word, and I rise in opposition to the amendments.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, I am going to be very brief. The gentleman from Arizona (Mr. UDALL) made the proper arguments against the amendment.

Actually here again we are in what may be a pattern in working on this bill. This is a classic case of an immediate retreat from a new goal. Basically, this amendment would add an extra step which would impede termination of the services of an incompetent employee.

As I understand this amendment, it would encourage everyone to appeal. If I may have the attention of the gentleman from New York (Mr. HANLEY), the figure he earlier quoted of \$63 million as the possible cost of the application of this amendment was the result of research for the Civil Service Commission, but the gentleman, with a brush of his hand ruled that out.

Can the gentleman tell us specifically what figures he has to substantiate the cost of his amendment?

I am speaking of something other than an opinion now. I would like to have something specific.

Mr. HANLEY. Mr. Chairman, if the gentleman will yield, I believe in fairness, the figure used by OMB and provided the committee at that time was a figure used in association with an entirely different bill, and the committee labored under the impression that that was the cost of this amendment in committee. That is not true.

What the actual cost is I do not know. However, I do know that this cost is substantively less than the cost in the singular bill that was approved by the committee and is now pending in the Committee on Rules.

Mr. DERWINSKI. But the point is—and I am sure the gentleman will not dispute the other statistics we have—that the Civil Service Commission appealing now is 152 days. We would in fact, through the gentleman's amendment, add more days over and above whatever we provide for in this bill.

Mr. HANLEY. Mr. Chairman, will the

gentleman yield on that point?

Mr. DERWINSKI. Let me finish my thought first.

Mr. Chairman, the gentleman starts taking us down the road of adding to the appeal time, adding to the delay, and, therefore, denying the very goal of the bill, which is a streamlining of personnel procedures.

Mr. HANLEY. Mr. Chairman, will the gentleman yield now?

Mr. DERWINSKI. Yes, I yield to the gentleman from New York.

Mr. HANLEY. Mr. Chairman, obviously, on the basis of what the gentleman has just said, a misunderstanding prevails, because what I would suggest through this amendment is that we are expediting that process, because within a timeframe of not more than 90 days that matter would have to be disposed of one way or the other, as opposed to present law or the language of this bill, which still makes it possible that the process could continue up to 2, 3, or maybe 4 years.

Think of the cost involved in that procedure, where again you are dealing with administrative law, just in an effort to resolve that one employee problem.

My guess is that this would be far less expensive than the present methodology; and, beyond that, certainly fair to that individual.

It certainly is not my intent to encourage continued employment of incompetent people, but I do not feel that that individual should certainly be entitled to his or her day in court.

Mr. DERWINSKI. They are entitled to their day in court under the bill. The effect of the gentleman's amendment would be to add an additional layer, an

[From 124 Cong. Rec. H 9373
(daily ed. Sept. 11, 1978):]

additional step, and this would have the effect of encouraging people to utilize it. And that is where the cost factor comes in. I think it is the height of optimism for the gentleman to imply that there would be minimal cost because, in effect, through the gentleman's amendment, he would be encouraging almost automatic use of this provision, and the costs are almost impossible to calculate.

Mr. HANLEY. If the gentleman will yield further, is it not rather logical that the cost factor associated with an endeavor that can be washed out within a 90-day period would be far preferable to

a procedure which currently provides maybe up to 2 or 3 or 4 years before that decision is made? That is a rather costly process

Mr. DERWINSKI. The gentleman is talking about the present system which takes 2 or 3 or 4 years. That has been streamlined. The gentleman's amendment would add an additional 20 or 30 days.

Mr. HANLEY. No.

Mr. GILMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendments.

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, in the interest of due process, I rise in support of the gentleman's amendment.

The courts have generally found that a job is a property right and, therefore, that due process should apply in any decision with regard to that right.

Due process, in our system of justice, means an individual is innocent until proven guilty.

What the gentleman from New York is seeking to do is to provide the Federal employee with an opportunity to prove his or her innocence before they would lose their jobs. Removing employees from their jobs prior to any hearing would reverse our standards of justice.

In our committee hearings, I might add, there was testimony that, while in some instances it did take an inordinate length of time to remove an employee, there are statutory and regulatory provisions and procedures available that, if properly utilized, would enable the discharge of an employee within a very reasonable period, and not the 152 days as suggested by our acting chairman.

Accordingly, Mr. Chairman, I urge the adoption of this amendment.

Mrs. SPELLMAN. Mr. Chairman, I move to strike the requisite number of words.

(Mrs. SPELLMAN asked and was given permission to revise and extend her remarks.)

Mrs. SPELLMAN. Mr. Speaker, I would like to call to the attention of all of those Members present—and, I would hope, of anyone who is at all interested in the bill—the words of our distinguished Chairman. He made it very clear, and he was absolutely right, that under today's system an employee can be out of the system in 30 days.

We have heard a great deal of talk about how it takes 18 months, to fire

an employee. We were at times told it took 27 months, and 3 years, and all that sort of thing. That was nonsense. An employee can be out of the system today in 30 days, and then the appeals process starts. And, indeed, there have been situations where it has taken a couple of years, and even 3 years, but when we looked into those situations we found that that was because the Government itself had dragged its feet, that the Government had caused the delay, not the employee. The idea was to drag the case out, to the point where no employee could afford to continue to fight his dismissal.

So what we are having proposed here at this time really is not going to extend the time. It will give a date finite to the Government, and the Government will be advised that at the end of 90 days it must have reached some conclusion. Therefore, it makes very good sense, No. 1, to give an employee a fair opportunity and, No. 2, to allow that employee to know that in 90 days his or her case will be disposed of. The citizens of the United States would also be spared the expense incurred by delays.

It has been really cruel and unusual punishment to have dragged cases out, as they have been in the past. The amendment makes very good sense, and I would certainly support this proposal by the gentleman from New York.

Mr. STEERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I support this amendment, and I only want to make one additional point in connection with it. The acting chairman has pointed out that the purpose of the bill is to enable the boss to get rid of incompetent employees. Of course, that sounds good until we stop to remember that competence is a matter of opinion. So, when this bill gives the power to fire incompetent employees, it also gives the power to fire competent employees.

Now, let us assume the most favorable supposition, and that is that the great majority of the firings are of incompetent people. There is no question that out of a large number that may get fired over a number of years, there are going to be some mistakes made for one reason or another, so somebody gets fired who is not incompetent, and so his salary ceases.

It is all very well to talk about reinstatement and payment of back salary and so forth. The family, however, of this employee has got to eat, and they cannot eat on future pay. I think that to

deny the employee a hearing before firing him for "incompetence" is quite unfair. I support the amendment proposed by the gentleman from New York.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New York (Mr. HANLEY).

The question was taken; and the Chairman being in doubt, the committee divided, and there were—ayes 15; noes 23.

So the amendments were rejected.

* * * * *

[From 124 Cong. Rec. H 9377
(daily ed. Sept. 11, 1978):]

AMENDMENTS OFFERED BY MR. STEERS

Mr. STEERS. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. STEERS. Page 148, strike out lines 12 through 24 and insert in lieu thereof the following:

(b)(1) Section 5314 of title 5, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(67) Director of the Office of Personnel Management".

(2) Section 5315 of such title is amended by inserting at the end thereof the following new paragraph:

"(122) Deputy Director of the Office of Personnel Management."

(3) Section 5316 of such title is amended by inserting at the end thereof the following new paragraph:

"(144) Associate Directors of the Office of Personnel Management (5)."

Page 165, strike out line 24 and all that follows down through line 12 on page 166 and insert the following:

(c)(1) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(123) Chairman of the Merit Systems Protection Board".

(2) Section 5316 of such title is amended by adding at the end thereof the following new paragraphs:

"(145) Members, Merit Systems Protection Board.

"(146) Special Counsel of the Merit Systems Protection Board."

(3) (A) Paragraph (17) of section 5314 of such title is hereby repealed.

(B) Paragraph (66) of section 5315 of such title is hereby repealed.

(C) Paragraph (99) of section 5316 of such title is hereby repealed.

Page 300, line 6, strike out "Senate" and insert in lieu thereof the following: "Senate, and shall be paid at an annual rate of basic pay equal to the maximum annual rate of basic pay currently paid, from time to time, under the General Schedule."

Page 347, strike out lines 5 through 8 and insert in lieu thereof the following:

(e) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(47) Members, Federal Labor Relations Authority (2)."

Mr. STEERS (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Maryland?

There was no objection.

(Mr. STEERS asked and was given permission to revise and extend his remarks.)

Mr. STEERS. Mr. Chairman, what this amendment would do is quite simple. It would save money. The problem of the size and cost of the bureaucracy is not adequately addressed in H.R. 11280. Streamlining the existing bureaucracy should make it smaller and more cost effective; it should not increase its size and cost. The amendment which I am offering here, which was offered by the

[From 124 Cong. Rec. H 9378
(daily ed. Sept. 11, 1978):]

junior Member of the Senate from Pennsylvania. This amendment was adopted by the Senate and will partially address this inconsistency.

Inherent in H.R. 11280, and in the reorganization plan which will go into effect between now and January 1, is an increase in the number of top-level appointed positions in the civil service system and an increase in the cost of these top-level positions. In sum, Mr. Chairman, we are seeing a so-called reform measure transform 3 full-time positions, and 3 very much part-time positions, into a total of 13 top-level, full-time positions, all at a higher pay level than currently. While it is tempting to try to restructure and prune back this proliferation of top-level political appointees, this amendment only seeks to reduce the pay of these positions by one level, thus preventing the pay inflation in the bill.

Mr. Chairman, I am including at this point the following table of the proposed positions and the pay levels for them under the administration's proposal and also under the Senate bill:

COMPARISON OF COSTS FOR APPOINTED POSITIONS BETWEEN THE ADMINISTRATION PROPOSAL AND HEINZ AMENDMENT

Administration proposal	Annual salary	Level	Senate amendment	Annual salary	Level
OPM:			OPM:		
Director	\$57,500	2	Director	52,500	3
Deputy Director	52,500	3	Deputy Director	50,000	4
Five Associate Directors.....	250,000	4	Five Associate Directors.....	142,500	5
Total	360,000		Total	245,000	
MSPB:			MSPB:		
Chairman	52,500	3	Chairman	50,000	4
Vive Chairman	50,000	4	Vice Chairman	47,500	5
Member	50,000	4	Member	47,500	5
Total	152,500		Total	145,000	
Special Counsel	50,000	4	Special Counsel	47,500	5
FLRA:			FLRA:		
Chairman	52,500	3	Chairman	50,000	4
Two members	100,000	4	Two members	95,000	5
Total	152,500		Total	145,000	
Total for appointees	715,000		Total for appointees	582,500	

Amendment total for appointed positions (including Associate Directors) is 18.5 percent (\$132,500) less than Administration proposal.

Mr. Chairman, I will yield to the acting chairman if the gentleman would like to speak at this point.

Mr. UDALL. Mr. Chairman, I was going to rise in opposition to the amendment. If the gentleman will yield for that purpose, maybe we can save some time.

Mr. STEERS. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I want to make a couple of points. The first point is that all of these positions are under compression now. These executive-level positions involved in this amendment are not going to get the October pay raise, in any event, so it has no practical application. The main opposition to the amendment, however, is that the scheduling of these positions in the different executive levels was done by the administration when they drafted the bill, so that positions of equal responsibility here in the new agencies we are creating would be equivalent to those of other agencies. For example, the head of the Office of Personnel Management should be the same level, unless you are going to get out of the synchronized salary system, as the Director of the Office of Management and Budget. And so it goes with the new adjudicatory positions. They should be the same as the positions of the Federal Labor Relations Board, the National Labor Relations Board, and similar positions. This would knock them all out of comparability status with other similar positions in the Federal Government.

For that reason, the amendment is unwise, and I would oppose it.

Mr. STEERS. Mr. Chairman, if the gentleman will yield back my time, what is the OPM Director under the bill supposed to be paid?

Mr. UDALL. Level 2, which would be \$57,500.

Mr. STEERS. It is the gentleman's position that this job is so important that it is comparable to the Director of the Office of Management and Budget?

Mr. UDALL. That is the position the administration took in drafting the bill. Frankly, I think we have grade creep in the whole Federal Government. I think all executive positions and generals and admirals maybe ought to go down one notch, but I am not sure the place to start is in this bill.

Mr. STEERS. Mr. Chairman, reclaiming my time, I would just say that the time to start will never arrive if it is continually postponed. I think we do

have grade creep, and I commend the gentleman from Arizona for acknowledging the grade creep. I regret that he has accepted it by failing to support this amendment.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Maryland (Mr. STEERS).

The amendments were rejected.

* * * * *

[From 124 Cong. Rec. H 9432
(daily ed. Sept. 11, 1978):]

Mr. UDALL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think we can finish this bill this evening in a couple of hours. We are on title IV. The bill has eleven titles, but most of the remaining controversy is in title VII, the labor-management section.

Therefore, Mr. Chairman, I ask unanimous consent that all debate on title IV and all amendments thereto close at 9:45 p.m.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. DUNCAN of Oregon. I will be glad to reconsider after we see how many of the pending amendments are affected, but for now I object.

Reserving the right to object, Mr. Chairman, how many more amendments are pending, if the gentleman knows?

Mr. UDALL. There are a large number of amendments which have been noticed. I do not think that very many of them will be offered. I have no way of telling.

I think that the amendments which Members seriously want to offer will get an opportunity to be offered in this period of time. Most Members with major amendments have already printed them in the CONGRESSIONAL RECORD, and they would be outside the limitation, in any event.

Mr. DUNCAN of Oregon. They would be outside the limitation with respect to the 5 minutes which the sponsor is entitled to.

Mr. Chairman, until we can get some

[From 124 Cong. Rec. H 9433
(daily ed. Sept. 11, 1978):]

more information as to the number pending and going to be considered, if there is a large number pending, I think a half hour is unreasonable on a bill of this magnitude.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. DUNCAN of Oregon. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I especially appreciate that there has been a kind of bipartisan support and opposition to this bill. However, I have looked over all of the pending amendments; and really, as the gentleman from Arizona indicated, the gut issues are in title VII. The remaining amendments to titles IV, V, and VI may be important to some individual Member, but they are not going to alter the direction of the Republic.

Mr. Chairman, I really think we could expedite the relatively noncontroversial titles, and we could do a good job on the one tough title remaining.

Mr. DUNCAN of Oregon. Further reserving the right to object, Mr. Chairman, I am interested, as I know a number of other Members are, in a specific amendment which I think should be relatively noncontroversial. If the chair and the ranking minority member would study it and give us some assurance that it would be accepted, I should think in that instance a half hour would be plenty of time.

Mr. UDALL. If the gentleman will yield, Mr. Chairman, I will say to the gentleman that I do not think I am going to accept the amendment he refers to. However, we can process it very quickly. It is not complicated. I think that in 3 or 4 minutes the Members will be able to make a sensible decision on it.

Mr. DUNCAN of Oregon. Mr. Chairman, I will be constrained to withdraw an objection at a later time, but at this point I am constrained to object.

The CHAIRMAN. Objection is heard.

* * * * *

[From 124 Cong. Rec. H 9446 (daily ed. Sept. 11, 1978):]

The CHAIRMAN. Are there other amendments to title VI?

There being none, the Clerk will read title VII.

The Clerk read as follows:

* * * * *

[For Title VII as reported, see pages 376-436 above.]

[From 124 Cong. Rec. H 9453 (daily ed. Sept. 11, 1978):]

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of title VII, and that it be printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

AMENDMENT OFFERED BY MR. ERLBORN

Mr. ERLBORN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLBORN: Page 288, strike line 12 and all that follows thereafter through line 12 on page 348.

(Mr. ERLBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLBORN. Mr. Chairman, I join with the gentleman from Illinois, my colleague (Mr. DERWINSKI) in supporting the basic concept contained in this bill for civil service reform. This itself is a very complex subject, but it is a very laudable and a very necessary goal. The question I think that is given to the House at this point is whether we should at the same time consider another very complex question that will impinge upon and, in some way, affect the goals of civil service reform; that is, to reform our labor-management relations at the same time.

I submit that we should not, that if we are to move from the present labor-management relations controls that are contained in the President's Executive order, it should be done in separate legislation and probably after civil service reform has been enacted and we have had an opportunity to see how that works under the present labor-management rules.

In submitting a civil service reform package in March, the President did not—did not—include legislation to rewrite the Executive order governing labor-management relations, nor even to

[From 124 Cong. Rec. H 9454 (daily ed. Sept. 11, 1978):]

take the present Executive order and write it into law. Later, he apparently agreed to make his Executive order statutory. As late as his August 3 forum in Fairfax County, he admitted that a few technical amendments had been worked out with Ken Blaylock, the head of some of the Government unions, and

with the union, before the legislation was introduced. That is what is now title VII, the collective-bargaining legislation.

He said that this would in some way expand the Executive order, and I quote, "in ways that I do not understand."

In other words, the President suggested that he did want the Executive order, per se, written into law, and that there were some agreements reached with the union chief that the President himself did not understand. He went on to add that his preference is to limit the collective-bargaining processes of this legislation to what was included in the Executive order.

Now, when administration officials sent to Congress on May 10 a proposed title VII on labor relations, it was headlined as incorporating into law the existing Federal employee labor relations program. Title VII before us, as reported by the committee, is not the Executive order. The changes are not, as the President referred to them, a few technical amendments. I think we had better understand the differences before anyone votes for title VII, because we all know how important a few changes and a few words here and there may be.

We should not make it possible for some Federal officials to give a union exclusive recognition, with all that conveys, without an election, but that is in title VII. Members may recall H.R. 77, which was the predecessor to the famous labor law reform bill, contained such a provision, certification of a union as the exclusive bargaining agent for a unit of Government without an election before determining that they are supported by a majority of the employees in that unit.

Even President Carter rejected that concept and before he supported a labor law reform bill insisted that certification without election come out of the bill—and so it did:

Mr. CHARLES H. WILSON of California. Mr. Chairman, will the gentleman yield?

Mr. ERLBORN. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. The gentleman made reference to H.R. 7700. I do not think it is related to this at all.

Mr. ERLBORN. I am sorry. The gentleman misunderstood me. I said H.R. 77. H.R. 77 was in the Education and Labor Committee and was the first of a series of bills labeled labor law reform.

Mr. CHARLES H. WILSON of Califor-

nia. Then the gentleman is not talking about the great bill the gentleman from New York (Mr. HANLEY) and I brought out. I thought that was it.

Mr. ERLBORN. No. It is a different bill altogether.

There is another provision. Under the current law and the Executive order a strike by Federal employees is illegal. The provision here in title VII instead makes it merely an unfair labor practice.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. ERLBORN) has expired.

(By unanimous consent, Mr. ERLBORN was allowed to proceed for 5 additional minutes.)

Mr. ERLBORN. Mr. Chairman, under the Executive order an illegal strike by Federal employees causes the union that has been certified as the bargaining agent to lose their status an exclusive agent.

The bill creates a divisive factor in Federal employment between union members and bargaining units and may affect employees who feel no need to affiliate with a labor union in such because under this bill they will be provided a two-track appeals process concerning disciplining of an employee or denial of automatic salary increases or disciplining actions.

This also will produce a major incentive to vote for union representation or to join the union if one has been certified so that the individual employee will have this additional appeal alternative.

The bill allows a union with only 10 percent representation in the unit under question to negotiate for a voluntary dues check off, a form of union security. Now this is a strange provision in that a governmental agency as the employer will be required to bargain with a union that represents as little as 10 percent of the members of the bargaining unit for the purpose of check off. Agency discretion for withholding dues is removed. That discretion is now current under the Executive order.

The definition of dues is expanded to include assessments, which is extraordinary. That is not true under the Executive order. It is not true under the National Labor Relations Act. It means though that those who have agreed, an employee who has agreed to a check off will also have union assessments taken off his pay automatically. A worker who agrees to dues check off today commits himself only for a 6-month period. Title

VII will commit without chance to change to his mind to that employee to a 1-year period.

How does title VII relate to the major objective of this bill, and that is change in the merit system? We do not know, because we have not had time to consider the relationship but it is altogether likely that negotiated contracts under title VII may directly go contrary to the major thrust and objective of the balance of the bill.

To top it off, title VII goes far beyond telling agency managers to meet and confer with unions as the Executive order currently does, it will order the manager to reach an agreement with the union. By adding two words to the definition of labor organization, title VII could allow other than public employee unions to represent Federal employees. Let us say, then, that we have a private sector union that organizes a unit in an agency in the Federal Government. Will then strife in the private sector lead to picketing at the Federal agency and refusal of Federal employees to cross the picket line, thus interfering with governmental business? It is altogether possible.

Expanding the scope of the Executive order as title VII will do means that we will need more administrative law judges, probably with all of the attendant personnel such as regional directors and their supporting personnel. Thus title VII will be expanding the Federal bureaucracy and adding to the cost of Government.

If you really want to tell your constituents that you voted for a civil service reform bill that is going to give the Government the flexibility and the abilities that are necessary for effective Government management, I urge you to vote to strike title VII. That will leave the Executive order in place governing labor-management relations and we will be able to get on with the business of civil service reform and if we desire later to change labor-management relations beyond this Executive order, this Congress will have the ability to do so.

Mr. COLLINS of Texas. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Texas.

Mr. COLLINS of Texas. Mr. Chairman, I thank the gentleman from Illinois (Mr. ERLENBORN) for yielding to me and I believe that he has summed it up well in just suggesting, very plainly, that we should strike this particular section of the bill.

I was impressed with a letter I received from the Chamber of Commerce of the United States.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. COLLINS of Texas and by unanimous consent, Mr. ERLENBORN was allowed to proceed for 2 additional minutes.)

Mr. COLLINS of Texas. Mr. Chairman, if the gentleman will continue to yield, the letter said:

However, title VII goes so far beyond Executive Order 11491 that an entirely new system is created which clearly ignores the essential differences between private and public sector labor relations.

So what the gentleman has said is that this is not the time or the place or the bill to change this legislation.

I think the gentleman has summed it up well.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Chairman, I thank the gentleman for yielding. I might say that I am a little bit concerned, I just do not know what the gentleman is referring to about the issue of a strike. And on page 320, it indicates that calling a strike on behalf of a union, constitutes an unfair labor practice.

Mr. ERLENBORN. That is right. What I was pointing out is that at the present time it is illegal, not just an unfair labor practice, an illegal strike by Federal employees, supported by their union will lead to the union no longer being allowed to be the exclusive bargaining agent. Now that will be changed, in substance, by this title VII.

Mr. GLICKMAN. If the gentleman will

[From 124 Cong. Rec. H 9455
(daily ed. Sept. 11, 1978):]

yield further, participating in or calling an illegal strike, being in violation of any other Federal laws, or perhaps other criminal laws—or does this section supersede anything like that? What I am trying to figure out, does this apply only to an unfair strike, or do other applications of the Federal law still prohibit the strike?

Mr. ERLENBORN. So far as I know this will be the only remedy, the unfair labor practice charge and no longer will it lead to decertification of the union or the union being any longer considered

the exclusive bargaining agent for bargaining purposes.

Mr. FORD of Michigan. Mr. Chairman, if the gentleman will yield, I know the gentleman from Illinois (Mr. ERLNBORN) and I are totally in disagreement on some issues, and have been for the past 14 years, we have been in disagreement, but I know the gentleman well enough to know that he would not be wanting to mislead the Members, but the prohibition against Federal employees striking is in a single sentence which prohibits them from joining any organization.

The CHAIRMAN. The time of the gentleman has again expired.

(On request of Mr. FORD of Michigan, and by unanimous consent, Mr. ERLNBORN was allowed to proceed for 2 additional minutes.)

Mr. FORD of Michigan. Mr. Chairman, as I was saying, that prohibits them from joining any organization advocating the overthrow of the Government by force or violence, or as mentioned, participating in a strike, and the Supreme Court has said that the effect of the strike provision is not enforceable because it is in violation of the first amendment to the Constitution. That statute is not affected by this law at all, or by this bill, rather, so the act of striking will continue to be a violation of Federal law.

The difference is that this bill for the first time will add on top of that a specific procedure available to the Government to go after a labor organization which advocates strike activity by making that an unfair labor practice reachable in the same way that any other unfair labor practice committed by the union or its representatives is reached by the statute, so that, in fact, we did not affect the existing law on strikes. We add a remedy for the Government in the case of someone advocating an illegal strike, which we think meets the court test of still not violating any first amendment rights.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. ERLNBORN) has expired.

(By unanimous consent, Mr. ERLNBORN was allowed to proceed for 5 additional minutes.)

Mr. ERLNBORN. Mr. Chairman, let me understand this. Is the gentleman suggesting that this bill, being a later enactment, would not be considered to be a repeal of the current law, and is it the gentleman's understanding that

besides being an unfair labor practice, and illegal strike will also lead to a decertification of the union or to the union's no longer being able to act as the exclusive bargaining agent of the employees?

Mr. FORD of Michigan. If the gentleman will yield further, Mr. Chairman, title 18 of the United States Code 1918 provides criminal penalties against strikes in violation of 5 United States Code. Five United States Code prohibits the strike. Title 18 makes participating in the illegal strike a crime.

Neither of those titles is affected by any of the provisions in this act.

Mr. ERLNBORN. I thank the gentleman for his contribution.

Let me just wind this up by saying I would hope that the Members would support this motion to strike title VII. It is highly controversial; and if we would strike title VII, we can move on very expeditiously to concluding the consideration of this bill and going home tonight.

Mr. MARRIOTT. Mr. Chairman, will the gentleman yield?

Mr. ERLNBORN. I am happy to yield to the gentleman from Utah.

Mr. MARRIOTT. Mr. Chairman, I just want to ask the gentleman what the Senate did with this particular provision.

Mr. ERLNBORN. The Senate has a title VII that is in substance the incorporation of the Executive order with some few changes. Primarily it is an incorporation into the law of the Executive order. That title is not making the changes contemplated in this title VII.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield for one additional question?

Mr. ERLNBORN. I am happy to yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Chairman, perhaps the gentleman from Michigan (Mr. Ford) will want to answer this question.

I would like to ask two basic questions, if possible.

Number one, how does this provision in title VII expand on the provisions in the Executive order with respect to calling a strike or engaging in a strike?

Number two, I think unequivocally we need to have it stated whether this title in any way limits the Federal Government's ability to control strikes. Our constituents are concerned about public employees striking and Federal employees striking.

I think those two questions need to be

answered. Could the gentleman from Illinois (Mr. ERLÉNORN) or the gentleman from Michigan (Mr. FORD) answer them?

Mr. ERLÉNORN. I am afraid I was trying to read a note from the staff and did not hear the gentleman's question.

Mr. FORD of Michigan. If the gentleman will yield, Mr. Chairman, the answer to the gentleman's question is that it does not expand on the right to strike. It does not deal with the right to strike except to enumerate the advocacy of strike activity which is not now prohibited by law as an unfair labor practice, so that, in fact, the passage of this law will provide the Government, as management, with a tool it does not now have to go after a union which advocates the right to strike, because the Supreme Court has said that the current prohibition against advocating the right to strike is an unconstitutional impairment of their first amendment rights and that one cannot totally abrogate someone's right to advocate something, such as withholding his labor.

However, the court has in the past, under the National Labor Relations Act, upheld illegal strike advocacy for the wrong purposes at the wrong time; and we are following that kind of pattern.

I do not know why this particular section is picked on by the gentleman from Illinois (Mr. ERLÉNORN) or why he does not like it because, very clearly, I will be very happy to strike that provision from the bill. It is an antilabor provision. It is a restraint on labor, a tool to be used against labor unions which does not now exist in the executive order. In fact, this provision of the act is stronger than the Executive order when viewed from the perspective of anyone wanting to see unions challenged on the right to strike.

Mr. ERLÉNORN. If the gentleman will yield back, it is very apparent it is not spelled out here. One of the effects of conducting an illegal strike would be the decertification of the union. Under the present practice of the Executive order, if an illegal strike is engaged in, the union that backed such an illegal strike can no longer act as the exclusive bargaining agent of the employees of that unit. Besides, in that definition section we allow a labor organization composed of one unit in whole or in part of Federal employees. In other words, this is an open invitation to mix in the same local employees in the private sector and

the public sector.

Again I would point out that this could lead to strife in the private sector, leading to an interruption of work in the public sector. These are only a few. I have pointed out many of the other changes from the Executive order that are in this particular title VII. None of them were specifically backed by the President. The most he has said so far was that he would like possibly to see incorporated into the statute the Executive order. I hope the amendment is adopted.

The CHAIRMAN. The time of the gentleman has expired.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

(Mr. FORD of Michigan asked and was given permission to revise and extend his remarks.)

Mr. FORD of Michigan. I want to say, without any intent to offend my friend, the gentleman from Illinois (Mr. ERLÉNORN), that I thought for about 20 minutes there that he was going to filibuster his own amendment, so I will not take much more time. It should be very simple for everyone to understand that there are some trade-offs in legislation of this kind.

We have heard very eloquently, particularly from that side this evening when we were talking about the SES, about all the new power we are giving the executive branch to control the destinies of employees, not just the employees who belong to the bargaining agents, the workers, not only the Indians but the

[From 124 Cong. Rec. H 9456
(daily ed. Sept. 11, 1978):]

chiefs as well, all the way to the top. In the process of the giving of this new power and expanded power and authority to management to manage the Federal work force, I think we might understand that the Federal employees become a little restive about where their status quo fits into a future with all this new power coming on one side of the picture. So the committee over a long period of time has tried to work out a balance to reassure the Federal employees that they are in fact going to maintain the status quo.

I wish that I could say to my friends in organized labor that what we have constructed here is a monumental new breakthrough for the future of public

employee collective bargaining, but that would not be true. I must say parenthetically that the discussion of the gentleman from Illinois (Mr. ERLNBORN) about striking is all sheer nonsense, because not at any time did we spend 5 seconds talking about the right to strike. No practical person on our committee would have talked about that as a possibility. It has never been in the draft of any legislation. It has never even been whispered in a closet by any member of the committee. We know, I will say to the gentleman from Illinois (Mr. ERLNBORN) that that would be a foolish attempt to make here, and it has never been advocated. For us to spend all of this time talking about the right to strike as if at some time we had it in the bill is sheer nonsense. The bill does not deal with any expanded right in that regard. The bill does not deal with lots of rights that public employees have in the State arena and on the local level across the country. As a matter of fact, this is anything but a model that I would recommend that public employees would want adopted in their States for their States. What it does represent is an attempt to restructure John Kennedy's Executive order of 1962 into the realities of 1978 and the future, as the name of the game is changing and the rules of the game are changed by this civil service reform.

It is true that there are people in this country who would like to have us go home and say, "I voted for civil service reform," and when they say, "What is that?" we have to reply, "Well, that is the way which we use to kick the lazy, no good Federal employees off of their duffs and get them up to work." If we want to demagogue against Federal employees in that fashion, this is a handy vehicle to do it, but we need not at the same time create chaos in the Federal work force by destroying the morale of the employees.

It is absolutely essential that the employees believe, when we get through reforming the system and giving all of the top management these new powers, that the system is at least as fair to them in the exercise of their rights as it was before. And it is true that there is some change made in the language, the familiar language of the Executive order, although I think the gentleman from Illinois has illustrated that he is far more familiar with the National Labor Relations Act than he is with the

Executive order, and I defer to his superior knowledge as a labor lawyer on the National Labor Relations Act.

We are dealing here with an entirely different ball game, I say to the gentleman from Illinois, and there are no dramatic changes from or departures from the existing rights of unions. We are not trying to write a collective bargaining agreement. We are not changing the method by which collective bargaining comes into play. We are drawing a more definitive picture of what the proper subject for collective bargaining would be, what the limitations on the subject matter of collective bargaining might be and the methodology. We are talking about grievance procedures for the first time. We are talking about them in a fashion that we calculate is going to save the Government a great deal of time and money.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(At the request of Mr. FRENZEL, and by unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Chairman, I thank the gentleman for yielding.

I would like to inquire if one of those tiny little changes the gentleman is talking about is the installation of a binding arbitration system. That is not in the current Executive order, is it?

Mr. FORD of Michigan. The installation of a binding arbitration system? No; we are not installing a binding arbitration system.

Mr. FRENZEL. We are not? That is not the way I read the act.

Mr. FORD of Michigan. Is the gentleman talking about arbitration of grievances?

Mr. FRENZEL. Yes.

Mr. FORD of Michigan. Not arbitration of contract benefits?

Mr. FRENZEL. I will find it in a minute.

Mr. FORD of Michigan. I hope the gentleman understands the difference.

Mr. THOMPSON. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from New Jersey.

Mr. THOMPSON. Mr. Chairman, first of all, I would like to associate myself with the gentleman's general remarks

with respect to this title.

Second, to point out to my friend and colleague from Illinois, whose knowledge of the NLRA is not questioned at all, it seems to me there is a bit of confusion, if anything, here. In addition to the existing regulation emanating from 1962, there is being added by the committee a further restriction heretofore not extant in the form of creating an unfair labor practice where none exists now in the Federal Government. This does not relate at all, and the gentleman knows perfectly well, to the proposed H.R. 7777 relating to public employees, State, county, municipal, and Federal. It is really not in any way similar.

I certainly agree with my friend, the gentleman from Michigan (Mr. FORD) that I would not recommend this title, which I consider entirely too restrictive, to State, county, or municipal employees.

The CHAIRMAN. The time of the gentleman from Michigan has again expired.

(By unanimous consent, Mr. FORD of Michigan was allowed to proceed for 1 additional minute.)

Mr. FORD of Michigan. Mr. Chairman, let me say to my colleagues, it comes down to this. The gentleman from Illinois (Mr. ERLBORN) and I have been arguing for 14 years. I have not persuaded the gentleman from Illinois very much and the gentleman from Illinois has not persuaded me very much.

Let me say, we are wasting our time arguing; but if title VII goes under the Erlborn amendment, the bill goes, because this is like a balance. It is like a teeter-totter. We are trying to keep a balance with the employees and the new rights we are conferring on management.

You have heard those of us identified with labor tonight consistently fighting those people off who want to give management too many rights. Just a few minutes ago they were helping to try to gut the new management rights we are giving the administration. Who was fighting for them? We were fighting for them, but we were fighting in good faith, relying on the fact that what we had done in writing out agreements for employees would stay in the bill as a balance for what we were giving employees.

The CHAIRMAN. The time of the gentleman from Michigan has again expired.

(By unanimous consent, Mr. FORD of Michigan was allowed to proceed for 1 additional minute.)

Mr. FORD of Michigan. Mr. Chairman, really, if we accept the Erlborn

amendment, it simply ends everything and ends the ball game. We will rewrite this bill in a way that is harmful and there will be a subsequent amendment offered by the gentleman from Arizona (Mr. UDALL) that has been worked out over many months with all kinds of disagreeable choices, pushing and shoving, and finally coming to an agreement that does not make anyone so happy that they can walk away from here claiming a victory; but it is a reasonable legislative solution to our problems.

I just ask those of us who want to support this bill and want to see the President have a chance to put civil service reform into effect to support us in defeating the Erlborn amendment, because passage of the Erlborn amendment kills the bill.

Mr. ERLBORN. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Illinois.

Mr. ERLBORN. Mr. Chairman, the gentleman said a few minutes ago that no one would offer the right to strike, and that that was not in the bill. I call the attention of the gentleman to his H.R. 1589, which provides the right to strike.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has expired.

Mr. ERLBORN. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. The gentleman from

[From 124 Cong. Rec. H 9457
(daily ed. Sept. 11, 1978):]

Michigan (Mr. FORD) does seek further time. The time of the gentleman has expired.

Mr. FRENZEL. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Chairman, the gentleman from Michigan invited me to peruse the bill to find what I consider to be binding arbitration within the bill.

I refer the committee and the gentleman to section 7119 on page 326, et seq., which states as follows:

If the parties do not arrive at a settlement after assistance by the Panel . . .

And this is the Impasses Panel.

Then it states:

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 . . .

That is No. 1. Now, this is No. 2.

Mr. FORD of Michigan. Mr. Chairman, let me take my time back.

Mr. FRENZEL. Mr. Chairman, it is not the gentleman's time, but I will be glad to yield to him in a minute.

Mr. FORD of Michigan. Does the gentleman want an answer?

Mr. FRENZEL. Let me state the second part first.

The CHAIRMAN. The Chair will state that the time is that of the gentleman from Minnesota (Mr. FRENZEL).

Mr. FORD of Michigan. Mr. Chairman, I ask the gentleman if he is seriously asking a question. If he is, I will be glad to answer it.

The CHAIRMAN. The Chair will repeat that the time is that of the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Chairman, my second point is in relation to section 7121, which is the grievance procedure, found on page 331, et seq., and there, of course, we have binding arbitration of grievances.

Mr. Chairman, I would ask the gentleman from Michigan (Mr. FORD) if that is not true, and I yield to the gentleman for his response.

Mr. FORD of Michigan. Mr. Chairman, it is true, but it is irrelevant, because what the gentleman is reading from on page 326 of the bill is the present Executive order, which the gentleman from Illinois, Mr. JOHN ERLÉN-BORN, has taken to himself as the "Holy Grail."

Mr. FRENZEL. Do we have an impassable panel in the present Executive order?

Mr. FORD of Michigan. Yes; in the exact language the gentleman just read, and this is taken from the executive order.

Mr. FRENZEL. That is not my understanding.

Mr. FORD of Michigan. It represents no change in the status at all.

Mr. FRENZEL. That is not my understanding. How about the grievance procedure?

Mr. FORD of Michigan. That is this gentleman's understanding, and I think the gentleman from Minnesota misunderstands the situation.

Mr. FRENZEL. It would not be the first time I misunderstood, nor would it

be the first time I misunderstood the gentleman from Michigan (Mr. FORD).

How about section 7121? Is that right out of the Executive order, too?

Mr. FORD of Michigan. No; that is grievance arbitration.

Mr. FRENZEL. That is binding arbitration, and that is new law; is it not?

Mr. FORD of Michigan. With respect to wages, hours, and working conditions.

Mr. FRENZEL. Is that not what we grieve over usually?

Mr. FORD of Michigan. No; we do not grieve a contract; we negotiate a contract.

Mr. FRENZEL. Mr. Chairman, I no longer yield.

Mr. Chairman, I think the situation is quite obvious. I think it is quite obvious there is new law, and it is different law. I think a lot of us do not know whether it is good law or bad law, but it seems to me we would be best served to revert to the time-tested Executive order.

Mr. Chairman, I hope the amendment is agreed to.

Mr. CHARLES H. WILSON of California. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I would like to ask the gentleman from Illinois (Mr. DERWINSKI) a question. The gentleman is the administration's supporter of this bill, and I want to know whether he is for this amendment or not.

Mr. FRENZEL. Mr. Chairman, I cannot advise the gentleman on that. I do not know.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I see the gentleman from Illinois (Mr. DERWINSKI) is over here, and I will ask the gentleman, who is the administration's supporter of this bill, whether he is for this amendment.

Mr. DERWINSKI. Mr. Chairman, may I use this microphone?

Mr. CHARLES H. WILSON of California. The gentleman may use any microphone he wants to use.

Mr. FRENZEL. Mr. Chairman, I yield to the gentleman from Illinois (Mr. DERWINSKI).

Mr. DERWINSKI. Mr. Chairman, my personal position is that this bill should have as title VII the President's Executive order, which was in fact the action taken in the Senate.

Mr. CHARLES H. WILSON of California. Mr. Chairman, will the gentleman

yield further?

Mr. FRENZEL. I yield to the gentleman from California.

Mr. CHARLES H. WILSON. Mr. Chairman, let me ask: Is that what the gentleman from Illinois (Mr. ERLBORN) is seeking?

Mr. FRENZEL. That is what the gentleman from Illinois (Mr. ERLBORN) is trying to do.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I will ask the gentleman from Illinois (Mr. DERWINSKI): Is that what the gentleman from Illinois (Mr. ERLBORN) is trying to do?

Mr. DERWINSKI. Mr. Chairman, if the gentleman will yield, the gentleman from Illinois (Mr. ERLBORN) is a very free gentleman.

Mr. CHARLES H. WILSON of California. No, what I would like to know is this: I think the Democrats should understand who is for who and what is for what. Now, if the gentleman from Illinois (Mr. ERLBORN) is presenting the Presidential position, I think we should know that.

Mr. DERWINSKI. Mr. Chairman, the gentleman from Illinois (Mr. ERLBORN) and I are both for civil service reform. We have a difference of opinion on title VII.

Mr. CHARLES H. WILSON of California. Who is for what?

Mr. CLAY. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Missouri?

Mr. CLAY. I thank the gentleman for yielding.

Mr. Chairman, the President recommended the provision that is in this title relating to binding arbitration. The Senate bill also includes this provision. In addition to that, the reason and the basis for this precise procedure is to save the taxpayers money.

The CHAIRMAN. The time of the gentleman from Minnesota (Mr. FRENZEL) has expired.

(On the request of Mr. CLAY and by unanimous consent, Mr. FRENZEL was allowed to proceed for 1 additional minute.)

Mr. FRENZEL. Mr. Chairman, I yield further to the gentleman from Missouri (Mr. CLAY).

Mr. CLAY. Presently, Mr. Chairman, under the process of appealing through statutory appeals, the Government pays the entire cost of the proviso. Under the provisions of this title, subjecting griev-

ances to binding arbitration, the costs will be shared equally by the Government and the parties who are alleging grievances. And that is one of the provisos for us including it and accepting the recommendation of the administration to include it in the bill.

Mr. FRENZEL. Mr. Chairman, I thank the gentleman for his contribution.

I think it is an interesting point and may be a good one. I am not sure it would be pervasive in asking us to accept this new concept, however.

Mr. UDALL. Mr. Chairman. I move to strike the requisite number of words.

Mr. Chairman, the issue before us is the Erlenborn amendment, which would strike all of title VII. And as my friend, the gentleman from Michigan (Mr. FORD), said a minute ago, if there is no title VII, there simply is no bill.

The administration came forward early on in this controversy. The original administration's submission had no title VII, had no labor-management title in it at all. We raised questions about this, and the administration finally said, "We are willing to write into this new management rights bill, this new civil service reform bill, something the Federal employee unions have always wanted,"

[From 124 Cong. Rec. H 9458 (daily ed. Sept. 11, 1978):]

which was not to be at the whim or the mercy of the President, who, with a stroke of the pen, could undo all of these collective bargaining rights enjoyed since 1963.

We argued a good deal over the last few months about what should be in that title VII, and no one has seriously suggested until tonight that there should be no title VII at all.

A number of my colleagues have asked me where we are in this debate today, and most of the remaining controversy is in title VII. Title VIII is a short title. Title IX and title X have been stricken by a point of order. We can be out of here fairly soon if we decide what we are going to do about title VII.

The first thing to do is to get rid of the Erlenborn amendment and get on with the real issues. There will be an amendment which will be offered by the gentleman from Texas (Mr. COLLINS) which sets up a labor-management framework. It is not at all acceptable to the Federal employee unions. It is acceptable to the administration. I will

have a substitute for that amendment which represents the product of long negotiations. My labor friends do not like it very much. The gentleman from Michigan (Mr. FORD) has very limited enthusiasm for it. We have finally reached that limited ground, but we cannot get on with that as long as we are involved with an amendment which strikes out all of the title. I thought we were making good progress until I saw all of the big guns on the Education and Labor Committee rise, but I would hope that at least we could proceed very shortly to get a decision on the Erlenborn amendment which totally strikes all of title VII and, then, so far as I am concerned, we can end the debate.

Mr. ERLBORN. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Illinois.

Mr. ERLBORN. I thank the gentleman for yielding.

Mr. Chairman, as the gentleman knows, I have been waiting patiently since noon to reach title VII. I would like to comment on the gentleman's statement about the Education and Labor Committee. About an hour ago, about 8 or 9 o'clock, several of my colleagues mentioned that the gentleman's committee was making the Education and Labor Committee look good.

Mr. UDALL. I claim full credit for that.

Mr. Chairman, I would hope that we could have a vote now on the Erlenborn amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLBORN).

RECORDED VOTE

Mr. ERLBORN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 125, noes 217, not voting 90, as follows:

[Roll No. 751]

AYES—125

Abdnor	Frenzel	Montgomery
Andrews, N.C.	Ginn	Moore
Archer	Goldwater	Myers, Gary
Ashbrook	Goodling	Myers, John
Badham	Gradison	Neal
Bafalis	Grassley	Nichols
Barnard	Gudger	Poage
Bauman	Guyer	Preyer
Beard, Tenn.	Hall	Pritchard
Bennett	Harsha	Quayle
Bowen	Hefner	Quillen
Breckinridge	Hightower	Regula
Brinkley	Holt	Roberts
Broomfield	Horton	Robinson

Broyhill	Hubbard	Rose
Butler	Hyde	Runnels
Carter	Ichord	Ruppe
Cederberg	Ireland	Satterfield
Clausen,	Jones, N.C.	Schulze
Don H.	Jones, Okla.	Sebellus
Collins, Tex.	Jones, Tenn.	Shuster
Conable	Kazen	Snyder
Coughlin	Kelly	Spence
Crane	Kindness	Stangeland
Cunningham	Lagomarsino	Stanton
Daniel, Dan	Leach	Stockman
Daniel, R. W.	Levitas	Symms
de la Garza	Livingston	Taylor
Devine	Lloyd, Tenn.	Thone
Dornan	Lott	Treen
Duncan, Oreg.	McClory	Trible
Duncan, Tenn.	McDonald	Waggoner
Edwards, Ala.	McEwen	Walker
Edwards, Okla.	Madigan	Wampler
English	Mahon	Watkins
Erlenborn	Marlenee	White
Ertel	Marriott	Whitehurst
Evans, Ga.	Martin	Whitley
Findley	Mathis	Wilson, C. H.
Flippo	Michel	Winn
Flynt	Millford	Wyder
Fountain	Miller, Ohio	Wylie

NOES—217

Akaka	Derwinski	Kostmayer
Alexander	Dicks	Krebs
Ambro	Diggs	LaFalce
Anderson,	Dingell	Le Fante
Calif.	Dodd	Lederer
Anderson, Ill.	Downey	Leggett
Andrews,	Drinan	Lent
N. Dak.	Early	Lloyd, Calif.
Applegate	Edgar	Long, La.
Ashley	Edwards, Calif.	Long, Md.
Aspin	Ellberg	Luken
AuCoin	Evans, Ind.	Lundine
Baldus	Fascell	McCloskey
Baucus	Fenwick	McCormack
Beard, R.I.	Fisher	McDade
Bedell	Fithian	McFall
Beilenson	Florio	McHugh
Benjamin	Foley	McKay
Bevill	Ford, Mich.	Maguire
Bingham	Ford, Tenn.	Mann
Blanchard	Fowler	Markey
Blouin	Gammage	Marks
Boggs	Garcia	Mattox
Boland	Gaydos	Mazzoli
Bolling	Gephardt	Metcalfe
Bonior	Gilman	Meyner
Bonker	Gluckman	Mikulski
Brademas	Gonzalez	Mineta
Brodhead	Gore	Minish
Brooks	Green	Mitchell, N.Y.
Brown, Calif.	Hamilton	Moakley
Burison, Mo.	Hammer-	Moffett
Burton, John	schmidt	Mollohan
Caputo	Hanley	Moorhead, Pa.
Carney	Hannaford	Mottl
Carr	Harkin	Murphy, Ill.
Cavanaugh	Harris	Murphy, N.Y.
Clay	Heckler	Murphy, Pa.
Cleveland	Hefstel	Murtha
Coleman	Hillis	Myers, Michael
Collins, Ill.	Holland	Natcher
Conte	Holtzman	Nedzi
Corman	Howard	Nix
Cornell	Hughes	Nolan
Cornwell	Jacobs	Nowak
Cotter	Jeffords	O'Brien
D'Amours	Jenrette	Oakar
Danielson	Johnson, Calif.	Oberstar
Davis	Jordan	Obey
Dellums	Kastenmeier	Ottinger
Dent	Keys	Panetta
Derrick	Kildee	Patten

Patterson	Sawyer	Udall
Pattison	Scheuer	Ullman
Pease	Schroeder	Van Deerlin
Pepper	Seiberling	Vanik
Perkins	Sharp	Vento
Pickle	Sikes	Volkmer
Pike	Simon	Walgren
Pressler	Skelton	Walsh
Price	Skubitz	Waxman
Rahall	Slack	Weaver
Railsback	Smith, Iowa	Weiss
Reuss	Solarz	Whalen
Rhodes	Spellman	Wilson, Tex.
Roe	Staggers	Wirth
Rogers	Stark	Wolf
Rooney	Steed	Yates
Rosenthal	Steers	Yatron
Rostenkowski	Steiger	Young, Fla.
Roybal	Studds	Young, Mo.
Russo	Thompson	Zablocki
Ryan	Thornton	
Santini	Tucker	

NOT VOTING—90

Addabbo	Flood	Pursell
Ammerman	Flowers	Quie
Annuzio	Forsythe	Rangel
Armstrong	Fraser	Richmond
Biaggi	Frey	Rinaldo
Breaux	Fuqua	Risenhoover
Brown, Mich.	Glaimo	Rodino
Brown, Ohio	Gibbons	Roncalio
Buchanan	Hagedorn	Rousselot
Burgener	Hansen	Rudd
Burke, Calif.	Harrington	Sarasin
Burke, Fla.	Hawkins	Shiplee
Burke, Mass.	Hollenbeck	Sisk
Burleson, Tex.	Huckaby	Smith, Nebr.
Burton, Phillip	Jenkins	St Germain
Byron	Johnson, Colo.	Stokes
Chappell	Kasten	Stratton
Chisholm	Kemp	Stump
Clawson, Del	Krueger	Teague
Cochran	Letta	Traxler
Cohen	Lehman	Tsongas
Conyers	Lujan	Vander Jagt
Corcoran	McKinney	Whitten
Delaney	Meeds	Wiggins
Dickinson	Mikva	Wilson, Bob
Eckhardt	Miller, Calif.	Wright
Emery	Mitchell, Md.	Young, Alaska
Evans, Colo.	Moorhead,	Young, Tex.
Evans, Del.	Calif.	Zeferetti
Fary	Moss	
Fish	Pettis	

The Clerk announced the following pairs:

On this vote:

Mr. Breaux for, with Mr. Addabbo against.
Mr. Burleson of Texas for, with Mr. Mitchell of Maryland against.

Mr. Teague for, with Mr. Richmond against.

Mr. Lujan for, with Mr. Zeferetti against.

Mrs. FENWICK and Mr. SAWYER changed their vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PREFERENTIAL MOTION OFFERED BY MR. CHARLES H. WILSON OF CALIFORNIA

Mr. CHARLES H. WILSON of California. Mr. Chairman, I offer a preferential motion.

The Clerk read as follows:

Mr. CHARLES H. WILSON of California moves that the Committee do now rise and report the bill back to the House with the recommendation that the enacting clause be stricken.

Mr. CHARLES H. WILSON of California. Mr. Chairman, I am not going to take too much time. I think this amending process could go on indefinitely. It is a bad bill. We have not passed the right amendments, and I think it is about time that we went home and started doing other business.

[From 124 Cong. Rec. H 9459 (daily ed. Sept. 11, 1978):]

Mr. DERWINSKI. Mr. Chairman, I rise in opposition to the preferential motion.

Mr. Chairman, I appreciate the Members' frustration. I appreciate that some of them are tired, and I appreciate all the complications of the hour.

However, I would like to point out that we have gone about 90 percent of the way with a very difficult, absolutely necessary piece of legislation. I would like to commend all of the Members who have in any way participated in the debate. This has been a good, high class, non-partisan handling of a major national issue.

Mr. Chairman, this is necessary legislation. This is legislation that is good for every Member's constituents. If the Members will just be patient, we are within an hour of wrapping this legislation up properly. The Members are within an hour of casting a vote for what will go down in history as one of their greatest votes as Members of Congress. If they will just stay here, Mr. Chairman, we will pass civil service reform legislation.

Mr. RHODES. Mr. Chairman, would the gentleman yield?

Mr. DERWINSKI. I yield to my distinguished statesmanlike leader.

Mr. RHODES. I do not recognize the description. I would like to differ with the gentleman most respectfully. It seems to me that after the hour of 9 o'clock—and I thought we had agreed upon this—very little is done to save the Republic. I do not recognize the absolute necessity of passing this bill tonight. It seems to me that we have many days left, and some say we are even going to come back after the election. It seems to me, if the gentleman will yield further, that

this might be a very propitious time to shut down the proceedings of the House tonight. I just do not believe that it is necessary for us to consider a bill of this importance—and it is of great importance—in this type of a situation. With all of the regrets and my great respect for the gentleman from Illinois (Mr. DERWINSKI) and my good friend, the gentleman from Arizona (Mr. UDALL), I hope that the motion of the gentleman from California (Mr. CHARLES H. WILSON) will be adopted.

Mr. DERWINSKI. No; just a minute. Do not hope that much. The gentleman from California is moving to strike the enacting clause, and I am sure my distinguished leader, the gentleman from Arizona, is just referring to the Committee's rising for the evening.

Mr. RHODES. If the gentleman would yield further, actually, if the committee votes to strike the enacting clause, we would go back into the House, and then, before the House agrees to the recommendation of the Committee we could adjourn, if we want to adjourn. We cannot adjourn from the Committee of the Whole. That is the main reason I think the gentleman's motion is well taken.

Mr. DERWINSKI. I realize that, but we do not want anybody in the well to think that our distinguished minority leader is momentarily in the embrace of the gentleman from California (Mr. CHARLES H. WILSON).

Mr. CHARLES H. WILSON of California. If the gentleman will yield, why not?

The CHAIRMAN. All time for debate on the motion has concluded. The question is on the preferential motion offered by the gentleman from California (Mr. CHARLES H. WILSON).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. CHARLES H. WILSON of California. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 46, noes 286, not voting 100, as follows:

[Roll No. 752]

AYES—46

Applegate	Hammer	Rhodes
Ashbrook	schmidt	Runnels
Barnard	Harris	Sawyer
Bauman	Holt	Schulze
Breckinridge	Kindness	Sebelius
Broomfield	Leggett	Shuster
Broyhill	McDade	Snyder
Carter	McDonald	Spellman
Coleman	McEwen	Stangeland
Collins, Tex.	Marlenee	Steers
Crane	Mazzoli	Symms
Davis	Murtha	Taylor
Dornan	Myers, Gary	Waggonner
Duncan, Tenn.	Myers, John	Walsh
Edwards, Okla.	Quayle	Wilson, C. H.
Flynt	Quillen	

NOES—286

Abdnor	D'Amours	Harkin
Addabbo	Daniel, Dan	Harsha
Akaka	Daniel, R. W.	Heckler
Alexander	Danielson	Hefner
Ambro	de la Garza	Hefel
Anderson,	Dellums	Hightower
Calif.	Dent	Hillis
Anderson, Ill.	Derrick	Holland
Andrews, N.C.	Derwinski	Holtzman
Andrews,	Devine	Horton
N. Dak.	Dicks	Howard
Archer	Diggs	Hubbard
Ashley	Dodd	Hughes
Asplin	Downey	Hyde
AuCoin	Drinan	Ireland
Badham	Duncan, Oreg.	Jacobs
Bafalis	Early	Jeffords
Baldus	Edgar	Jenrette
Baucus	Edwards, Ala.	Johnson, Calif.
Beard, R.I.	Edwards, Calif.	Jones, N.C.
Beard, Tenn.	Eilberg	Jones, Okla.
Bedell	English	Jones, Tenn.
Bellenson	Erlenborn	Jordan
Benjamin	Ertel	Kastenmeyer
Bennett	Evans, Ind.	Kazen
Bevill	Fascell	Kelly
Bingham	Fenwick	Keys
Blanchard	Findley	Kildee
Blount	Fisher	Kostmayer
Boggs	Fithian	Krebs
Boland	Filippo	Lagomarsino
Bolling	Florio	Le Fante
Bonior	Foley	Leach
Bonker	Ford, Mich.	Lederer
Bowen	Ford, Tenn.	Lent
Brademas	Fountain	Levitas
Brinkley	Fowler	Livingston
Brodhead	Frenzel	Lloyd, Calif.
Brooks	Gammage	Lloyd, Tenn.
Burlison, Mo.	Garcla	Long, La.
Butler	Gaydos	Long, Md.
Caputo	Gephardt	Lott
Carney	Gialmo	Luken
Carr	Gilman	Lundine
Cederberg	Ginn	McClory
Clausen,	Glickman	McCloskey
Don H.	Goldwater	McCormack
Clay	Goodling	McFall
Cleveland	Gore	McHugh
Collins, Ill.	Gradison	McKay
Conable	Grassley	Madigan
Conte	Green	Maguire
Corman	Gudger	Mahon
Cornell	Guyer	Mann
Cornwell	Hall	Markey
Cotter	Hamilton	Marks
Coughlin	Hanley	Marriott
Cunningham	Hannaford	Martin

Mattox	Pike	Steiger
Meeds	Poage	Stockman
Metcalfe	Fressler	Stokes
Meyner	Freyer	Studds
Michel	Price	Thompson
Mikulski	Pritchard	Thone
Miller, Ohio	Rahall	Thornton
Mineta	Rallsback	Treen
Minish	Regula	Trible
Mitchell, N.Y.	Reuss	Tucker
Moakley	Roberts	Udall
Mollohan	Robinson	Ullman
Moore	Roe	Van Deerlin
Moorhead, Pa.	Rogers	Vanik
Mottl	Rooney	Vento
Murphy, Ill.	Rose	Volkmer
Murphy, N.Y.	Rosenthal	Walgren
Murphy, Pa.	Rostenkowski	Walker
Myers, Michael	Roybal	Wampler
Natcher	Ruppe	Watkins
Neal	Russo	Waxman
Nedzi	Santini	Weaver
Nichols	Satterfield	Weiss
Nix	Scheuer	Whalen
Nolan	Schroeder	White
Nowak	Seiberling	Whitehurst
O'Brien	Sharp	Whitley
Oakar	Sikes	Winn
Oberstar	Simon	Wirth
Obey	Skelton	Wolf
Ottinger	Skubltz	Wyder
Panetta	Slack	Wyllie
Patten	Smith, Iowa	Yates
Patterson	Solarz	Yatron
Pattison	Spence	Young, Fla.
Pease	Stagers	Young, Mo.
Pepper	Stanton	Zablocki
Perkins	Stark	
Pickle	Steed	

NOT VOTING—100

Ammerman	Flood	Pettis
Annunzio	Flowers	Pursell
Armstrong	Forsythe	Quie
Biaggi	Fraser	Rangel
Breaux	Frey	Richmond
Brown, Calif.	Fuqua	Rinaldo
Brown, Mich.	Gibbons	Risenhoover
Brown, Ohio	Gonzalez	Rodino
Buchanan	Hagedorn	Roncalio
Burgener	Hansen	Rousselot
Burke, Calif.	Harrington	Rudd
Burke, Fla.	Hawkins	Ryan
Burke, Mass.	Hollenbeck	Sarasin
Burleson, Tex.	Huckaby	Shipley
Burton, John	Ichord	Sisk
Burton, Phillip	Jenkins	Smith, Nebr.
Byron	Johnson, Colo.	St Germain
Cavanaugh	Kasten	Stratton
Chappell	Kemp	Stump
Chisholm	Krueger	Teague
Clawson, Del	LaFalce	Traxler
Cochran	Latta	Tsongas
Cohen	Lehman	Vander Jagt
Conyers	Lujan	Whitten
Corcoran	McKinney	Wiggins
Delaney	Mathis	Wilson, Bob
Dickinson	Mikva	Wilson, Tex.
Dingell	Milford	Wright
Eckhardt	Miller, Calif.	Young, Alaska
Emery	Mitchell, Md.	Young, Tex.
Evans, Colo.	Moffett	Zeferetti
Evans, Del.	Montgomery	
Evans, Ga.	Moorhead,	
Fary	Calif.	
Fish	Moss	

So the preferential motion was rejected.

The result of the vote was announced as above recorded.

Mr. UDALL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we have had a long and difficult day, and I must say that it has been a very productive day. The Members have been cooperative, and we have not had the kind of dilatory tactics some had feared. But the hour is late, and I am not sure we can be productive much longer. We do have a number of important amendments left.

Mr. Chairman, I am going to make a unanimous-consent request in just a moment, and if it is agreed to, at that point I would move that the Committee rise. I am told by the leadership that we

[From 124 Cong. Rec. H 9460 (daily ed. Sept. 11, 1978):]

will come back on this bill perhaps on Wednesday, but not tomorrow.

Mr. Chairman, my unanimous-consent request is that the remaining time for debate on title VII, and all amendments thereto—that is the title we are now considering—be limited to a total of 2 hours.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. CHARLES H. WILSON of California. Mr. Chairman, reserving the right to object, this is just title VII?

Mr. UDALL. If the gentleman will yield, this is title VII only.

Mr. CHARLES H. WILSON of California. Further reserving the right to object, the gentleman is not asking that the entire bill be limited to 2 hours?

Mr. UDALL. No.

The remaining titles are not very controversial and are not very long. I am assuming that after we finish title VII, in a very rapid pace we could finish up the bill. But the pending request relates to title VII only.

Mr. CHARLES H. WILSON of California. I thank the gentleman.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. ASHBROOK. Mr. Chairman, I reserve the right to object. Could I be informed as to how many amendments are pending on title VII?

Mr. UDALL. It has been anticipated at this point that the gentleman from Texas

(Mr. COLLINS) would offer a complete substitute for title VII. Immediately after that, I was going to offer a substitute for that substitute, which represents a compromise we have put together over here.

The gentleman from Illinois (Mr. ERLENBORN) indicated that he had a number of amendments to my substitute, and that he would offer them in a fairly prompt fashion. At the close of that we would choose between the Collins substitute and the Udall substitute. If either one of them carries, that is the end of title VII.

Mr. ASHBROOK. Further reserving the right to object, those do sound like very substantial amendments. Does the gentleman know whether there are any other amendments?

Mr. UDALL. I am not aware of any major amendments to title VII except those that have been proposed by the distinguished gentleman from Illinois (Mr. ERLENBORN). It might be that there are perfecting amendments to either the Collins or Udall substitutes. I doubt that there would be any besides that. In any event, the Members who have printed amendments in the RECORD would be protected.

Mr. DERWINSKI. Mr. Chairman, I am the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I am sure the gentleman from Ohio will be pleased to know that the amendment to be offered by the gentleman from Texas is identical to title VII in the Senate passed bill, so that what we are down to is really a narrow difference between the Udall substitute, which is an administration amendment, in effect, to the Collins amendment, which is the Senate title VII. So, the differences between the two positions are not extreme.

Mr. ASHBROOK. I thank the gentleman, and withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. GARY A. MYERS. Mr. Chairman, reserving the right to object, I do so make inquiry on parliamentary procedure. It is normal parliamentary procedure upon such a request for Members to stand and request time. Is it the Chairman's intent that the time to be divided be divided tonight?

The CHAIRMAN. The Chair would advise the gentleman that the Chair would

not intend to divide the time tonight, but that subject will be taken up at the time we reconvene in connection with this bill.

Mr. GARY A. MYERS. I thank the Chair, and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. FRENZEL. Mr. Chairman, reserving the right to object, as I understand it, there will be two substitutes posed, and a number of Members have amendments in the RECORD. They are, of course, amendments to the bill and not to the substitutes. I wonder if the Chair could tell me how we could protect the amendments which are now filed so that they would be in order and have time under the proposal that the gentleman suggests, to either of the substitutes.

The CHAIRMAN. The Chair advises the gentleman that the amendments which have been printed in the RECORD would be protected under our rules.

Mr. FRENZEL. Will we be able to make the amendments to the substitute, Mr. Chairman?

The CHAIRMAN. Yes. If they can be redrafted to pertain to the substitute, and placed in the RECORD, the answer is in the affirmative.

Mr. FRENZEL. I thank the Chair.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, to further demonstrate the absolute cooperation that is developing, the gentleman from Illinois (Mr. ERLENBORN) has filed his amendments in the RECORD so that the record of what we are going to get to is clear. We think we are moving on an open basis toward final solution.

Mr. FRENZEL. I thank the gentleman, and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. CHARLES H. WILSON of California. Mr. Chairman, I object to the unanimous-consent request.

The CHAIRMAN. Objection is heard.

Mr. UDALL. Mr. Chairman, I move that all debate on title VII and all amendments thereto be limited to 2 hours for that debate purpose when we resume.

The CHAIRMAN. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The motion was agreed to.

* * * * *

[From 124 Cong. Rec. H 9461 (daily ed. Sept. 11, 1978):]

● Mr. FRENZEL. Mr. Chairman, the President has a rather low batting average in converting ideas into law. Partly it is his fault, but partly it is ours. When he has a good proposal, we ought to pass it even if it disturbs our personal comfort zones.

The President's civil service reform is a good idea. The American people think so, too. So did ex-President Ford who submitted a similar proposal. The need for tightening up the Federal bureaucracy, and for making it more responsive and manageable, is obvious.

The administration's plan was basically a good one. It still is. It addresses not all, but many, of the most glaring problems. Even our hard-to-please colleagues in the other body have passed it overwhelmingly.

Our Post Office and Civil Service Committee, has, however, made many changes which I deem inappropriate and unacceptable. The original bill was designed to make the civil service more manageable. The committee amendments, in some cases, make it the opposite. A case in point is the expanded scope of collective bargaining. These changes, made by the committee should be eliminated, and the original language, essentially retaining the provisions of the Executive order covering labor-management relations, should be restored.

* * * * *

When the bad amendments are removed the House should promptly pass civil service reform. The President has made a good recommendation. This is one issue on which he has strong and justified popular support. Support here in Congress ought to be bipartisan, and it ought to be just as strong. ●

* * * * *

Mr. UDALL. Mr. Chairman, I move that the Committee do now rise.
The motion was agreed to.

Accordingly, the Committee rose; and the Speaker having resumed the chair, (Mr. DANIELSON), Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 11280) to reform the civil service laws, had come to no resolution thereon.

[From 124 Cong. Rec. H 9617 (daily ed. Sept. 13, 1978):]

CIVIL SERVICE REFORM ACT OF 1978

Mr. UDALL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 11280, to reform the civil service laws.

The SPEAKER. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 328, nays 5, not voting 99, as follows:

[Roll No. 762]

YEAS—328

Abdnor	Duncan, Tenn.	Kostmayer
Addabbo	Early	Krebs
Akaka	Edgar	Lagomarsino
Alexander	Edwards, Ala.	Latta
Anderson,	Edwards, Calif.	Le Fante
Calif.	Edwards, Okla.	Leach
Andrews, N.C.	Ellberg	Lederer
Andrews,	Emery	Livingston
N. Dak.	English	Lloyd, Tenn.
Annunzio	Erlenborn	Long, La.
Applegate	Ertel	Long, Md.
Archer	Evans, Colo.	Lott
Ashbrook	Evans, Del.	Lujan
Aspin	Evans, Ga.	Luken
AuCoin	Evans, Ind.	Lundine
Badham	Fenwick	McClory
Bafalis	Findley	McCormack
Baldus	Fish	McDade
Barnard	Fisher	McEwen
Baucus	Fithian	McFall

Are there any further amendments to title VII?

AMENDMENT OFFERED BY MR. COLLINS OF TEXAS
Mr. COLLINS of Texas, Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COLLINS of Texas: Strike out title VII (beginning on line 12 of page 288, and ending on line 12 of page 348) and insert in lieu thereof the following new title:

TITLE VII—LABOR-MANAGEMENT RELATIONS

LABOR-MANAGEMENT RELATIONS

Sec. 701. (a) Subpart F of part III of title 5, United States Code, is amended by adding after chapter 71 the following new chapter:

"CHAPTER 72—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

"SUBCHAPTER 1—GENERAL PROVISIONS

"Sec.

"7201. Findings and purpose.

"7202. Definitions; application.

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"SUBCHAPTER I—GENERAL PROVISIONS

"§ 7201. Findings and purpose

"(a) The Congress finds that 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.

"(b) The Congress also finds that, while significant differences exist between Federal and private employment, experience

under Executive Order Numbered 11491 indicates that the statutory protection of the right of employees to organize, to bargain collectively within prescribed limits, and to participate through labor organizations of their own choosing in decisions which affect them—

"(1) may be accomplished with full regard for the public interest,

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

"(3) facilitates and encourages the amicable settlement between employees and their employers of disputes involving personnel policies and practices and matters affecting working conditions.

"(c) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal government subject to the paramount interest of the public and to establish procedures which are designed to meet the special requirements and needs of the Federal government in matters relating to labor-management relations.

"§ 7202. Definitions; application

"(a) For purposes of this chapter—

"(1) 'agency' means an Executive agency other than the General Accounting Office;

"(2) 'employee' means an individual who—

"(A) is employed in an agency;

"(B) is employed in a nonappropriated fund instrumentality described in section 2105(c) of this title;

"(C) is employed in the Veterans' Canteen Service, Veterans' Administration, and who is described in section 5102(c)(14) of this title; or

"(D) is an employee (within the meaning of subparagraph (A), (B), or (C)) who was separated from the service as a consequence of, or in connection with, an unfair labor practice described in section 7216 of this title;

but does not include—

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

"(ii) a member of the uniformed services (within the meaning of section 2101(3) of this title);

"(iii) for purposes of exclusive recognition or national consultation rights unless authorized under the provisions of this chapter, a supervisor, a management official, or a confidential employee;

"(3) 'labor organization' means any lawful organization of employees which was established for the purpose, in whole or in part, of dealing with agencies in matters relating to grievances and personnel policies and practices or in other matters affecting the working conditions of the employees, but does not include an organization which—

"(A) except as authorized under this chapter, consists of, or includes, management officials, confidential employees, or supervisors;

"(B) assists, or participates, in the conduct of a strike against the Government of the United States or any agency thereof or

imposes a duty or obligation to conduct, assist, or participate in such a strike;

"(C) advocates the overthrow of the constitutional form of government of the United States; or

"(D) discriminates with regard to the terms or conditions of membership because of race, color, religion, national origin, sex, age, or handicapping condition;

"(4) 'agency management' means the agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under this chapter;

"(5) 'Authority' means the Federal Labor Relations Authority established under section 7203 of this title;

"(6) 'General Counsel' means the General Counsel of the Federal Labor Relations Authority;

"(7) 'Panel' means the Federal Service Impasses Panel established under section 7222 of this title;

"(8) 'Assistant Secretary' means the Assistant Secretary of Labor for Labor-Management Relations;

"(9) 'confidential employee' means an employee who assists, and acts in a confidential capacity to, individuals who formulate and carry out management policies in the field of labor relations;

"(10) 'management official' means an employee having authority to make, or to influence effectively the making of, policy with respect to personnel procedures or programs which is necessary to an agency or an activity;

"(11) 'supervisor' means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

[From 124 Cong. Rec. H 9619

(daily ed. Sept. 13, 1978):

cal nature, but requires the use of independent judgment;

"(12) 'professional employee' means—

"(A) any employee engaged in the performance of work—

"(1) 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 in a hospital, as distinguished from work requiring knowledge acquired from a general academic education, an apprenticeship, or training in the performance of routine mental, manual, or physical process;

"(11) requiring the consistent exercise of discretion and judgment in its performance;

"(11) which is predominantly intellectual and varied in character and not routine mental, manual, mechanical or physical work; and

"(iv) which is of such a character that the measurement of the output produced, or of the result accomplished, cannot be standardized by relating it to a given period of time; or

"(B) any employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A) and who is performing related work under the direction or guidance of a professional employee to qualify the employee to become a professional employee.

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

"(14) 'collective bargaining', 'bargaining', or 'negotiating' means the performance of the mutual obligation of the representatives of the agency and the exclusive representative as provided in section 7215 of this title;

"(15) 'exclusive representative' includes any labor organization which has been—

"(A) selected pursuant to the provisions of section 7214 of this title as the representative of the employees in an appropriate collective bargaining unit; or

"(B) certified or recognized prior to the effective date of this chapter as the exclusive representative of the employees in an appropriate collective bargaining unit;

"(16) 'person' means an individual, labor organization, or agency covered by this chapter; and

"(17) 'grievance' means any complaint by any person concerning any matter which falls within the coverage of a grievance procedure.

"(b) Except as provided in subsections (c), (d), and (e) of this section, this chapter applies to all employees of an agency.

"(c) This chapter shall not apply to—

"(1) the Federal Bureau of Investigation;

"(2) the Central Intelligence Agency;

"(3) the National Security Agency;

"(4) any agency not described in paragraph (1), (2), or (3), or any unit within any agency, which has as a primary function intelligence, investigative, or national security work, if the head of the agency determines, in the agency head's sole judgment, that this chapter cannot be applied in a manner consistent with national security requirements and consideration;

"(5) any unit of an agency which has as a primary function investigation or audit of the conduct or work of officers or employees of the agency for the purpose of insuring honesty and integrity in the discharge of official duties, if the head of the agency determines, in the agency head's sole judgment, that this chapter cannot be applied in a manner consistent with the internal security of the agency;

"(6) the United States Postal Service;

"(7) the Foreign Service of the United States;

"(8) the Tennessee Valley Authority; or

"(9) officers and employees of the Federal Labor Relations Authority, including the Office of General Counsel and the Federal Service Impasses Panel.

"(d) The head of an agency may, in the agency head's sole judgment and subject to such conditions as he may prescribe, suspend any provision of this chapter with respect to any agency, installation, or activity located outside the United States if the agency head determines that such suspension is necessary for the national interest.

"(e) Employees engaged in administering a labor-management relations law who are otherwise authorized by this chapter to be represented by a labor organization shall not be represented by a labor organization which also represents other employees covered by such law or which is affiliated directly or indirectly with an organization which represents such employees.

"§ 7203. Federal Labor Relations Authority; Office of General Counsel

"(a) There is established, as an independent establishment of the executive branch of the Government, the Federal Labor Relations Authority.

"(b) The Authority shall consist of three members, not more than two of whom may be adherents of the same political party and none of whom may hold another office or position in the Government of the United States except as provided by law or by the President.

"(c) Members of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, and shall be eligible for reappointment. The President shall designate one member to serve as Chairman of the Authority. Any member of the Authority may be removed by the President.

"(d) The term of office of each member of the Authority is 5 years, except that a member may continue to serve beyond the expiration of the term to which appointed until the earlier of—

"(1) the date on which the member's successor has been appointed and has qualified, or

"(2) the last day of the session of the Congress beginning after the date the member's term of office would (but for this sentence) expire.

"(e) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member such individual replaces.

"(f) The Authority shall make an annual report to the President for transmittal to the Congress and shall include in such report information as to the cases it has heard and the decisions it has rendered under this chapter.

"(g) There is established within the Authority an Office of General Counsel. The General Counsel shall be appointed by the President, by and with the advice and con-

sent of the Senate. The General Counsel shall be appointed for a term of 5 years and may be reappointed to any succeeding term. The General Counsel may be removed 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 or by the President.

"§ 7204. Powers and duties of the Authority and of the General Counsel

"(a) The Authority shall administer and interpret the provisions of this chapter, decide major policy issues, prescribe regulations, and disseminate information appropriate to the needs of agencies, labor organizations, and the public.

"(b) The Authority shall, in accordance with regulations prescribed by it—

"(1) decide questions submitted to it with respect to the appropriate unit for the purpose of exclusive recognition and with respect to any related issue;

"(2) supervise elections to determine whether a labor organization has been selected by a majority of the employees in an appropriate unit who cast valid ballots in the election;

"(3) decide questions with respect to the eligibility of labor organizations for national consultation rights; and

"(4) decide unfair labor practice complaints.

"(c) The Authority may consider, in accordance with regulations prescribed by it, any—

"(1) appeal from any decision on the negotiability of any issue as provided in subsection (e) of section 7215 of this title;

"(2) exception to any arbitration award as provided in section 7221 of this title;

"(3) appeal from any decision of the Assistant Secretary issued pursuant to section 7217 of this title;

"(4) exception to any final decision and order of the Panel issued pursuant to section 7222 of this title; and

"(5) other matters it deems appropriate in order to assure it carries out the purposes of this chapter.

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

"(e) The Authority shall maintain its principal office in or about the District of Columbia but it may meet and exercise any or all of its powers at any time or place. Subject to subsection (g) of this section, the Authority may, by one or more of its members or by such agents as it may designate, make any inquiry necessary to carry out its duties wherever persons subject to this chapter are located. A member who participates in such inquiry shall not be disqualified from later participating in a decision of the Authority in the same case.

"(f) The Authority shall appoint an Executive Director, such attorneys, regional directors, administrative law judges, and other officers and employees as it may from time to time find necessary for the proper performance of its duties and may delegate to

such officers and employees authority to perform such duties and make such expenditures as may be necessary.

"(g) All of the expenses of the Authority, including all necessary traveling and subsistence expenses outside the District of Columbia, incurred by members, employees, or agents of the Authority under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Authority or by an individual it designates for that purpose and in accordance with applicable law.

"(h) (1) The Authority is expressly empowered and directed to prevent any person from engaging in conduct found violative of this chapter. In order to carry out its functions under this chapter, the Authority is authorized to hold hearings, subpoena witnesses, administer oaths, and take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas requiring the production and examination of evidence as provided in section 7234 of this title relating to any matter pending before it and to take such other action as may be necessary. 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 regulations or other policy directives promulgated by the Office of Personnel Management in connection with a matter before the Authority for adjudication.

"(2) If a regulation or other policy directive issued by the Office of Personnel Management is at issue in an appeal before the Authority, the Authority shall timely notify the Director, and the Director shall have standing to intervene in the proceeding and shall have all the rights of a party to the proceeding.

[From 124 Cong. Rec. H 9620
(daily ed. Sept. 13, 1978):]

"(3) The Director may request that the Authority reopen an appeal and reconsider its decision on the ground that the decision was based on an erroneous interpretation of law or of a controlling regulation or other policy directive issued by the Office of Personnel Management.

"(1) In any matter arising under subsection (b) of this section, the Authority may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take such remedial action as it considers appropriate to carry out the policies of this chapter.

"(j) (1) The Authority shall maintain a record of its proceedings and make public any decision made by it or any action taken by the Panel under section 7222 of this title.

"(2) The provisions of section 552 of this title shall apply with respect to any record maintained under paragraph (1).

"(k) The General Counsel is authorized

to—

"(1) investigate complaints of violations of section 7216 of this title;

"(2) make final decisions as to whether to issue notices of hearing on unfair labor practice complaints and to prosecute such complaints before the Authority;

"(3) direct and supervise all field employees of the General Counsel in the field offices of the Authority; and

"(4) perform such other functions as the Authority prescribes.

"(1) Notwithstanding any other provision of law, including chapter 7 of this title, the decision of the Authority on any matter within its jurisdiction shall be final and conclusive, and no other official or any court of the United States shall have power or jurisdiction to review any such decision by an action in the nature of mandamus on appeal of that decision or by any other means, except that nothing in this section shall limit the right of persons to judicial review of questions arising under the Constitution of the United States.

"SUBCHAPTER II—RIGHTS AND DUTIES OF EMPLOYEES, AGENCIES AND LABOR ORGANIZATIONS

"§ 7211. Employees' rights

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

"(1) participate in the management of a labor organization,

"(2) act for the organization in the capacity of a representative,

"(3) present, in such representative capacity, the views of the organization to agency heads and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

"(4) bargain collectively, subject to the title, through representatives of their own choosing.

"(b) This chapter does not authorize—

"(1) a management official, a confidential employee, or a supervisor to participate in the management of a labor organization or to act as a representative of such an organization, unless such participation or activity is specifically authorized by this chapter, or

"(2) any employee to so participate or act if such participation or activity would result in any conflict of interest, or appearance thereof, or would otherwise be inconsistent with any law or the official duties of the employee.

"§ 7212. Recognition of labor organizations

"(a) An agency shall accord exclusive recognition or national consultation rights at the request of a labor organization which

meets the requirements for such recognition or consultation rights under this chapter.

"(b) Recognition of a labor organization, once accorded, shall continue as long as the organization meets the requirements of this chapter for recognition.

"(c) Recognition of a labor organization shall not—

"(1) preclude an employee, regardless of whether the employee is in a unit of exclusive recognition, from exercising grievance or appellate rights established by law or regulation or from choosing the employee's own representative in a grievance or appellate action, except when the grievance or appeal is covered by and pursued under a negotiated procedure as provided in section 7221 of this title;

"(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees in connection with veterans preference; or

"(3) preclude an agency from consulting or dealing with a religious, social, fraternal, professional, or other lawful association not qualified as a labor organization with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members. Consultations and dealings under paragraph (3) shall not assume the character of formal consultation on matters of general employee-management policy covering employees in that unit or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interest of other employees.

"§ 7213. National consultation rights

"(a) An agency shall accord national consultation rights to a labor organization which qualifies under criteria established by the Authority as the representative of a substantial number of employees of the agency. National consultation rights shall not be accorded for any unit if a labor organization already holds exclusive recognition at the national level for that unit. The granting of national consultation rights shall not preclude an agency from appropriate dealings at the national level with other organizations on matters affecting their members. An agency shall terminate national consultation rights if the labor organization ceases to qualify under the established criteria.

"(b) If a labor organization has been accorded national consultation rights, the agency shall notify representatives of such organization of proposed substantive changes in personnel policies that affect employees such organization represents and provide an opportunity for such organization to comment on the proposed changes. Such organization may suggest changes in the agency's personnel policies and have its views carefully considered. Representatives of such organization may consult, at reasonable times, with appropriate officials on personnel policy matters and may, at all times, present in

writing the organization's views on such matters. An agency is not required to consult with any such organization on any matter on which it would not be required to negotiate if the organization were entitled to exclusive recognition.

"(c) Any question with respect to the eligibility of a labor organization for national consultation rights may be referred to the Authority for decision.

"§ 7214. Exclusive recognition

"(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) A unit may be established on an agency, plant, installation, craft, functional, or other basis which will assure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency in the agency's operations. A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be established if it includes—

"(1) except as provided in section 701(b) (1) of the Civil Service Reform Act of 1978, any management official, confidential employee, or supervisor;

"(2) an employee engaged in Federal personnel work in other than a purely clerical capacity; or

"(3) both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit.

Any question with respect to the appropriate unit may be referred to the Authority for decision.

"(c) All elections shall be conducted under the supervision of the Authority or persons designated by the Authority and shall be by secret ballot. Employees eligible to vote shall be provided the opportunity to choose the labor organization they wish to represent them from among those on the ballot and, except in the case of an election described in paragraph (4), the opportunity to choose not to be represented by a labor organization. Elections may be held to determine whether a labor organization should—

"(1) be recognized as the exclusive representative of employees in a unit;

"(2) replace another labor organization as the exclusive representative;

"(3) cease to be the exclusive representative;

"(4) be recognized as the exclusive representative of employees in a unit composed of employees in units currently represented by that labor organization or continue to be recognized in the existing separate units.

An election not be held to determine whether an organization should become, or continue to be recognized as, the exclusive representative of the employees in any unit, or subdivision thereof, during the 12-month pe-

riod after a valid election has been held under this chapter with respect to such unit.

"§ 7215. Representation rights and duties

"(a) If a labor organization has been accorded exclusive recognition, such organization shall be—

"(1) the exclusive representative of employees in the unit and is entitled to act for and negotiate agreements covering all employees in the unit;

"(2) responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership; and

"(3) 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.

"(b) An agency and an exclusive representative shall have a duty to negotiate in good faith and in exercising such duty shall—

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

"(2) be represented at the negotiations by appropriate representatives prepared to discuss and negotiate on all negotiable matters;

"(3) meet at such reasonable times and places as may be necessary; and

"(4) execute upon request of the agency or the organization a written document embodying the terms of, and take such steps as are necessary to implement, any agreement which is reached.

"(c) An agency and an exclusive representative shall, through appropriate representatives, negotiate in good faith as prescribed under subsection (b) of this section with respect to personnel policies and prac-

[From 124 Cong. Rec. H 9621
(daily ed. Sept. 13, 1978):]

tices and matters affecting working conditions but only to the extent appropriate under laws and regulations, including policies which—

"(1) are set forth in the Federal Personnel Manual,

"(2) consist of published agency policies and regulations for which a compelling need exists (as determined under criteria established by the Authority) and which are issued at the agency headquarters level or at the level of a primary national subdivision, or

"(3) are set forth in a national or other controlling agreement entered into by a higher unit of the agency.

In addition, such organization and the agency may determine appropriate techniques consistent with section 7222 of this title, to assist in any negotiation.

"(d) In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall give due regard to the obligation to negotiate imposed by this section, except that such obligation

does not include an obligation to negotiate with respect to matters concerning the number of employees in an agency, the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty, or the technology of performing the agency's work. The preceding sentence shall not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

"(e) (1) If, in connection with negotiations, an issue develops as to whether a proposal is negotiable under this chapter or any other applicable law, regulation, or controlling agreement, it shall be resolved as follows:

"(A) An issue which involves interpretation of a controlling agreement at a higher agency level is resolved under the procedures of the controlling agreement, or, if none, under regulations prescribed by the agency.

"(B) An issue not described in paragraph (1) which arises at a local level may be referred by either party to the head of the agency for determination.

"(2) An agency head's determination under paragraph (1) concerning the interpretation of the agency's regulations with respect to a proposal shall be final.

"(3) A labor organization may appeal to the Authority from a decision under paragraph (1) if it—

"(A) disagrees with an agency head's determination that a proposal is not negotiable under this chapter or any other applicable law or regulation of appropriate authority outside the agency, or

"(B) believes that an agency's regulations, as interpreted by the agency head, are in violation of this chapter or any other applicable law or regulation of appropriate authority outside the agency, or are not otherwise applicable to bar negotiations under subsection (c) of this section.

"§ 7216. Unfair labor practices

"(a) It shall be an unfair labor practice for an agency—

"(1) to interfere with, restrain, or coerce an employee in connection with the exercise of rights assured by this chapter;

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

"(3) to sponsor, control, or otherwise assist any labor organization, unless such assistance consists of furnishing customary and routine services and facilities—

"(A) in a manner consistent with the best interest of the agency, its employees, and the organization, and

"(B) on an impartial basis to organizations (if any) having equivalent status;

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

"(5) to refuse to accord appropriate recognition to a labor organization qualified for such recognition; or

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

"(b) It shall be an unfair labor practice for a labor organization—

"(1) to interfere with, restrain, or coerce an employee in connection with the exercise of the rights assured by this chapter;

"(2) to cause or attempt to cause an agency to coerce an employee in the exercise of rights under this chapter;

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

"(4) to—

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

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

"(5) to discriminate against an employee with regard to the terms or conditions of membership in the organization because of race, color, religion, national origin, sex, age, or handicapping condition; or

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

"(c) It shall be an unfair labor practice for a labor organization which is accorded exclusive recognition to deny membership to an employee in an appropriate unit unless such denial is for failure to meet reasonable occupational standards uniformly required for admission or for failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. This subsection shall not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws which conform to the requirements 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 sections 7221 (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 that procedure or as an unfair labor practice under this section, but not under both procedures. Appeals or grievance decisions shall not be construed as unfair labor practice decisions under this chapter nor as a precedent for such decisions. All complaints of unfair labor practices prohibited under this section that cannot be resolved by the parties shall be filed with the Authority.

"(e) Any question with respect to whether an issue can properly be raised under an appeals procedure shall be referred for resolution to the agency responsible for final decisions relating to those issues.

"§ 7217. 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.

"(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 Sec-

retary, provide for bonding of officials and with trusteeship and election standards

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

"§ 7213. Basic provisions of agreements

"(a) Each agreement between an agency and a labor organization shall provide the following:

"(1) In the administration of all matters covered by the agreement, officials and employees shall be governed by—

"(A) existing or future laws and the regulations of appropriate authorities, including policies which are set forth in the Federal Personnel Manual,

"(B) published agency policies and regulations in existence at the time the agreement was approved, and

"(C) subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level.

"(2) Management officials of the agency

[From 124 Cong. Rec. H 9622
(daily ed. Sept. 13, 1978):]

shall retain the right to determine the mission, budget, organization, and internal security practices of the agency, and the right, in accordance with applicable laws and regulations, to—

"(A) direct employees of the agency;

"(B) hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;

"(C) relieve employees from duties because of lack of work or for other legitimate reasons;

"(D) maintain the efficiency of the Government operations entrusted to such officials;

"(E) determine the methods, means, and personnel by which such operations are to be conducted; and

"(F) take such actions as may be necessary to carry out the mission of the agency in situations of emergency.

"(b) Nothing in subsection (a) of this section shall preclude the parties from negotiating—

"(1) procedures which management will observe in exercising its authority to decide or act in matters reserved under such subsection; or

"(2) appropriate arrangements for employees adversely affected by the impact of management's exercising its authority to decide or act in matters reserved under such subsection,

except that such negotiations shall not unreasonably delay the exercise by management, of its authority to decide or act, and such procedures and arrangements shall be consistent with the provisions of any law or regulation described in 7215(c) of this title, and shall not have the effect of negating the authority reserved under subsection (a).

"(c) Nothing in the agreement shall require an employee to become or to remain a member of a labor organization or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.

"(d) The requirements of this section shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization.

"§ 7219. Approval of agreements - -

"An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or his designee. An agreement shall be approved within 45 days from the date of its execution if it conforms to this chapter and other applicable laws, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation), and regulations of other appropriate authorities. An agreement which has not been approved or disapproved within 45 days from the date of its execution shall go into effect without the required approval of the agency head and shall be binding on the parties subject to the provisions of this chapter, other applicable laws, and the regulations of appropriate authorities outside the agency. 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 agency regulations.

"SUBCHAPTER III—GRIEVANCES AND IMPASSES

"§ 7221. Grievance procedures

"(a) An agreement between an agency and a labor organization which has been accorded exclusive recognition shall provide a procedure, applicable only to the unit, for the consideration of grievances. Subject to the provisions of subsection (d) of this section

and to the extent not contrary to any law, the coverage and scope of the procedure shall be negotiated by the parties to the agreement. Except as otherwise provided in this section, such procedure shall be the exclusive procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage.

"(b) Any employee or group of employees

in the unit may present grievances falling within the coverage of the negotiated grievance procedure to the agency and have them adjusted without the intervention of the exclusive representative if the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given an opportunity to be present at the adjustment.

"(c) A negotiated grievance procedure shall provide for arbitration as the final step of the procedure. Arbitration may be invoked only by the agency or the exclusive representative. Except as provided in subsection (g) of this section, the procedure must also provide that the arbitrator is empowered to resolve questions as to whether or not any grievance is on a matter subject to arbitration under the agreement.

"(d) A negotiated grievance procedure may cover any matter within the authority of an agency if not inconsistent with the provisions of this chapter, except that it may not include matters involving examination, certification and appointment, suitability, classification, political activities, retirement, life and health insurance, national security, or the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

"(e) 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.

"(f) 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 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 subsections (h) and (i) of section 7701 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.

"(g) An question that cannot be resolved by the parties as to whether or not a grievance is on a matter excepted by subsection (d) of this section shall be referred for resolution to the agency responsible for final decisions relating to those matters.

"(h) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with the provisions of subsection (e) of this section, an arbitrator shall be governed by the provisions of section 4303 (f) or 7701(d) of this title, as applicable.

"(i) Allocation of the costs of the arbitration shall be governed by the collective-bargaining agreement. An arbitrator shall have no authority to award attorney or other representative fees, except that in matters where an employee is the prevailing party and the arbitrator's decision is based on a finding of discrimination prohibited by any law referred to in section 7701(h) of this title attorney fees may be awarded and shall be governed by the standards applicable under the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-5(k)).

"(j) Either party may file exceptions to any arbitrator's award with the Authority, except that no exceptions may be filed to awards concerning matters covered under subsection (e) of this section. The Authority shall sustain a challenge to an arbitrator's award only on grounds that the award violates applicable law, appropriate regulation, or other grounds similar to those applied by Federal courts in private sector labor-management relations. Decisions of the Authority on exceptions to arbitration awards shall be final, except for the right of an aggrieved employee under subsection (f) of this section.

"(k) In matters covered under sections 4303 and 7512 of this title which have been raised under the provisions of the negotiated grievance procedure in accordance with the provisions of subsection (e) of this section, the provisions of section 7702 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 Merit Systems Protection Board. In matters similar to those covered under sections 4303 and 7512 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.

"§ 7222. Federal Service Impasse Panel; negotiation impasses

"(a) (1) There is established within the Authority, as a distinct organizational entity, the Federal Service Impasses Panel. The Panel is composed of the Chairman, and an even number of other members, appointed by the President solely on the basis of fitness to perform the duties and functions of the Office, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations. No employee (as defined under section 2105 of this title) shall be appointed to serve as a member of the Panel.

"(2) At the time the members of the Panel (other than the Chairman) are first appointed, half shall be appointed for a term of 1 year and half for a term of 3 years. An individual appointed to serve as the Chairman shall serve for a term of 5 years. A successor of any member shall be appointed for terms of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member whom

[From 124 Cong. Rec. H 9623
(daily ed. Sept. 13, 1978):]

such individual replaces. Any member of the Panel may be removed by the President.

"(3) The Panel may appoint an executive secretary and such other employees as it may from time to time find necessary for the proper performance of its duties. Each member of the Panel is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay currently paid, from time to time, under the General Schedule for each day the member is engaged in the performance of official business on the work of the Panel, including traveltime, and is entitled to travel expenses and a per diem allowance under section 5703 of this title.

"(b) Upon request, the Federal Mediation and Conciliation Service shall provide services and assistance to agencies and labor organizations in the resolution of negotiation impasses.

"(c) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third-party mediation, fail to resolve a negotiation impasse, either party may request the Panel to consider the matter.

"(d) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (c) of this section. The Panel shall consider the matter and shall either recommend procedures to the parties for the resolution of the impasse or assist the parties in arriving at a settlement through such methods and procedures, including fact finding and recommendations,

as it may find appropriate to accomplish the purposes of this section. Arbitration, or third-party fact finding with recommendations to assist in the resolution of an impasse, may be used by the parties only when authorized or directed by the Panel. If the parties do not arrive at a settlement, the Panel may hold hearings, compel under section 7234 of this title the attendance of witnesses and the production of documents, and take whatever action is necessary and not inconsistent with the provisions of this chapter to resolve the impasse. Notice of any final action of the Panel shall be promptly served upon the parties and such action shall be binding upon them during the term of the agreement unless the parties mutually agree otherwise.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"§ 7231. Allotments to representatives

"(a) If, pursuant to an agreement negotiated in accordance with the provisions of this chapter, an agency has received from an employee in a unit of exclusive recognition a written assignment which authorizes the agency to deduct from the wages of such employee amounts for the payment of regular and periodic dues of the exclusive representative for such unit, such assignment shall be honored. Except as required under subsection (b) of this section, any such assignment shall be revocable at stated intervals of not more than 6 months.

"(b) An allotment for the deduction of labor organization dues terminates when—

"(1) the dues withholding agreement between the agency and the exclusive representative is terminated or ceases to be applicable to the employee; or

"(2) the employee has been suspended or expelled from the labor organization which is the exclusive representative.

"§ 7232. Use of official time

"Solicitation of membership or dues and other internal business of a labor organization shall be conducted during the non-duty hours of the employees concerned. Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management, except that the negotiating parties may agree to arrangements which provide that the agency will authorize a reasonable number of such employees (not normally in excess of the number of management representatives) to negotiate on official time for up to 40 hours, or up to one-half the time spent in negotiations during regular working hours.

"§ 7233. Remedial actions

"If it is determined by appropriate authority, including an arbitrator, that certain action will carry out the policies of this chapter, such action may be directed by the appropriate authority if consistent with law, including section 5596 of this title.

"§ 7234. Subpenas

"(a) Any member of the Authority, in-

cluding the General Counsel, any member of the Panel, 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 or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia, except that 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; and

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

“(b) In the case of contumacy or failure to obey a subpoena issued under subsection (a) (1), 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) Witness (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.

“§ 7235. Regulations

“The Authority, including the General Counsel and the Panel, and the Federal Mediation and Conciliation Service shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to them. Unless otherwise specifically provided in this chapter, the 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.”

“(b) (1) The amendments made by subsection (a) shall not preclude—

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

(B) 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 section.

(2) Policies, regulations, and procedures established, and decisions issued, under Executive Order Numbered 11491, or under the provision of any related Executive order in effect on the effective date of this section, shall remain in full force and effect until revised or revoked by Executive order or statute, or unless superseded by appropriate deci-

sion or regulation of the Federal Labor Relations Authority.

(c) Any term of office of any member of the Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority serving on the effective date of this section shall continue in effect until such time as such term would expire under Reorganization Plan Numbered 2 of 1978, and upon expiration of such term, appointments to such office shall be made under section 7203 of title 5, United States Code. Any term of office of any member of the Federal Service Impasses Panel serving on the effective date of this section shall continue in effect until such time as members of the Panel are appointed pursuant to section 7222 of title 5, United States Code.

(d) There are hereby authorized to be appropriated such sums as may be necessary to carry out the functions and purposes of this section.

(e) The table of chapters for subpart F of part III of title 5, United States Code, is amended by adding after the item relating to chapter 71 the following new item:

“72. Federal Service Labor-Management Relations----- 7201”.

(f) Section 5314 of title 5, United States Code, is amended by adding at the end thereof:

“(69) Chairman, Federal Labor Relations Authority.”

(g) Section 5315 of title 5, United States Code, is amended by adding at the end thereof:

“(124) Members (2), Federal Labor Relations Authority.”

(h) Section 5316 of title 5, United States Code, is amended by adding at the end thereof:

“(145) General Counsel, Federal Labor Relations Authority.”

REMEDIAL AUTHORITY

Sec. 702. Section 5598 of title 5, United States Code, is amended by striking out subsections (b) and (c) and inserting in lieu thereof the following:

“(b) An employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority to have suffered a withdrawal, reduction, or denial of all or part of the employee's pay, allowances, differentials, or other monetary or employment benefits, or a denial of an increase in such pay, allowances, differentials, or other monetary or employment benefits, which would not have occurred but for unjustified or unwarranted action taken by the agency—

“(1) is entitled, on correction of the action—

“(A) to be made whole for all losses suffered less, in applicable circumstances, interim earnings; and

“(B) if appropriate, to reinstatement or restoration to the same or a substantially similar position, or promotion to a higher level position; and

“(2) for all purposes is deemed to have performed service for the agency during the

period of the unjustified or unwarranted action, except that—

“(A) 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

“(B) annual leave credited under subparagraph (A) of this paragraph but unused and still available to the employee under regulations prescribed by the Office of Personnel Management 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.

“(c) For the purposes of this section—

“(1) ‘unjustified or unwarranted action’ includes—

[From 124 Cong. Rec. H 9624
(daily ed. Sept. 13, 1978):]

“(A) any act of commission, either substantive or procedural, which violates or improperly applies a provision of law, Executive order, regulation, or collective bargaining agreement; and

“(B) any act of omission, or failure to take an action, or confer a benefit, which must be taken or conferred under a non-discretionary provision of law, Executive order, regulation, or collective-bargaining agreement;

“(2) ‘administrative determination’ includes, but is not limited to, a decision, award, or order issued by—

“(A) a court having jurisdiction over the matter involved;

“(B) the Office of Personnel Management;

“(C) the Merit Systems Protection Board;

“(D) the Federal Labor Relations Authority;

“(E) the Comptroller General of the United States;

“(F) the head of the employing agency or an agency official to whom corrective action authority is delegated; or

“(G) an arbitrator under a negotiated binding arbitration agreement between a labor organization and agency management;

“(3) ‘appropriate authority’ includes, but is not limited to—

“(A) a court having jurisdiction;

“(B) the Office of Personnel Management;

“(C) the Merit Systems Protection Board;

“(D) the Federal Labor Relations Authority;

“(E) the Comptroller General of the United States;

“(F) the head of the employing agency or agency official to whom corrective action authority is delegated; or

“(G) an arbitrator under a negotiated binding arbitration agreement between a labor organization and agency management.

“(d) The provisions of this section shall

not apply to reclassification actions nor shall they authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

“(e) The Office of Personnel Management shall prescribe regulations to carry out this section. However, the regulations are not applicable to the Tennessee Valley Authority and its employees.”

Page 143, beginning on line 19, strike out “Section 7203 of title 5, United States Code (as redesignated in section 703(1) of this Act)” and insert in lieu thereof “Section 7153 of title 5, United States Code.”

Page 264, beginning on line 14, strike out “supervisor or management official (as defined in paragraphs (10) and (11) of section 7103 of this title, respectively)” and insert in lieu thereof “management official or supervisor (as defined in paragraphs (10) and (11) of section 7203 of this title, respectively)”.

Page 376, beginning on line 1, strike out “before ‘7203’ (as added in section 703(d) (2) of this Act)” and insert in lieu thereof “before ‘7153’”.

Page 386, beginning on line 1, strike out “7203, and 7204 (as redesignated in section 703(a) (1) of this Act),” and insert in lieu thereof “7153, and 7154.”

Conform the table of contents accordingly.

Mr. COLLINS of Texas (during the reading). Mr. Chairman, I ask unanimous consent that my amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

(Mr. COLLINS of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLLINS of Texas. Mr. Chairman, I am rising to offer an amendment for the committee's version of title VII, dealing with labor-management relations in the Federal civil service.

Under the provisions of the committee's bill, our longstanding policy toward labor relations between Federal employees and their government employer would be drastically altered. Knowing this, and afraid of the outcome when the committee's bill was brought to the floor, the Carter administration has been attempting to negotiate with various members of the committee in the hope of reaching some sort of compromise between what the administration wants and what the committee wants to give them.

Although I have not been a participant in these 11th-hour negotiations, I

have a solution to the problem now facing the administration.

My amendment is virtually identical to the bill reported by the Senate Committee on Governmental Affairs before the Senate acted on S. 2640, and it reflects what I understand to be the administration's position on codifying our present Executive order program of labor-management relations.

The amendment establishes a Federal Labor Relations Authority and creates a legislated program for our labor-management relations, following the basic charter or our existing Executive order program.

My offering of what is the administration's requested language for this title of the bill, and what has already been agreed to by the Senate committee should go a long way in avoiding complications as we finish out this session and could well insure final passage of the Civil Service Reform Act itself.

I want to point out that my amendment does not give Federal employees the right to strike, does not allow for an agency shop arrangement, and does not require employees in a bargaining unit who choose not to belong to a union to pay any fees for union representation.

The new Authority, which will come into being between now and next January 1 by virtue of passage of Reorganization Plan No. 2 of 1978, will carry out the functions formerly performed by the Federal Labor Relations Council and the Assistant Secretary of Labor for Labor-Management Relations.

The amendment permits labor unions to bargain collectively over those personnel policies, practices and matters affecting working conditions that are within the authority of agency managers to agree to. It specifies those areas of decisionmaking which are reserved to management and may not be subject to the collective bargaining process.

The amendment also provides statutory permission allowing labor unions to bargain on the creation of arbitration mechanisms for resolving adverse actions—such as demotions and discharges—and other appealable matters—such as grievances.

There are several major areas where the amendment is different from the bill as reported by the House committee, because my amendment incorporates the administration's proposals:

SCOPE OF BARGAINING

The amendment permits bargaining only on those personnel policies, practices and matters affecting working con-

ditions that are not limited by laws and excludes Government-wide regulations, as well as agency regulations for which "compelling need" exists.

The amendment sets up two categories of "management rights":

Bargaining would be permitted but not required on number of employees in agency; on the numbers, types, and grades assigned to a unit, project, or tour of duty; or on the technology of performing work.

Bargaining would be prohibited on mission, budget, organization, and internal security of agency; as well as one management's retained right in accordance with applicable laws and regulations to direct employees to hire, promote, transfer, assign, and retain employees; to suspend, demote, discharge, or take other disciplinary action against employees; relieve employees from duty because of lack of work; to maintain efficiency of operations; to determine methods, means and personnel for accomplishing work; and on ability to take necessary actions in emergencies.

The House committee bill, on the other hand, broadly defines scope of bargaining by saying that "conditions of employment" excludes only matter relating to discrimination, political activities, and those few specifically prescribed by law—for example, pay and benefits.

Under the committee's bill, all agency regulations and Government-wide regulations would be subject to bargaining, unless a compelling need is demonstrated for keeping them off the bargaining table.

The committee's bill sets up only one category of management rights:

Bargaining would be prohibited only on management's retained right to determine the mission, budget, organization and number of employees in an agency, and on the internal security of an agency. Management would only be able to direct employees, to assign work—including contracting out—and to determine personnel for conducting agency operations, and to take necessary actions in emergencies.

GRIEVANCE ARBITRATION

The amendment permits grievance arbitration to cover any matter within the authority of an agency to decide but such arbitration may not include matters involving examination, certification and appointment, suitability, classification, political activities, retirement, life and health insurance, national security or the Fair Labor Standards Act.

The committee bill defines the scope

of grievance arbitration in a fashion similar to its definition of "condition of employment" and includes discrimination and classification as matters for grievance arbitration. The only items excluded from an arbitration process would be political activities, retirement, life and health insurance, and suspension or removal for national security reasons.

USE OF GRIEVANCE ARBITRATION

The amendment provides that any negotiated procedure will be the exclusive forum for use by employees in a bargaining unit on matters covered, except in adverse action and discrimination cases where employees may choose the negotiated arbitration procedure or the statutory appeal procedure, but not both.

The committee's bill provides no similar exclusivity. An employee may choose between the negotiated or statutory procedure on any matter covered.

JUDICIAL REVIEW OF FEDERAL LABOR RELATIONS AUTHORITY

My amendment provides that decisions and orders issued by the Federal Labor Relations Authority are final and enforceable by the Authority and are not subject to judicial review or enforcement—except that judicial review may be obtained on constitutional questions. Access to judicial review for adverse action and discrimination matters would continue under the substitute.

The committee's bill seriously weakens the Federal Labor Relations Authority by providing that all of its decisions and orders are subject to judicial review in any U.S. District court, which introduces the possibility of intolerable delays and unpredictable final decision by judges.

EXCLUSIVE RECOGNITION WITH AN ELECTION

The amendment continues our current procedures in requiring that an election must be held before exclusive recognition status can be granted by an agency to a union.

The committee's bill, however, departs substantially from our current practice by permitting the Federal Labor Relations Authority to grant exclusive recognition without an election simply on the basis of a showing by a labor organization that it represents a majority of employees in the unit. This could be accomplished on the basis of a "card check," or by a petition.

UNFAIR LABOR PRACTICES—PICKETING

The amendment includes a prohibition against picketing which interferes or threatens to interfere with agency operations, which is a continuation of our current Executive order prohibition.

The committee bill, on the other hand, is unclear on the subject of picketing. Its provisions on unfair labor practices, the committee bill does not include picketing as an unfair labor practice. I am uncertain if the exclusion would permit pickets in all circumstances, and if so, what recourse would an agency have if such picketing was not unfair labor practice?

DUES WITHHOLDING AND OFFICIAL TIME

The amendment allows unions to enter into dues withholding agreements with agencies, and the service charge for the work would be subject to bargaining. Under the voluntary dues withholding system, allotments are revocable at 6-month intervals. Both of these provisions are identical to our current program.

The committee bill, on the other hand, departs from our current program by requiring an agency to deduct dues at the request of an exclusion union. Allotments would be irrevocable for 1 year, and would be made free of charge to both the union and the employee.

The committee bill also allows for dues withholding arrangements for unions with 10 percent or more membership in bargaining units where there is no exclusive union.

AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. UDALL. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Strike out title VII (beginning on line 12 of page 288 and ending on line 12 of page 348) and insert in lieu thereof the following:

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. Reporting requirements for standards of conduct.
- "7132. Official time.
- "7133. Subpenas.
- "7134. Compilation and publication of data.
- "7135. Regulations.
- "7136. Continuation of existing laws, recognitions, agreements, and procedures.

"SUBCHAPTER I—GENERAL PROVISIONS**"§ 7101. Findings and purpose**

"(a) The Congress finds that 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 safeguards the public interest and contributes to the effective conduct of public business. Such protection facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment. 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 Federal Government.

"§ 7102. Employees' rights

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

"(1) to act for a labor organization in the capacity of a representative and the right, in such 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,

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

"(3) to engage in other lawful activities for the purpose of establishing, maintaining, and improving conditions of employment.

"§ 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;

or

"(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;

"(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—

"(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 whose basic purpose

is entirely social, fraternal, or limited to special interest objectives which are only incidentally related to conditions of employment;

[From 124 Cong. Rec. H 9626
(daily ed. Sept. 13, 1978):]

"(B) 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 non-preferential civil service status, political affiliation, marital status, or handicapping condition; or

"(C) an organization sponsored by an agency;

"(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 confer, 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 discrimination in employment on the basis of race, color, religion, sex, age, national origin, or handicapping condition, within an agency subject to the jurisdiction of the Equal Employment Opportunity Commission;

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

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

"(D) 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 repre-

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—

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

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

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

"§ 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 misconduct, 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 by the President.

"(2) The General Counsel may—

"(A) investigate alleged violations of this chapter,

"(B) file and prosecute complaints under this chapter.

"(C) intervene before the Authority in proceedings brought under section 7118 of this title, and

"(D) 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.

"(4) If a vacancy occurs in the office of General Counsel, the President shall promptly designate an Acting General Counsel and shall submit a nomination for General Counsel to the Senate within 40 days after the vacancy occurs, unless the Congress adjourns sine die before the expiration of the 40-day period, in which case the President shall submit the nomination to the Senate not later than 10 days after the Congress reconvenes.

"§ 7105. Powers and duties of the Authority

"(a) 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.

"(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

[From 124 Cong. Rec. H 9627
(daily ed. Sept. 13, 1978):]

3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions.

"(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 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 the 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—

"(1) hold hearings; and

"(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7233 of this title.

"(h) The Authority shall, by regulation, establish standards which shall be applied in determining the amount and circumstances in which reasonable attorney fees and reasonable costs and expenses of litigation may be awarded under section 7118(a)(6)(C) or 5596(b)(1)(B) of this title in connection with any unfair labor practice or any grievance processed under a procedure negotiated in accordance with this chapter.

"(1) 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.

"§ 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, lay off, 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—

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

"(ii) any other appropriate source; and

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

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

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

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

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

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

"§ 7111. Exclusive recognition of labor organizations

"(a) Exclusive recognition shall be accorded to a labor organization which has been selected by a majority of employees in an appropriate unit who participate in an election in conformity with the requirements of this chapter.

"(b)(1) If a petition is filed with the Authority—

"(A) by any person alleging—

"(1) 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

"(ii) 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

"(B) 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. Except as provided under subsection (e) of this section, if the Authority finds on the record of the hearing that a question of representation exists, the Authority shall, subject to paragraph (2) of this subsection, 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 of in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

"(2) (A) If, after the 60-day period beginning on the date on which the petition is filed pursuant to paragraph (1) of this subsection, unresolved issues exist concerning—

"(i) the appropriateness of the unit in accordance with section 7112 of this title;

"(ii) the eligibility of one or more employees to vote in the proposed election; or

"(iii) other matters determined by the Authority to be relevant to the election;

the Authority shall direct an election by secret ballot in the unit specified in the petition and announce the results thereof.

"(B) After conducting an election under subparagraph (A) of this paragraph, the Authority shall expedite the resolution of any disputed issues described in subparagraph (A) of this paragraph. If the Authority determines that matters raised by the disputed issues did not affect the outcome of the election, the Authority shall certify the results of the election. If the Authority determines that the matters affected the outcome of the election, it shall conduct a new election by secret ballot in accordance with such requirements as are appropriate on the basis of its determination, and shall certify the results thereof.

"(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) The Authority may, on the petition of a labor organization, certify the labor organization as an exclusive representative—

"(1) if, after investigation, the Authority determines that the conditions for a free and untrammelled election under this section cannot be established because the agency involved has engaged in or is engaging in an unfair labor practice described in section 7116(a) of this title; or

"(2) if, after investigation, the Authority determines that—

"(A) the labor organization represents a majority of employees in an appropriate unit;

"(B) the majority status was achieved without the benefit of any unfair labor practice described in section 7116 of this title;

"(C) no other person has filed a petition for recognition under subsection (b) of this section or a request for intervention under subsection (c) of this section; and

"(D) no other question of representation exists in the appropriate unit.

"(f) Any labor organization described in section 7103(a) (16) (B) (i) of this title may petition for an election for the determination of that labor organization as the exclusive representative of an appropriate unit.

"(g) 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.

"(h) 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

[From 124 Cong. Rec. H 9628

(daily ed. Sept. 13, 1978):] 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 120 days and not less than 60 days before the expiration date of has been in effect for more than 3 years, 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.

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

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

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

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

“(1) except as provided under section 7136(a)(2) of this title, any management official or supervisor, except that, with respect to a unit a majority of which is composed of firefighters or nurses, a unit which includes both supervisors and employees may be considered appropriate;

“(2) a confidential employee;

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

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

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

“(6) any employee engaged in intelligence, 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.

“(e) In the case of the reorganization of one or more units for which, before the reorganization, a labor organization was the exclusive representative of any such unit, the labor organization shall continue to be the exclusive representative for each such unit until new elections are held or a period of 45 days has elapsed, whichever first occurs.

“§ 7113. National consultation rights

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

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

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

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

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

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

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

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

“§ 7114. Representation rights and duties

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

“(2) Before any representative of an agency commences any investigatory interview of an employee in a unit concerning misconduct which could reasonably lead to suspension, reduction in grade or pay, or removal, the employee shall be informed of that employee's right under paragraph (3) (B) of this subsection to be represented by an exclusive representative.

“(3) 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 practice or other general condition of employment; or

“(B) any investigatory interview of an employee in the unit by a representative of the agency if—

“(1) the employee reasonably believes that such interview may result in disciplinary action against the employee; and

“(1i) the employee requests such representation.

Any agency and any exclusive representative of any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purpose of arriving at a collective bargaining agreement. The rights of an exclusive representative under the preceding provisions of this subsection shall not be construed to preclude an employee from being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any appeal action under procedures other than procedures negotiated pursuant to 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 conditions 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.

“§ 7115. Allotments to representatives

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

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

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

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

“(c) (1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the

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deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

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

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

“§ 7116. Unfair labor practices

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

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

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

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

“(4) to discipline or 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, confer, 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 prescribe any rule or regulation which restricts the scope of collective bargaining permitted by this chapter or which is in conflict with any applicable collective bargaining agreement; 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, confer, or negotiate in good faith with an agency as required by this chapter;

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

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

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

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

Nothing in paragraph (7) 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 may properly be raised under—

“(1) an appeals procedure prescribed by or pursuant to law; or

“(2) any grievance procedure negotiated pursuant to section 7121 of this title; may, at the election of the aggrieved party, be raised either—

(A) under such appeals procedure or such grievance procedure, as appropriate; or

(B) if applicable, under the procedure for resolving complaints of unfair labor practices under section 7118 of this title.

An election under the preceding sentence shall be made at such time and in such manner as the Authority shall prescribe. Any decision under subparagraph (B) of this subsection on any such issue shall not be construed to be a determination of an unfair labor practice under this chapter or a precedent for any such determination.

“7117. Duty to bargain in good faith; compelling need; duty to consult

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

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

“(3) Paragraph (2) of this 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, after a hearing under this subsection, that a compelling need for the rule or regulation does not exist.

"(3) Any hearing under this subsection shall be expedited to the extent practicable and shall not include the General Counsel as a party.

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

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

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

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

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

"(3) On or before the 15th 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 repre-

sentative 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) 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

[From 124 Cong. Rec. H 9630 (daily ed. Sept. 13, 1978):] the views or recommendations are presented; and

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

"7118. Prevention of unfair labor practices

"(a) (1) If an 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—

"(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 Au-

thority and designated for such purpose); and

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

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

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

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

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

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

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

"(5) The 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 on hear argument.

"(6) 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) directing that a collective bargaining agreement be amended and that the amendments be given retroactive effect;

"(C) requiring an award of reasonable attorney fees;

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

"(E) including any combination of the actions described in subparagraphs (A) through (D) 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.

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

"(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request from the Director of the Office of Personnel Management an opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management. Any interpretation under the preceding sentence shall be advisory in nature and shall not be binding on the Authority.

"§ 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.

"(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 impasses presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

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

"(ii) assist the parties in resolving 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 7133 of this title; and

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

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

"§ 7120. Standards of conduct for labor organizations

"(a) A labor organization representing or seeking to represent employees pursuant to this chapter shall adopt, maintain, and enforce governing requirements containing explicit and detailed provisions to which it shall subscribe, which include provision—

"(1) the maintenance of democratic procedures and practices, including—

"(A) provisions for periodic elections to be conducted subject to recognized safeguards; and

"(B) provisions defining and securing the right of individual members to—

"(i) participate in the affairs of the labor organization,

"(ii) fair and equal treatment under the governing rules of the organization, and

"(iii) fair process in disciplinary proceedings,

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

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

"(b) 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 or a supervisor, 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.

[From 124 Cong. Rec. H 9631
(daily ed. Sept. 13, 1978):]

"SUBCHAPTER III—GRIEVANCES

"§ 7121. Grievance procedures

"(a) Any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Any employee who has a grievance and who is covered by a collective bargaining agreement may elect to have the grievance processed under a procedure negotiated in accordance with this chapter.

"(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) Any party to a collective bargaining agreement aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the negotiated grievance procedure provided in the agreement may file a petition in the appropriate United States district court requesting an order directing that arbitration proceed pursuant to the procedures provided therefor in the agreement. The court shall hear the matter without jury, expedite the hearing to the maximum extent practicable, and issue any order it determines appropriate.

"(d) 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.

"(e) The processing of a grievance under a procedure negotiated under this chapter shall not limit the right of an aggrieved employee to request the Equal Employment Opportunity Commission to review a final decision under the procedure—

"(1) pursuant to section 3 of Reorganization Plan Numbered 1 of 1978; or

"(2) where applicable, in such manner as shall otherwise be prescribed by regulation by the Equal Employment Opportunity Commission.

"§ 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. If upon review the Authority finds that the award is deficient because—

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

"(2) it was obtained by corruption, fraud, or other misconduct;

"(3) the arbitrator exercised partiality in making the award; or

"(4) the arbitrator exceeded powers granted to the arbitrator;

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 60-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

"§ 7123. Judicial review; enforcement

"(a) Any person aggrieved by a final order of the Authority under—

"(1) section 7118 of this title (involving an unfair labor practice);

"(2) section 7122 of this title (involving an award by an arbitrator); or

"(3) 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.

"(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 here were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record

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

"(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief or 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.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"§ 7131. Reporting requirements for standards of conduct

"The provisions of subchapter III of chapter 11 of title 29 shall be applicable to labor organizations which have been or are seeking to be certified as exclusive representatives under this chapter, and to the organizations' officers, agents, shop stewards, other representatives, and members to the extent to which the provisions would be applicable if the agency were an employer under section 402 of title 29. In addition to the authority conferred on him under section 438 of title 29, the Secretary of Labor shall prescribe regulations, with the written concurrence of the Authority, providing for simplified reports for any such labor organization. The Secretary of Labor may revoke the provision for simplified reports of any such labor organization if the Secretary determines, after any investigation the Secretary considers proper and after reasonable notice and opportunity for a hearing, that the purpose of this chapter and of chapter 11 of title 29 would be served thereby.

"§ 7132. Official time

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

"(b) Any activities performed by any employee relating to the internal business of a

labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.

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

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

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

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

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

[From 124 Cong. Rec. H 9632 (daily ed. Sept. 13, 1978):]

"§ 7133. Subpenas

"(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 subpenas 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.

"(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.

"§ 7134. Compilation and publication of data

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

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

§ 7135. Regulations

"The Authority, the Federal Mediation and Conciliation Service, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. The 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.

§ 7136. Continuation of existing laws, recognitions, agreements, and procedures

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

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

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

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

BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND GRIEVANCES

SEC. 702. Section 5598(b) of title 5, United States Code, is amended to read as follows:

"(b) 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 a part of the pay, allowances, or differentials of the employee—

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

"(A) 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, plus

5 percent, less any amounts earned by the employee through other employment during that period; and

"(B) reasonable attorney fees and reasonable costs and expenses of litigation 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 7105(h) of this title; and

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

"(A) 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

"(B) annual leave credit under subparagraph (A) of this paragraph 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.

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."

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 703. (a) Subchapter II of chapter 71 of title 5, United States Code, is amended—

(1) by redesignating sections 7151 (as amended by section 312 of this Act), 7152, 7153, and 7154 as sections 7201, 7202, 7203, and 7204, respectively;

(2) by striking out the subchapter heading and inserting in lieu thereof the following:

**"Chapter 72—ANTIDISCRIMINATION;
RIGHT TO PETITION CONGRESS**

**"SUBCHAPTER I—ANTIDISCRIMINATION
IN EMPLOYMENT**

"Sec.

"7201. Antidiscrimination policy; minority recruitment program.

"7202. Marital status.

"7203. Handicapping condition.

"7204. Other prohibitions.

**"SUBCHAPTER II—EMPLOYEES' RIGHT
TO PETITION CONGRESS**

"7211. Employees' right to petition Congress."

and

(3) by adding at the end thereof the following new subchapter:

**"SUBCHAPTER II—EMPLOYEES' RIGHT
TO PETITION CONGRESS**

“§ 7211. Employees' right to petition Congress

“The right of employees, individual or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.”.

(b) The analysis for part III of title 5, United States Code, is amended by striking out—

“Subpart F—Employee Relations

“71. Policies----- 7101”
and inserting in lieu thereof

“Subpart F—Labor-Management and Employee Relations

“71. Labor-Management Relations... 7101”

“72. Antidiscrimination; Right to Petition Congress----- 7201”

(2) Section 3302(2) of title 5, United States Code, is amended by striking out “and 7154” and inserting in lieu thereof “and 7204.”

(c) (1) Section 2105(c) (1) of title 5, United States Code, is amended by striking out “7152, 7153” and inserting in lieu thereof “7202, 7203”.

(3) Sections 4540(c), 7212(a), and 9540(c) of title 10, United States Code, are each amended by striking out “7154 of title 5” and inserting in lieu thereof “7204 of title 5”.

(4) Section 410(b) (1) of title 39, United States Code, is amended by striking out “chapters 71 (employee policies)” and inserting in lieu thereof the following: “chapters 72 (antidiscrimination; right to petition Congress)”.

(5) Section 1002(g) of title 39, United States Code, is amended by striking out “section 7102 of title 5” and inserting in lieu thereof “section 7211 of title 5”.

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following clause:

“(124) Chairman, Federal Labor Relations Authority.”.

(e) Section 5316 of such title is amended by adding at the end thereof the following clause:

“(145) Members, Federal Labor Relations Authority (2), and its General Counsel.”.

MISCELLANEOUS PROVISIONS

Sec. 704. (a) Except as provided in subsection (b) of this section, the amendments made by this title shall take effect on the first day of the first calendar month beginning more than 90 days after the date of the enactment of this title.

(b) Sections 7104, 7105, and 7136 of title 5, United States Code, as added by section 701 of this title, shall take effect on the date of the enactment of this title.

(c) The regulation required under section 7105(h) of this title shall be prescribed and made effective by the Authority not later than 90 days after the date of the enactment of this Act.

(d) (1) The wages, terms, and conditions of employment, and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92-392 applies shall be negotiated in accordance with prevailing rates and practices without regard to any provision of—

(A) chapter 71 of title 5, United States Code (as amended by this title);

(B) chapters 51, 53, and 55 of title 5, United States Code; or

(C) any other law, rule, regulation, decision, or order relating to rate of pay or pay practices with respect to Federal employees.

(2) No provision of chapter 71 of title 5, United States Code (as amended by this title), shall be considered to limit—

(A) any rights or remedies of employees referred to in paragraph (1) of this subsection under any other provision of law or before any court or other tribunal; or

(B) any benefits otherwise available to such employees under any other provision of law.

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that

[From 124 Cong. Rec. H 9633

(daily ed. Sept. 13, 1978):]

the amendment offered as a substitute for the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

Mr. UDALL. Mr. Chairman, we are about to reach what I think is the final major controversy in this bill and one of the major points that occupied our time in the Committee on Post Office and Civil Service.

We decided on Monday night in a vote on the Erlenborn amendment that we were going to have a title VII. The question I hope we can resolve this morning is what kind of a title VII we will have. We have basically two alternatives now before us: The Collins amendment, which is a complete rewrite of this title, and the substitute amendment which I have just offered.

I appeal to my colleagues, as we debate and consider and resolve this issue, that we not let this be turned into some kind of a bitter replay of the debate that we have had in this House on labor-management bills earlier in this session. I hope this will not dissolve into a bitter labor-management fight because there is not any basis for it.

This is not the old right-to-work controversy, for example; it is not the old 14(b) controversy. There is a right-to-work provision on page 290 of the bill that is in my amendment and which would gladden the heart of the gentleman from Ohio, JOHN ASHBROOK, if he were here, and other Members who have engaged in this debate over the years. This is not situs picketing or it is not the Labor Reform Act of 1977, although some of these things are involved in our discussion.

There is nothing before us today in the substitute about the right of public employees to strike. As the gentleman from Michigan (Mr. Ford) said the other day, no one is seriously talking about that this year. That is outside the scope of this legislation entirely.

There is not really any argument in this bill or in this title about Federal collective bargaining for wages and fringe benefits and retirement—the kinds of things that are giving us difficulty in the Postal Service today. All these major regulations about wages and hours and retirement and benefits will continue to be established by law through congressional action. Major management rights to hire and fire and determine staffing are preserved in my amendment.

What we really do is to codify the 1962 action of President Kennedy in setting up a basic framework of collective bargaining for Federal employees. This was good enough and acceptable enough to all segments of our society that it was left unchanged during the 8 years of the Nixon and Ford administrations. Either one of those Presidents with a stroke of a pen could have eliminated this and chose not to have it.

So we are now going to put into the United States Code instead of the Federal Register this basic plan of President Kennedy's that has worked so well in the last 15 years. No one seems to be arguing much about that anymore.

The Federal employee unions do not get much out of this amendment process that is not already in the Executive order. They do gain in my substitute some guarantees about procedures that management must follow. They get to arbitrate some things that now go through a torturous appeal process—things involving various labor grievances.

It would be a mistake to view this title VII or my substitute as some kind of a labor bill that is attached to an unrelated bill dealing with management prerogatives in the Federal service. This is

how I view what we are trying to do here: It moves to meet some of the legitimate concerns of the Federal employee unions as an integral part of what is basically a bill to give management the power to manage and the flexibility that it needs.

But I say this in two respects. One, it gives some balance. We are saying to the Federal employees that we are going to give management some broad new rights here in this legislation, we are going to enable them to move. And employee organizations are saying, in turn, that they are entitled to have a more independent, secure position from which to deal with management as it operates under this new freedom in the bill.

Second, the arbitration provision I view as much of a gain for management as for labor. The Federal managers now, instead of having to go through difficult, complex appeal procedures, will be able to submit them to arbitration, and this is a gain for management.

As I have said, Mr. Chairman, the President's program basically deals with strengthening management, Senior Executive Service, merit pay for supervisors and management, separating the operating functions of the Civil Service Commission from the judicial functions.

None of these basic management tools are affected by my amendment.

The CHAIRMAN. The time of the gentleman from Arizona (Mr. UDALL) has expired.

(By unanimous consent, Mr. UDALL was allowed to proceed for 1 additional minute.)

Mr. UDALL. Mr. Chairman, in conclusion, let me say that perhaps the best guide to what we come down to with the Udall substitute is that it is barely acceptable to people such as the gentleman from Michigan (Mr. Ford) and my friend, the gentleman from Missouri (Mr. CLAY), who have been outstanding spokesmen for the rights of the Federal employee groups. It is acceptable barely to the Business Roundtable, which represents 190 of our largest corporations. It does not really please the administration. But it is the balance point. It is the middle ground, and I think we can go forward and pass a good Senate bill if we would take this one final step here in title VII in adopting my substitute.

SECTIONAL ANALYSIS OF TITLE VII SUBSTITUTE

The substitute makes numerous changes in Title VII as reported by the Committee. These changes are designed to guarantee

essential management prerogatives and flexibility, while safeguarding the fundamental rights of employees and their representatives. The bill section numbers and the code section numbers and headings are, with one small exception (the words "duty to consult" are added to the heading of Code section 7117), identical to those of the Committee's Title VII. Where no change is made in the provisions of a section as reported by the Committee, this is so stated. Any changes in the substance of a section are noted and explained. Minor changes in wording or punctuation which do not change the meaning of a section are not noted.

SECTION 7101

Section 7101. Findings and purpose: No change.

Section 7102. Employees' rights: No change.

Section 7103. Definitions; applications: Two changes are made. First, the definition of "conditions of employment" (subsection (a)(14)) is amended. Paragraph (A) is clarified to provide for the exclusion of policies, practices, and matters relating to discrimination in employment on the basis of race, color, religion, sex, age, national origin, or handicapping condition, "within an agency subject to the jurisdiction of the Equal Employment Opportunity Commission." The reported paragraph (C) is redesignated as paragraph (D). The new paragraph (C) excludes from "conditions of employment" any policy, practice, or matter relating to the "classification of any position." The effect of this new exclusion would be to remove the classification of positions from collective bargaining. This change is designed to help ensure the continuation of classification uniformity throughout the Federal Government. The term "classification of any position" encompasses all positions and jobs, including white-collar and blue-collar.

The second change is to subsection (b), concerning the exclusion of agencies and agency subdivisions, for national security reasons, from coverage by the labor-management relations provisions to be created by Title VII. The reported bill requires an agency seeking such an exclusion to apply to the Federal Labor Relations Authority, which would review and investigate the matter, and then issue a decision either granting or denying the exclusion. The substitute's subsection (b) would give to the President the power to exclude agencies and agency subdivisions from coverage for national security reasons. The President could do this, in his or her sole discretion, by order.

Section 7104. Federal Labor Relations Authority: No change.

Section 7105. Powers and duties of the Authority: Two subsections are added. A new subsection (h) directs and empowers the Authority to establish, by regulation, standards to be applied in determining the amount and circumstances in which reasonable attorney fees and reasonable costs and expenses

of litigation may be awarded in connection with any unfair labor practice or any grievance processed under a procedure negotiated in accordance with the provisions being established by Title VII of this bill.

A new subsection (i) would allow the Federal Labor Relations Authority to represent itself (except in litigation before the U.S. Supreme Court) in any civil action brought in connection with any function carried out by the Authority pursuant to title 5 of the United States Code or as otherwise authorized by law. Under this subsection, the Authority would not have to seek Justice Department approval or representation in carrying out its litigation-related responsibilities (except in the U.S. Supreme Court). This provision is designed to help ensure the independence which will be essential to the proper functioning of the Authority. It also

[From 124 Cong. Rec. H 9634
(daily ed. Sept. 13, 1978):]

will permit the Justice Department to represent agencies without the potential conflicts of interest that could arise if it also represented the Authority in the same case.

Section 7106. Management rights: Four changes increase the number of rights reserved to management. This substitute strengthens the "Management rights" section reported by the Committee, but it is still to be treated narrowly as an exception to the general obligation to bargain over conditions of employment.

Subsection (a)(2)(A) is expanded to reserve to management, the authority, in accordance with applicable law, 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." The reported subsection (a)(2)(A) reserves only the right to "direct employees". The new language preserves management's right to make the final decisions in these additional areas, in accordance with applicable laws, including other provisions of chapter 71 of title 5. For example, management has the reserved right to make the final decision to "remove" an employee, but that decision must be made in accordance with applicable laws and procedures, and the provisions of any applicable collective bargaining agreement. The reserved management right to "remove" would in no way affect the employee's right to appeal the decision through statutory procedures or, if applicable, through the procedures set forth in a collective bargaining agreement.

Subsection (a)(2)(C) of the substitute adds a new provision, guaranteeing management's right, with respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion, or from any other appropriate source. The intent of this provision is to preserve as bargainable (to the extent permitted by applicable laws and

regulations) the standards, criteria, and procedures for establishing promotion certificates, while ensuring management's right to make the actual selection from the certificate, or to make the appointment from any other appropriate source.

The reported Title VII's subsection (a) (2) (C) is redesignated in the substitute as subsection (a) (2) (D), with one substantive change. Management is guaranteed the right to take whatever actions may be necessary to carry out the agency mission during emergencies. The reported bill reserves this right only in the case of national emergencies.

The reported subsections (b) (1) and (b) (2) are redesignated, with changes, as subsections (b) (2) and (b) (3). A new subsection (b) (1) is added to provide that nothing in the "Management rights" section shall preclude any agency and any labor organization from negotiating, 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.

The amendment's subsections (b) (2) and (b) (3) provide that nothing in the section shall preclude negotiating the procedures which management officials of the agency will observe in exercising any authority under this section, or negotiating appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

The reported subsections (b) (1) and (b) (2) provide that nothing in the "Management rights" section shall preclude negotiating procedures management officials will observe in exercising their authority to determine the mission, budget, organization, number of employees, and internal security of the agency (the rights reserved in subsection (a) (1)), or appropriate arrangements for employees adversely affected by the exercise of management authority described in subsection (a).

Section 7111. Exclusive recognition of labor organizations: The substitute modifies the reported subsection (b) (2) by expanding the maximum time period during which secret ballot representation elections must be held from 45 days to 60 days.

The substitute also modifies the reported subsection (h) (3) (B) by changing the time period for filing a petition for exclusive recognition, where there is in effect a lawful written collective bargaining agreement, from "the 4-month period beginning on the 180th day before the expiration date" of the existing agreement, to "not more than 120 days and not less than 60 days before the expiration date" of the agreement.

Subsection (h) (4) of the substitute bars the according of exclusive representation to a labor organization where, within the previous 12 calendar months, the Authority has

conducted a secret ballot election for the unit described in the petition, and in the election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative. The effect is to lend stability to the collective bargaining relationship by preventing challenges to incumbents by other unions for at least 12 months, while at the same time permitting elections in larger units during the 12-month period if no exclusive representative has been certified. The reported subsection (h) (4) bars the according of exclusive representation whenever an election involving any of the employees in the petitioned-for unit has been held during the previous 12 months.

Section 7112. Determination of appropriate units for labor organization representation: Subsection (c) of the substitute provides that any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization which represents other individuals to whom such provision applies, or which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies. This provision, which is not found in the reported Title VII, is intended to help prevent conflicts of interest and appearances of conflicts of interest. For example, an employee of the National Labor Relations Board could not, under this provision, be represented by a labor organization which is subject to the National Labor Relations Act, or which is affiliated with an organization which is subject to the National Labor Relations Act.

Subsection (c) of the reported Title VII is redesignated as subsection (d) in the substitute, with two changes in substance. The new subsection (d) provides that two or more bargaining units in an agency 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 would then certify the labor organization as the exclusive representative of the new, larger unit. The analogous portion of the reported section 7112, subsection (c), requires that the labor organization be the exclusive representative of the existing, smaller units "by reason of election". It is also not specific as to the triggering of the consolidation process by petition, and the discretion of the Authority to direct or not to direct an election. The substitute's provisions should better facilitate the consolidation of small units.

Subsection (d) of the reported section 7112 is redesignated, substance unchanged, as subsection (e) in the substitute.

Section 7113. National consultation rights: Subsection (b) (1) (A) of the substitute requires that any labor organization having national consultation rights in connection with any agency be informed of "any sub-

stantive change" in conditions of employment proposed by the agency. The reported subsection (b) (1) (A) required that the labor organization be informed of "any change".

Section 7114. Representation rights and duties: Two important provisions in the reported bill's section 7114 are modified by the substitute.

The right of an employee to request representation by the exclusive representative and the right of an exclusive representative to be present at certain types of management-employee meetings are set forth in subsections (a) (2) and (a) (3) of the substitute. Subsection (a) (2) provides that before any representative of an agency commences any investigatory interview of an employee in a bargaining unit, where the interview concerns misconduct which could reasonably lead to suspension, reduction in grade or pay, or removal, the employee must be informed of his or her right to be represented by the exclusive representative. Subsection (a) (3) provides that an exclusive representative has the right to be given the opportunity to be represented at: (1) 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 personnel policy or practice or other general condition of employment; and (2), any investigatory interview of an employee in the unit by a representative of an agency if the employee reasonably believes that such interview may result in disciplinary action against the employee, and the employee requests such representation.

The reported section 7114 provides the right of representation for any discussion between one or more representatives of the agency and one or more unit employees or their representatives concerning any grievance, personnel policy or practice, or other conditions of employment. By inserting the word "general" before "conditions of employment", the substitute limits the right of representation to those formal discussions (other than grievance discussions) which concern conditions of employment affecting employees in the unit generally.

The reported sections also differs from the substitute in providing the right of representation for "any discussion between an employee in the unit and a representative of the agency if the employee reasonably believes that the employee may be the subject of disciplinary action." The substitute provides the right for investigatory interviews, and stipulates that the employee must request representation before the right attaches. The substitute also provides that the employee must be informed of the right of representation before the commencement of any investigatory interview concerning misconduct which would reasonably lead to suspension, or reduction in grade or pay, or removal.

The substitute's provisions concerning investigatory interviews reflect the U.S. Su-

preme Court's holding in *National Labor Relations Board v. J. Weingarten, Inc.*, 420 U.S. 251 (1975). In *Weingarten*, the Court upheld the Board's determination that the National Labor Relations Act provides a statutory "right of union representation at investigatory interviews which the employee reasonably believes may result in disciplinary action against him." 420 U.S. 251, at 267.

The Court also sustained the Board's shaping of "the contours and limits of the statu-

[From 124 Cong. Rec. H 9635 (daily ed. Sept. 13, 1978):]

tory right." 420 U.S. 251, at 256. First, the right inheres in the Act's "guarantee of the right of employees to act in concert for mutual aid and protection." Second, "the right arises only in situations where the employee requests representation." Third, "the employee's right to request representation as a condition of participation in an interview is limited to situations where the employee reasonably believes the investigation will result in disciplinary actions." Fourth, "exercise of the right may not interfere with legitimate employer prerogatives." And fifth, "the employer has no duty to bargain with any union representative who may be permitted to attend the investigatory interview." 420 U.S. 251, at 256, 257, 258, 259.

The *Weingarten* right, of course, is tied to the National Labor Relations Act's "guarantee of the right of employees to act in concert for mutual aid and protection." Other than this difference in derivation, the substitute's provisions differ from *Weingarten* only in providing that the employee must be informed of the right of representation prior to the commencement of any investigatory interview concerning misconduct which could reasonably lead to suspension, reduction in grade or pay, or removal.

The second area of change made by the substitute's section 7114 is in subsection (b) (4), concerning the obligation of an agency to provide data necessary for negotiations to the exclusive representative. The substitute qualifies this obligation by providing, in subsection (b) (4) (C), that data which constitutes "guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining" need not be furnished to the exclusive representative.

Section 7115. Allotments to representatives: No change.

Section 7116. Unfair labor practices: The one change made adds a new labor organization unfair labor practice by expanding subsection (b) (7) to proscribe "picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations." A positive statement is added, however, after subsection (b) (8) to provide that nothing in subsection (b) (7) "shall result in any information picketing which does not interfere with an agency's operations being considered as an unfair labor practice."

Section 7117. Duty to bargain in good faith; compelling need; duty to consult: The substitute's section 7117 contains major changes effecting a significant alteration of the reported bill's scope of bargaining.

Under the reported bill, agency-wide rules or regulations are never a bar to negotiations, and any Government-wide rule or regulation may be removed as a bar to negotiations if there is no "compelling need" for the rule or regulation, as determined by the Federal Labor Relations Authority under the reported section 7117.

The substitute's section 7117 makes Government-wide rules or regulations an absolute bar to negotiations (subsection (a)(1)).

Subsection (a)(2) of the substitute provides that agency rules or regulations are a bar to negotiations, subject to subsection (a)(3), unless a finding of "no compelling need" for the rule or regulation is made by the Authority (as determined under regulations prescribed by the Authority).

Subsection (a)(3) states that the provisions of subsection (a)(2) apply 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 which includes a majority of the employees in the issuing agency or primary national subdivision to whom the rule or regulation is applicable.

The net effect of the substitute's subsection (a)(3) is to make rules or regulations of agencies, or of primary national subdivisions of agencies, bars to negotiation, subject to the "compelling need" test, except in cases in which an exclusive representative represents a bargaining unit which includes a majority of the employees in the issuing agency or primary national subdivision to whom the rule or regulation is applicable. In those latter cases, the agency or primary national subdivision rule or regulation is not, for purposes of that unit, a bar to negotiations on the subject matter of the rule or regulation.

If, for example, the Department of the Treasury issues a regulation which applies to employees of the Department, and an exclusive representative represents a unit which includes a majority of the employees to whom the regulation applies, the regulation will not be a bar to negotiations for purposes of that unit. Similarly, if the Department issues a regulation which applies to employees of the Internal Revenue Service (a primary national subdivision of the Department) and an exclusive representative represents a unit which includes a majority of IRS employees to whom the regulation applies, the regulation will not be a bar to negotiations for purposes of that unit in IRS.

Subsection (b) of the substitute sets forth a procedure for "compelling need" determinations for agency or primary national subdivision rules or regulations. When an exclusive representative alleges that no com-

pellling need exists for a rule or regulation which an agency or primary national subdivision has invoked as a bar to negotiations, the Federal Labor Relations Authority takes jurisdiction and determines whether a compelling need exists. The Authority will prescribe regulations governing compelling need determinations. A finding of "no compelling need" may be made only if the issuing agency or primary national subdivision informs the Authority in writing that no compelling need exists, or if the Authority determines after a hearing that there is no compelling need. The Authority's General Counsel shall not be a party to a "compelling need" hearing, but the issuing agency or primary national subdivision shall be.

Subsection (c) of the substitute provides an expedited appeals system for resolving negotiability disputes other than those involving "compelling need" determinations. The reported Title VII provides that such disputes be resolved through the unfair labor practice mechanism. The substitute provides that an exclusive representative may appeal an agency's allegation of non-negotiability to the Authority. The appeal may be filed, on or before the 15th day after the date on which the agency first makes its allegation, by filing a petition with the Authority and furnishing a copy to the head of the agency. On or before the 15th day after the agency head receives the copy of the petition, the agency must file a statement with the Authority either withdrawing the allegation or setting forth in full its reasons supporting the allegation. A copy is to be furnished to the exclusive representative, which then has 15 days to file a response with the Authority. The Authority shall expedite proceedings to the extent practicable and shall issue a written decision and supporting reasons at the earliest practicable date.

Subsection (d) of the substitute provides for consultation rights concerning Government-wide rules or regulations. A labor organization which is the exclusive representative of a substantial number of employees (as determined in accordance with criteria prescribed by the Authority) shall be granted consultation rights by any agency issuing a Government-wide rule or regulation effecting any substantive change in any condition of employment. Consultation rights shall terminate when the labor organization no longer meets the Authority's prescribed criteria. The Authority shall resolve issues relating to a labor organization's eligibility for, or continuation of, consultation rights.

A labor organization having consultation rights must be informed of any substantive change in conditions of employment proposed by the agency and must be permitted reasonable time to present its views and recommendations regarding the proposed changes. The agency must consider any views or recommendations so presented before taking final action on any matter with respect

to which the views or recommendations are presented, and must provide the labor organization a written statement of the reasons for taking the final action.

Section 7118. Prevention of unfair labor practices: The one change from the provisions of the reported bill's section 7118 is in subsection (a) (6) (D). Instead of empowers the Authority to require reinstatement of an employee "with backpay, together with interest thereon," the substitute empowers the Authority to require reinstatement of an employee with "backpay in accordance with section 5596 of this title." The applicable provision of section 5596, as amended by section 702 of this substitute, provides for backpay plus 5 percent, rather than "interest".

Section 7119. Negotiation impasses; Federal Service Impasses Panel: One change is made in the provisions of the reported bill's section 7119. In subsection (b) (2) of the reported section, the parties may agree to adopt a procedure for binding arbitration of a negotiation impasse. The substitute requires that the procedure agreed to by the parties is subject to approval by the Federal Service Impasses Panel.

Section 7120. Standards of conduct for labor organizations: No change.

Section 7121. Grievance procedures: In subsection (d), the substitute excludes additional matters from the scope of negotiated grievance procedures. Not grievable under negotiated procedures (in addition to those exclusions already in the reported section 7121) would be matters concerning examination, certification, or appointment, or the classification of any position which does not result in the reduction in grade or pay of any employee. The term "classification of any position" encompasses all positions and jobs, including white-collar and blue-collar.

Section 7122. Exceptions to arbitral awards: No change.

Section 7123. Judicial review; enforcement: No change.

Section 7131. Reporting requirements for standards of conduct: No change.

Section 7132. Official time: No change.

Section 7133. Subpenas: The substitute simplifies the reported section's subpoena provision, and removes the immunity and criminal penalty provisions found in subsections (d) and (e) of the reported section 7133.

Subsection (a) of the substitute section provides that any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of title 5 of the United States Code, and any employee of the Authority designated by the Authority may: (1) issue subpoenas requiring the attendance of 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.

Subsection (b) provides that in the case of contumacy or failure to obey a subpoena

issued under subsection (a), the United States district court for the judicial district in which the person to whom the subpoena is

[From 124 Cong. Rec. H 9636
(daily ed. Sept. 13, 1978):]

addressed resides or is served may issue an order requiring such person to appear at any designated place to testify and to produce documentary or other evidence. The court may punish as contempt any failure to obey an order.

Subsection (c) provides that all witnesses be paid the same fee and mileage allowance which are paid subpoenaed witnesses in Federal courts.

Section 7134. Compilation and publication of data: No change.

Section 7135. Regulations: No change.

Section 7136. Continuation of existing laws, recognitions, agreements and procedures: No change.

SECTION 702

Section 5596. Backpay in case of unfair labor practices and grievances: The substitute retains the modifications to the Backpay Act which would be made by the reported Title VII, with two changes.

First, the reported bill's modification of section 5596(b) (1) (A) is changed to provide for backpay "plus 5 percent, less any amount earned through other employment." The reported bill provides for backpay, less any amounts earned through other employment, plus "interest".

The substitute's section 5596(b) (1) (B) provides for reasonable attorney fees and reasonable costs and expenses related to the personnel action. With respect to any decision relating to an unfair labor practice or to a grievance processed under a procedure negotiated in accordance with chapter 71 of title 5 of the United States Code (Federal Service Labor Management Relations), attorney fees and reasonable costs and expenses of litigation shall be awarded in accordance with standards established by the Federal Labor Relations Authority under section 7105 (h) of title 5.

SECTION 703

No change.

SECTION 704

Subsection (c) of the reported section is redesignated as subsection (d) and a new subsection (c) is added, requiring that the regulation required under section 7105(h) of title 5 (standards for the awarding of attorney fees and reasonable costs and expenses of litigation in unfair labor practice and negotiated grievance procedure cases) be prescribed and made effective by the Authority not later than 90 days after the date of the enactment of the Civil Service Reform Act.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Kansas.

Mr. GLICKMAN. I thank the gentle-

man for yielding.

Mr. Chairman, I wonder if the gentleman might tell me the difference between his substitute and the Collins amendment with respect to the issue of the agency shop or the closed or union shop, and how that relates to the existing Executive order.

Mr. UDALL. There is no difference here. The unions have long wanted an agency shop. We do not give them that in the Udall substitute. They do not get the agency shop, they do not get the union shop in either one of the provisions.

Mr. Chairman, I will yield to my friend, the gentleman from Michigan, who can clarify this point.

Mr. FORD of Michigan. Mr. Chairman, this is one of the unfortunate things that can happen in the discussion of this matter. The agency shop issue has no place in this discussion. It has not been in this bill at any point, it is not in this bill directly, indirectly, back door, front door or side door, and the discussion of the agency shop is totally irrelevant.

Mr. UDALL. No one advocates it here in this debate. It is not in the bill.

Mr. ERLLENBORN. Mr. Chairman, I rise in support of the Collins amendment and in opposition to the Udall substitute.

(Mr. ERLLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLLENBORN. Mr. Chairman, let me say, however, that I am pleased to see the Udall substitute, which is moving in the direction of the Senate language and away from the House-reported language in title VII. The Collins amendment contains, I think, with little or no change, the language adopted by the Senate, and the Senate language is substantially the Executive order relative to labor and management relations. So obviously I am in favor of the Senate language embodied in the Collins amendment. But given the choice, if it should come to that, between the Udall substitute or the House-reported language, I certainly would prefer the Udall substitute. The Udall substitute moves in the right direction, in some respects, by narrowing the scope of bargaining, by expanding management's rights, and these are in relationship to the House-reported language, the committee-reported language. Moreover, some of the provisions of the Udall substitute recognize the uniqueness of the National Labor Rela-

tions Board. But it really goes much farther than title VII, as reported by the committee, in some respects. It permits informational picketing, except if the Federal labor relations authority determines that the picketing interferes with the agency's operations. It allows the Federal labor relations authority to consolidate units, even if neither of the unions has by free elections been certified as the major bargaining agent. It still, as does the committee-reported language, permits certification of a union without election.

It allows a dues checkoff form of union security. As a matter of fact, it requires negotiation by an Agency with the union for the purpose of achieving an agreement relative to checkoff, with a union that has as little as 10-percent support among the employees of the unit. It delegates the Federal labor relations authority to the administrative labor law judges, something the so-called labor reform bill tried to do in the context of the National Labor Relations Act.

The Udall substitute allows the President to remove the general counsel at will, without cause. It permits an election after 60 days rather than 45 days when basic issues remain unresolved.

It does not recognize the conflict of interest to which the Federal Election Commission employees are subject and exposed. I will be offering an amendment in most of these areas. The first one I will offer will be on this area of the Federal Election Commission. The Commissioners asked this administration to give them some protection in this area because it is altogether possible that the employees of the Commission could be members of the very same union that they are investigating and controlling under the Federal Election Act.

Lastly, the Udall substitute treats a strike as an unfair labor practice only. I think we should require a decertification of the union or a loss of union rights, but the substitute only treats this, as far as the union is concerned, as an unfair labor practice. Then, we have to look to other portions of the law to find the sanctions for the individuals who engage in a strike or support a strike. There are sanctions in the current law which, in our colloquy the day before yesterday, our experts from the Education and Labor Committee, Mr. FORD and Mr. THOMPSON, said remained undisturbed by this bill. I am pleased because, there are some severe sanctions,

including a \$1,000 fine for individuals who support a strike against a Government agency.

For these reasons, I think the Udall substitute is better than the House committee bill, but the Collins amendment is much more preferable. It would also make the job of the conferees a good deal easier, because we would adopt the Senate language. There would not be much to confer on.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

(At the request of Mr. ROUSSELOT and by unanimous consent, Mr. ERLLENBORN was allowed to proceed for 3 additional minutes.)

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. ERLLENBORN. I am happy to yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Chairman, I appreciate my colleague yielding, and I appreciate his description of how the Collins substitute is superior to the Udall substitute.

I am interested in this new term "informational picketing." What is that?

Mr. ERLLENBORN. Well, in answer to the gentleman, I believe informational picketing is a fairly well-known term. Informational picketing is one where the pickets are in place; they carry signs; they indicate their displeasure over some condition, but no labor dispute exists.

I will tell the gentleman, it is something he may have noticed here in the District of Columbia. It is where several restaurant unions have thrown up picket lines around restaurants and bars where none of the employees of those restaurants or bars are interested in joining the union, but the union thinks that they should be interested, and so they throw up a picket line around the restaurant or the bar for informational purposes. Of course, it goes a little bit beyond information, because once the information is given, then many people will decline to patronize the bar or restaurant because the pickets are there.

But, in the law they have no right to picket because of a labor dispute, because there is no labor dispute in that place of business.

Mr. ROUSSELOT. So it can be for anything. It could really just be a demonstration.

[From 124 Cong. Rec. H 9637
(daily ed. Sept. 13, 1978):]

Mr. ERLLENBORN. Usually the informational picketing is based upon the failure to observe so-called area standards which usually means union standards.

They will say that this employer does not live up to area union standards and is therefore unfair.

Mr. ROUSSELOT. Who makes the final determination under the Udall substitute as to whether or not informational picketing is legitimate?

Mr. ERLLENBORN. My understanding is under the Udall bill it is the Federal labor relations authority rather than the unit of Government that is being picketed.

Mr. ROUSSELOT. So a unit of Government could really have no say as to whether this is a legitimate informational picketing operation?

Mr. ERLLENBORN. They would certainly have no final say. They could complain to the Federal labor relations authority and that authority would have the final say.

Mr. ROUSSELOT. Let me make sure this point is clear: An agency could be subjected to "informational picketing" even though the picketing has nothing to do with employee grievances or other legitimate complaints of that particular agency.

Mr. ERLLENBORN. It could be that there are none of the employees in that unit that are even interested in the union but the union pickets could picket that unit because of the area standards or some other reason.

Mr. ROUSSELOT. I appreciate the gentleman's information.

Mr. CLAY. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Udall substitute.

(Mr. CLAY asked and was given permission to revise and extend his remarks.)

Mr. CLAY. Mr. Chairman, some in this body would have us believe that the Udall substitute was written the headquarters of the AFL-CIO, but just the reverse is true, I believe. Not impugning the integrity of the gentleman from Arizona (Mr. UDALL) who offered the substitute, but it seems most of the substitute was written long ago by the Business Roundtable.

I do not view this as a fight between labor and business. I view this as a fight between what is right and what is wrong, between what is just and what is unjust. I think what the gentleman from Arizona

(Mr. UDALL) is primarily attempting to do in his substitute is to get some balance between the now expanded rights of management and the lessened rights of the employees. It is in a sense a compromise.

It is still management oriented—too much, in my opinion. It still allows the administration flexibility—a little too much, in my opinion. It still permits the easy discharges of Federal employees—too much, in my opinion.

But, Mr. Chairman, the Udall substitute, even though it does not begin to reach the provisions that I and others on the subcommittee and committee approved of in title VII, does however represent the best that reasonable persons can expect under the present political circumstances.

Therefore I urge my colleagues to support the Udall substitute.

Mr. Chairman, at the time when the Committee of the Whole rose, on August 11, I expressed my disappointment that the administration—with whom I disagreed on several major ingredients of the Federal labor-management relations program, had not engaged in serious give-and-take with the Committee in an effort to iron out these major differences. I indicated that, in view of the intransigence of the administration, it would be necessary for me to utilize every parliamentary device at my command to bring the intransigence of the administration to the attention of my colleagues.

Since that time, I am pleased that the administration sat down with representatives of the Committee in what appears to have been a sincere effort to resolve our differences. The Udall substitute is the result of these extended negotiations.

I am not totally delighted with this final product because it does not begin to afford the rights to employees which, in my judgement are essential ingredients of any labor relations program. But the Udall substitute does represent a substantial improvement over what the administration originally proposed to the Congress. The Udall substitute does enjoy the support of the administration. Finally, the sad political reality is that given the anti-public employee mood of the Congress, I do not believe that the Nation is ready to accept much more than the provisions of the Udall substitute.

The Udall substitute provides for:

A statutory Federal labor-management program which cannot be universally

altered by any President;

A truly independent Federal labor relations authority with judicial review and enforcement of Federal labor relations authority decisions and actions;

Binding arbitration for most statutory appeals and grievances;

Negotiation of agency-wide regulations under some circumstances;

Mandatory consultation on Government-wide regulations;

Attorneys' fees, litigation costs for employees;

Automatic dues withholding at no cost to unions; and

Mandatory official time for the negotiation of collective bargaining agreements.

Because the Udall substitute for title VII contains several departures from the version in the committee print, I would like to set out for the record the considerations that lay behind this compromise approach to labor-management relations in the Federal Government. The Udall substitute is the culmination of extension discussions between Mr. UDALL, the administration, Mr. FORD and others especially concerned with title VII, and myself. As the chairman of the Subcommittee on Civil Service, the sponsor of H.R. 13, and the cosponsor of H.R. 9094, I would like to state the rationale behind certain sections of the bill that has led me and others to work out and support the Udall substitute.

Title VII obviously represents congressional dissatisfaction with the state of labor-management relations in the Federal service under the various oversight bodies now established. The public and the taxpayer deserve the more effective and efficient Federal Government that is a predictable result of a meaningful labor-management program for Federal agencies. Unfortunately, the provisions of the order and, especially, the straitjacket interpretation of them by the Federal Labor Relations Council, have barred the development of such a program.

In enacting title VII, Congress will free both agency management and employee representatives from the strictures of the past and thereby encourage both management and labor to engage in the kind of relationship that, in the private sector, has fostered the single most productive economy in the world. An essential component of the new labor-management program mandated by title VII is

the interplay between the obligation to bargain in good faith over conditions of employment and the reserved management rights set forth in section 7106. Since the Udall substitute contains several changes from the committee print's management rights clause, I would like to describe the background that led us to work out the Udall compromise and the current understanding that now prompts our agreement to the Udall substitute.

At no time either during the committee's deliberations or afterwards was it suggested that Federal employee labor organizations should be allowed to bargain over every conceivable topic. Initially, disagreement arose over whether the ultimate exercise of genuine management responsibility could best be protected, while also insuring meaningful negotiations on other topics, by inclusion of a management rights clause in title VII, as under the Executive order, or by a case-by-case development as under the National Labor Relations Act.

Many of us believed that a management rights clause was unnecessary. The National Labor Relations Board and the Federal courts have protected private sector management from union demands that "management rights" be bargained away. See, e.g., *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 235 (1964) (bargaining obligation does not extend to the method of investing capital, the goods to be produced, or the basic scope of the enterprise); *General Motors Corp.*, 191 NLRB 951, 952 (1971), aff'd 470 F.2d 422 (D.C. Cir. 1972) (the issue of whether a company should sell a dealership facility); and *Summit Tooling Co.*, 195 NLRB 479, 480 (1972) (partial closure of a company). Since this protection has been afforded private sector management without a management rights clause in the National Labor Relations Act, as amended, we believed that inclusion of such a clause in title VII was unnecessary and would invite the interpretative abuse reflected in the Council's decisions on the order.

We were persuaded, however, that a new independent agency, replacing the part-time management-oriented Council,

[From 124 Cong. Rec. H 9638 (daily ed. Sept. 13, 1978):]

would itself provide some insulation against the kind of decisional abuse that has hamstrung both agency managers and employee representatives in the past.

Moreover, we have included in section 7136(a) (1) express recognition of our expectation that the new Federal Labor Relations Authority will issue decisions superseding those of the Council. (In the interest of continuity we also provide that Council decisions will continue in force until superseded.) We fully expect that the Authority will not repeat the mistakes of the Council, especially since the Authority is acting under a new statutory charter mandating a new approach to Federal labor-management relations.

In drafting the committee print version of title VII, the committee intended that the scope of collective bargaining under the act would be greater than that under the order as interpreted by the Council. (See House Rep. No. 95-1403 at pages 43-44.) The Udall substitute and its accompanying sectional analysis also embodies this approach. Title VII is remedial legislation designed to cure the problems caused primarily by the Council's misinterpretation of the Executive order. The approach in title VII constitutes a clear rejection of the Council's interpretative techniques, and we support the Udall substitute with the clear understanding that the Authority is in no way bound to the Council's past decisions, even where language in title VII is identical to that in the Executive order.

As the sectional analysis makes clear, the management rights clause is to be construed as a narrow exception to the general obligation to bargain in good faith. Although reviewing bodies under existing labor-management programs have sometimes adopted this approach, the Council has in large measure departed from this canon of construction in its haste to restrict the scope of bargaining. For examples of the approach mandated by title VII, see *Federal Employees Metal Trades Council of Charleston and U.S. Naval Supply Center, Charleston, S.C.* 1 FLRC 235, 244 (FLRC No. 71A-52) (1972); *Local Union No. 2219, International Brotherhood of Electrical Workers AFL-CIO and Department of the Army, Corps of Engineers, Little Rock District, Little Rock, Ark.*, 1 FLRC 219, 235 (FLRC No. 71A-46) (1972); *American Federation of Government Employees, National Joint Council of Food Inspection Locals and Officer of the Administrator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture*, 1 FLRC 616, 620-21 (FLRC No. 73A-36) (1973), aff'd on remand 3 FLRC 324, 345-46 (1975); *AFGE Local 2595 and Immigra-*

tion and Naturalization Service, U.S. Border Patrol, Yuma Sector (Yuma, Arizona), 1 FLRC 71, 73-74 (FLRC No. 70A-10) (1971); *Library of Congress and American Federation of State, County and Municipal Employees, Local Nos. 2477 and 2910*, 56-7 (Decision of the Labor-Management Umpire) (May 17, 1978) (slip opinion); and *AFSCME, Local 2910 and Library of Congress*, 2-4, 6-7 (Decision of the Labor-Management Umpire) (Sept. 5, 1978) (slip opinion).

The Udall substitute contains a management rights clause substantially enlarged beyond that in the committee print. An important element in our agreeing to entrust such an expanded management rights clause to the hands of the new Authority is the example of the protection afforded the collective bargaining process by conscientious scrutiny of management claims of infringements on management rights, especially as found in the two 1978 decisions above. If the new Authority is faithful to these interpretative guidelines, the ultimate exercise of the specified managerial responsibility, the only subject exempted from the bargaining obligation, will be protected and the general obligation to bargain over conditions of employment will be unimpaired. However, it is essential that only those proposals that directly and integrally go to the specified management rights be barred from the negotiations. (See the May 17, 1978 decision above at pages 5-7.)

Although more management rights have been added, the section has been revised to make clear that the exercise of any management rights in the section does not preclude negotiations over procedures or adverse effects involved in those rights.

In section 7117, the Udall substitute removes many Government-wide regulations from collective bargaining. We have agreed to this change with the understanding that the consultation rights accorded exclusive representatives are to be rigidly enforced. It should be clear from the contents of the agency statement required in subsection 7117 (d) (3) (B) that the agency has in fact considered the views and recommendations of the labor organizations exercising consultation rights. A clear record is also necessary for later judicial review of the adequacy of the agency's proceedings that led to promulgation of the regulation.

Section 7103(a) (14) (D), removing from subjects of bargaining those matters specifically provided for by Federal statute, was adopted by the committee and retained in the Udall substitute with the clear understanding that only matters "specifically" provided for by statute would be excluded under this subsection. Thus, where a statute merely vests authority over a particular subject with an agency official with the official given discretion in exercising that authority, the particular subject is not excluded by this subsection from the duty to bargain over conditions of employment.

Section 7114(a) (1) requires that a labor organization that has been accorded exclusive recognition shall be the exclusive representative for employees in its bargaining unit. Section 7114(a) (3) (A) specifically gives the exclusive representative the opportunity to appear at "formal discussions" between agency representatives and employees. In the Udall substitute the word "formal" was inserted before "discussions" in order to make clear the intention that this subsection does not require that an exclusive representative be present during highly personal, informal meetings such as counseling sessions—unless covered by subsection 7114(a) (3) (B). Nothing in this section prohibits an agency from negotiating greater rights for exclusive representatives. Nor does this section authorize an agency to bypass the rights of the exclusive representative and engage in direct communications with unit employees. Section 7116(a) (8) makes it an unfair labor practice for an agency to violate any provision of title VII, including obviously the section requiring that a labor organization with exclusive recognition shall be the exclusive representative.

Section 7116(b) (7) of the compromise version adds "picketing in a labor-management dispute if such picketing interferes with an agency's operations" as an unfair labor practice by a labor organization. In *National Treasury Employees Union v. Fraser*, 428 F. Supp. 295 (D. D.C. 1976), the U.S. district court held that the Executive order's absolute ban on picketing was overbroad and violated the first amendment. The court specifically authorized nondisruptive informational picketing. We had recourse to the Federal Labor Relations Council policy statement in this area and, in view of the constitutional principles involved, adopted the language in this subsection.

Section 7132(b) of the Udall compromise bars the use of official time for conducting the internal business of a labor organization. The section also lists three such activities reflecting our intention that "internal business" be strictly construed to apply only to those activities regarding the structure and institution of the labor organization. Activities that involve labor-management contacts are not included in this section. Nor is preparation for such activities, such as grievances, bargaining, unfair labor practice proceedings, included within this section. Title VII imposes heavy responsibilities on labor organizations and on agency management. These organizations should be allowed official time to carry out their statutory representational activities just as management uses official time to carry out its responsibilities.

The purpose of title VII is to foster a successful labor-management program in the Federal service. Under the current system, many agencies have elected to ignore litigation before the Council and simply conclude agreements with employee representatives that benefit both agency management and employees. Since the Council's decisions have been too rigid even for agency management, there is a growing body of Federal contracts existing outside the realm of the Council's formal negotiability rulings. (See, e.g., "Assignment and Scheduling of Work in Federal Labor Agreements," USCSC/OLMR 76/14 (August 1976) and particularly clauses numbered 8, 13, 16, 29, 30, 31, 42, 43, 51, 52, 68, 103, and 113 therein.)

Section 7136(a) (1) provides that nothing in title VII will preclude the renewal or continuation of such agreements. In this way, we have sought to insure that our goal of bringing successful labor relations programs to other agencies will not impair the ongoing development of such programs in agencies where they already

language for management rights would be handled differently under the narrow construction mandated by title VII, the Udall compromise would never have been possible. That compromise is an important step in gaining House action on title VII and the bill in general. Many of us believe that the list of management rights is needlessly long, but we also believe that interpreted in accord with the clear principles enunciated in the legislative history the list of management rights will not impair a genuine collective bargaining relationship over meaningful issues. This last understanding is an essential element in all that we do in adopting the Udall compromise.

Section 7103(a) (14) (A) defines the term "conditions of employment" and the exceptions to the term. The general obligation of both management and labor to bargain in good faith is an obligation to bargain over "conditions of employment." Section 7103(a) (14) (A) was amended to clarify the intent that collective bargaining will not extend to matters of discrimination in agencies subject to the jurisdiction of the Equal Employment Opportunity Commission. Under section 11 of the Equal Employment Opportunity Act of 1972, Public Law 92-261, 86 Stat. 111, codified at 42 U.S.C. 2000e-16, the Civil Rights Act of 1964 was amended to include the prohibition of employment discrimination in the Federal Government. Under the act, the Civil Service Commission (CSC) was given oversight responsibility for equal employment and affirmative action programs in the Federal Government. A desire for more expert handling of such issues, and to some extent a dissatisfaction with the performance of CSC in this area, led to the transfer of CSC functions in the area of employment discrimination and affirmative action to the Equal Employment Opportunity Commission (EEOC). See Reorganization Plan No. 1 of 1978, effective May 6, 1978. The committee has added language to this subsection to make clear its intent that agencies and labor organizations do not engage in bargaining over matters subject to the EEOC's jurisdiction. Like the Civil Service Commission before it, the Equal Employment Opportunity Commission now has jurisdiction over all Federal employees covered by the 1972 act, except for those in the Library of Congress for whom the 1972 act precludes outside review of discrimination matters by another administrative agency.

[From 124 Cong. Rec. H 9639
(daily ed. Sept. 13, 1978):]

exist. This goal also requires great hesitancy in applying Council decisions, even where those decisions interpret language in the order identical to that found in title VII.

The whole structure and approach of title VII is in large part a repudiation of past Council practice. If we could not have been assured that identical

I urge my colleagues to support this amendment.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, the amendment is simply the administration's proposal for a flexible but orderly codification of the Executive orders which have successfully governed Federal labor-management relations since 1962. Four Presidents, two of each party, have managed to work with the guidelines embodied in this substitute, and now their successor has offered to codify the system into statutes which cannot, like Executive orders, be revoked by the White House at will.

The substance of this amendment closely resembles the original program established by President Kennedy.

First. Union membership and dues remain voluntary. Work slowdowns, stoppages or picket lines continue to be unfair labor practices.

Second. The President retains his right, within the law, to appoint and remove members of a bipartisan Federal Labor Relations Authority, whose General Counsel would investigate and prosecute unfair labor practices, as does the General Counsel of the National Labor Relations Board.

Third. The amendment would permit negotiated grievance arbitration on most matters, and the FLRA would have subpoena powers to enforce final decisions, which would be subject to judicial review on constitutional questions.

Fourth. Under this substitute, an agency's mission, budget, organization and internal security practices would remain beyond the scope of collective bargaining, as would the wages, fringe benefits, and number of employees in an agency; the numbers, types and grades of positions or employees assigned to an organizational unit, work project or tour of duty; or the technology of performing the work of such projects.

The other provisions of this substitute are substantially identical to Executive order 11491, as amended.

Fifth. The uniformed services, Foreign Service, Tennessee Valley Authority, national and internal security agencies, and non-executive agencies are excluded from coverage.

Sixth. National consultation rights at

an agency-wide level are available to unions which represent a substantial number of agency employees, but are not recognized as the exclusive bargaining agent. Exclusive representation rights would be won by a union's receiving a majority of votes in elections by secret ballot.

Seventh. Agencies would be required to show a "compelling need" why an otherwise negotiable regulation should be kept off the bargaining table.

The Assistant Secretary of Labor for Labor-Management Relations would continue to issue standards of conduct for all labor organization in both the private and public sectors.

Mr. Chairman, I support the amendment.

Mr. COLLINS of Texas. Mr. Chairman, I move to strike the requisite number of words.

(Mr. COLLINS of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLLINS of Texas. Mr. Chairman, I want to point out the four major places where my amendment differs from the Udall substitute. One is on exclusive recognition with a union election. My amendment continues our current procedure in requiring an election must be held before exclusive recognition status can be granted to a union. The committee bill and the Udall substitute, however, depart substantially from our current standard and permits the Federal Labor Relations Authority to grant exclusive recognition without an election simply on the basis of a showing by a labor organization that it represents a majority of the employees in the agency. This could be shown either on the basis of a card check or a petition. We differ on that point.

On picketing, my amendment includes a provision against picketing which interferes or threatens to interfere with an agency's operation, which is presently in the current Executive order prohibition. The committee bill, on the other hand, is unclear on the subject of picketing. It is also unclear in the Udall substitute. In its provisions on unfair labor practices, the committee bill does not include picketing as an unfair labor practice. I am uncertain if the exclusion would permit pickets in all circumstances and, if so, what recourse would an agency have if such picketing was not an unfair labor practice?

Another section on which we have a

difference is that of dues withholding and official time.

My amendment allows unions to enter into dues withholding agreements with agencies, and the service charge for the work would be subject to bargaining. Under the voluntary dues withholding system, allotments are revokable at 6 month intervals. Both of these provisions are identical to our current program.

The committee bill and the Udall substitute, on the other hand, depart from our current program by requiring an agency to deduct dues at the request of an exclusive union. Allotments would be irrevocable for 1 year, and would be made free of charge to both the union and the employee.

The committee bill also allows for dues withholding arrangements for unions with 10 percent or more membership in bargaining units where there is no exclusive union.

The fourth point on which we do not agree, and which is of major concern is that of judicial review of Federal Labor Relations Authority.

My amendment, and I differ from the Udall substitute, provides that decisions and orders issued by the Federal Labor Relations Authority are final and enforceable by the Federal Labor Relations Authority and are not subject to judicial review for enforcement—except that judicial review may be obtained on constitutional questions. Access to judicial review for adverse action and discrimination matters would continue under my amendment.

The committee bill seriously weakens the Federal Labor Relations Authority by providing that all of its decisions and orders are subject to judicial review in any U.S. District Court.

[From 124 Cong. Rec. H 9640
(daily ed. Sept. 13, 1978):]

What would happen under this judicial review is that one individual could go to court instead of bringing it before the Federal Labor Relations Authority, this when our courts are so overcrowded. Although we want everyone to have full recourse to judicial review, this would mean that it would go to the court system if one individual wished, and this would mean unending litigation and would make the paperwork on this unbearable.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, I thank the gentleman for yielding. I want to congratulate him for this amendment.

Mr. Chairman, it just seems incomprehensible that at a time when we are talking about more democratic procedures, we are talking about the rights of the rank and file, we are talking about individuals becoming more active throughout the country that we would have a bill which would limit the right of an employee to make an expression of whether or not he wants to belong to a union.

The provision in title VII, as reported in the Udall substitute, is absolutely an invitation to blanket in union membership without a vote.

Mr. Chairman, one of the most fundamental American principles is that we should have votes and, indeed, secret ballots on very substantive issues. Whether one is going to be required to belong to a union or not is a very substantive issue, and to try to blanket such an issue with an overall designation that we can have the FLRA blanket members into a union without a vote runs against the tide of everything that we have been doing.

The CHAIRMAN. The time of the gentleman from Texas (Mr. COLLINS) has expired.

(By unanimous consent, Mr. COLLINS of Texas was allowed to proceed for 3 additional minutes.)

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield further?

Mr. COLLINS of Texas. I yield to the gentleman from Ohio.

Mr. ASHBROOK. To continue, Mr. Chairman, it runs against the tide of everything that we have been doing, and against all of the great liberal talk on the other side.

Mr. Chairman, if we look at this from the civil rights standpoint, this is as important a civil right as anyone could have in America. I am amazed to see the great civil rights advocates look the other way when it comes to forcing members into a union without a vote. If they want a vote and there is a majority, that is fine. We all agree with that. However, it certainly runs against the tide of civil rights to say that we are going to make a person belong to a union without a secret ballot, without an expression of the majority.

Mr. Chairman, the one thing which the gentleman from Illinois (Mr. ERLIN-

BORN) and I have pointed out so frequently during the debate on the so-called Labor Reform Act is that often rank-and-file members of a union are denied the same democratic rights that others enjoy. Everyone would be astounded at the abuse of those rights if that happened anywhere else.

Mr. Chairman, I could cite examples of union members who have been fired for merely speaking out against the international officers. We had examples of unions fining members for having the audacity to run against an international president. They fine members for the exercise of constitutional rights that would be guaranteed to everyone else.

Somehow or other, on the other side they tend to look the other way. The great civil rights advocates of our time tend to look the other way when it comes to the basic constitutional rights of either union members or of workers who are about to be placed in the union, whether it is with their vote or without their vote. Our liberal friends just don't care. Their concern about civil rights has a water's edge and that is when unions are involved.

Mr. Chairman, I think the Collins amendment helps further some of the basic democratic rights which all of us in our speeches at home enunciate, except for those who look the other way when it comes to this vital area of recognition and whether or not a rank-and-file member should have a right to vote.

Mr. Chairman, I think it is basic that there should be a vote and there should be a secret vote. Any effort to force union membership on any employee, particularly a Federal employee, without a vote certainly runs against the tide of good public opinion and proper constitutional practice.

Again, Mr. Chairman, I certainly support the Collins amendment.

I think for all the reasons the gentleman pointed out, we could go through every section in order to have a much more balanced approach. I think we have to decide whether we want a balanced approach or whether we want the Federal unions to literally run the Federal service.

Mr. COLLINS of Texas. Mr. Chairman, the gentleman from Ohio (Mr. ASHBROOK) sums the matter up well in saying that every worker in America is entitled to freedom of choice and they should have the right to vote on whether they want to belong to a union; and

based on their vote, they would be so governed.

This is a very serious flaw in the Udall substitute because it almost brings on mandatory unionism instead of giving all of the workers an opportunity to decide for themselves.

AMENDMENT OFFERED BY MR. RUDD TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. RUDD. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. RUDD to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Immediately after section 7103(a)(2)(iv), insert the following new paragraph:

"(V) any person who participates in a strike in violation of 5 U.S.C. 7311;"

Mr. RUDD (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. RUDD. Mr. Chairman, this slight but important addition to the exclusions from the definition of "employee," in the Udall substitute to Collins, amendment and, re-states in clear and unequivocal language that strikes against the Federal Government are illegal and punishable.

By adding this exclusion, we will remove any doubt about the intent of this Congress and this legislation with regard to strikes by Federal employees.

The effect of this amendment is straightforward.

An employee who strikes is no longer eligible to work for the Federal Government.

Such a person would no longer enjoy the protections and benefits of this legislation.

This provision is consistent with the penalties already contained in title 5 of the United States Code.

It is, in fact, more lenient than the provisions of title 18, which allows fines and imprisonment for strikers.

These penalties are consistent with the provisions of Executive Order 11491.

But more importantly, this amendment is consistent with the original and overall intent of this legislation—to

facilitate the removal of those employees who are inadequate in the performance of their jobs.

For there can be no more inadequate performance than total abandonment of job responsibilities in order to strike.

It has long been recognized that public employment is quite different than private sector employment.

These differences are most acute when it comes to labor relations in general, and strikes in particular.

Strikes deprive the public of services for which there is no alternative source of supply.

Some of these services, including many provided by the Federal Government, are so critical that their disruption threatens the public well-being.

Many other strikes by Federal employees would cause extreme hardship to individuals and businesses across this country.

Just this summer, we have seen too many American cities thrown into chaos by striking police, firefighters, garbage men, and others seeking to force these cities to capitulate to their demands.

Such actions are nothing short of blackmail—the actions of a narrow-interest group holding public welfare hostage in order to achieve their own selfish ends.

There can be no question that we need to ban public sector strikes.

The threat to the public is unthinkable.

The tactic is intolerable.

Title VII of this bill must very clearly restate the intent of Congress that

[From 124 Cong. Rec. H 9641
(daily ed. Sept. 13, 1978):]

strikes against the Federal Government are illegal and punishable.

This amendment accomplishes that purpose.

I urge its adoption.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. RUDD. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, in a burst of good fellowship between Arizonans, if the gentleman wants to save time for other Members who have more contentious amendments, we are prepared to accept this one. It is already in the law.

Mr. RUDD. Mr. Chairman, I thank the

gentleman very much. This amendment nails it down.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Arizona (Mr. RUDD) to the amendment offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

AMENDMENT OFFERED BY MR. ERLBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. ERLBORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLBORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Newly designated section 7112 of subpart F of part III of title V, United States Code, is amended by inserting after subsection (c), a new subsection (d) (and redesignating the subsequent subsections accordingly) which reads as follows:

"(d) Any employee who is engaged in the administration, interpretation and enforcement of the Federal Election Campaign Act of 1971, as amended, shall not be represented by any labor organization which maintains a political action committee or which is affiliated, associated, or connected with an organization which maintains a political action committee; nor shall such employees be represented by a labor organization which expressly advocates the election or defeat of any candidate for Federal Office."

Mr. ERLBORN (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with, and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

(Mr. ERLBORN asked and was given permission to revise and extend his remarks).

Mr. ERLBORN. Mr. Chairman, this amendment addresses what I consider to be a very serious problem, and that is the possible conflict that Federal Election Commission employees will face if they belong to and are represented by a labor union that is subject to supervision under

the Federal Election Act. I do not stand alone, nor was I the one first to observe the problem, and I do not stand alone in looking for a solution.

I have here a letter dated July 20 of this year from the Federal Election Commission and signed by all of its members. The Commission itself and the members of the Commission are deeply concerned about this conflict. I will read it in part. The letter is addressed to the President and it says:

DEAR MR. PRESIDENT: The undersigned members of the Federal Election Commission, by this letter, urge that appropriate steps be taken to exempt the Federal Election Commission and its staff from collective bargaining with, and representation of employees by, labor unions which maintain political action committees or which endorse or support Federal candidates.

The letter goes on to ask that under the Executive order or through an amendment to the bill before us the Commission be exempt from having to recognize the union that they are supervising under the act. I think that is a reasonable request. I am surprised that the committee, knowing of the concerns of the Commission, did not respond and adopt in committee an amendment such as the amendment offered here.

The sole effect of my amendment is to say that unions that maintain political action committees or who endorse candidates for Federal office may not represent the employees of the Election Commission. The two conditions are conditions that would subject a union to supervision by the very people we are talking about here. I do not see any way we can reach any other conclusion than that there is a clear conflict of interest, if we have a member of the union investigating the very union that he belongs to.

I would hope that the committee would see fit to agree to this amendment.

Mr. FORD of Michigan. Mr. Chairman, I rise in opposition to the amendment.

(Mr. FORD of Michigan asked and was given permission to revise and extend his remarks.)

Mr. FORD of Michigan. Mr. Chairman, with all due respect to my colleague, the gentleman from Illinois (Mr. ERLÉN-BORN), the purpose that his amendment purports to carry out is a laudable one and one on which we are in total agreement. But, unfortunately, to reach his end he is driving a tractor across the front lawn, and it really is not necessary; a lawnmower would do the job.

I am sure that the gentleman has no way of knowing about the background of this. First of all, consider that what we are talking about is a bargaining unit of 150 employees which last week held an election to determine whether or not they wanted to belong to a union, and in fact selected the union to which they would belong. Seventy-five percent of all the employees in the unit participated in the secret election, as the gentleman has indicated he would like the practice to be, and 80 percent of those who participated in the election voted to select the National Treasury Employees Union as their collective bargaining agent. So, in fact, we are now at the point today where the FEC is required under the existing Executive order, not under this bill but under the existing Executive order, to begin

bargaining with a union that has been selected by its employees to represent its employees. Furthermore, it should be noted that the FEC is coming to us, that group of people who I am sure all of us think so fondly of as having done a wonderful job with the attempts we have made in reforming the election law, with a unanimously passed resolution saying that their highly laudable purpose is simply to avoid a conflict of interest. Baloney! Their highly laudable purpose is that they have a work force that is sufficiently concerned about representation to have an 80-percent vote to select a union to represent them.

What union did they select? Not a union that represents blue collar workers, not a union that represents a wide spectrum of the Federal work force; in fact, not even a union affiliated with the AFL-CIO, but an independent union which has grown out of representing Internal Revenue agents.

What is amazing is that a union made up entirely of professionals, that includes every office of the Internal Revenue Service in the United States, cannot be trusted to conduct audits if they belong to a union, if they are working for the FEC; yet those employees that belong to that union audit you and I as citizens. They audit every union in this country. They audit every nonprofit organization in this country and they audit every corporation from General Motors on down.

Now, the FEC came to us and talked to us about this. We said, "Look, this can be solved," and we conferred with Chairman THOMPSON of the House Committee on Administration. The solution of the problem is in the Federal

election law to provide that if a union representing the employees of the Federal Election Commission has a PAC and it comes within the purview of the law that that pact is to be audited, then the FEC would be required to go outside and get an independent auditor.

Now, how many times a year are they going to audit their own union PAC. Every month, every 2 months or every 10 years? Or only when they think there is some reason to audit them, or when they come up by the luck of the draw?

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. FORD of Michigan. Mr. Chairman, if this was the first attempt to prevent them, to save themselves from sitting down and bargaining in good faith with their employees, it would not be all that bad. What they first did was that the Federal Election Commission, 150 employees, was not under the existing Executive order as an appropriate bargaining unit and they tried to prevent their employees from joining a union by indicating they would not recognize that their employees constituted within the purview of the present Executive order a bargaining unit. That was appealed to the assistant secretary, who determined that, indeed, the employees of the Federal Election Commission were an appropriate bargaining unit under the Executive order that has been in effect since

[From 124 Cong. Rec. H 9642
(daily ed. Sept. 13, 1978):]

1962. They then appealed to the administration and asked the White House to change the Executive order. In other words, after having determined that the rules provided that they could not prevent the employees from joining the union and bargaining with them, they then went around the process and attempted to change the rules by saying, "Take us out of the Executive order." They were refused.

Now, after those efforts to prevent the employees from joining a union and to save themselves from bargaining with their employees, the same as every other Federal agency, they now come to us under the guise of trying to protect the purity of their audits, to try to accomplish by indirection that which they could not accomplish directly.

I will pledge the gentleman from Illinois my full support before the House Committee on Administration and on this floor for clear language in the Federal election law amendments when they come to us that specifically lawfully requires that the Federal Election Commission seek outside independent audits on any occasion when the activity of a union representing its employees are involved. I think that is the proper way to do it. We should not leave here being accused of having literally ex post facto legislated out of existence a bargaining unit.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has expired.

(On request of Mr. ERLENBORN, and by unanimous consent, Mr. FORD of Michigan was allowed to proceed for 2 additional minutes.)

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. Yes, I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, I appreciate what the gentleman from Michigan (Mr. FORD) has said, and I hope that that clear expression is forthcoming in the Federal election law or the report accompanying it.

But the gentleman is referring, I think, only to audits. There is the other question raised by this amendment, and that is as to employees belonging to a union that has endorsed a candidate for Federal office. Now, that means that we will have employees of the commission who may be investigating that very candidate or the committee supporting the candidate that they have endorsed or who may be investigating the opponent of the candidate they have endorsed. That goes beyond the question of audits.

How would the gentleman suggest that, without the adoption of an amendment such as this, we ward off that kind of conflict of interest?

Mr. FORD of Michigan. Mr. Chairman, I will say to the gentleman from Illinois (Mr. ERLENBORN) that I do not really think that we do that. What the latter part of the gentleman's amendment suggests is this—and I frankly did not allude to it—in addition to the other conditions, any "labor organization which expressly advocates the election or defeat of any candidate for Federal office."

Now, is it not rather interesting that of all the unions in this country repre-

senting employees in the private sector, in and out of right-to-work States, it has never occurred to anyone to change the National Labor Relations Act to affect the ability of the members of a group to belong to a union if in fact that union takes a position in elections?

This would make the FEC distinct and different from every other collective bargaining unit in the U.S. Government.

I am frankly ashamed of the fact that the Members of my party voted on FEC to ask for this kind of an amendment. I think it is the most undemocratic—with a small “d”—proposal I have ever heard. I think it is an absolute outrage, and it is an insult to every Member in this House who worked for election reform and for the purity of the electoral process.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. Ford) has again expired.

(On request of Mr. ERLENBORN, and by unanimous consent, Mr. Ford of Michigan was allowed to proceed for 2 additional minutes.)

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield further?

Mr. FORD of Michigan. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, let me point out that there are two portions of my amendment. One is as it applies to the political action committees and proscribes belonging to a union or a group that is affiliated with a union that maintains a political action committee.

Mr. FORD of Michigan. Mr. Chairman, if I might put the gentleman's mind to rest, I suspect there is a little jealousy in there someplace. The fact is that this is an independent union which got there “fustest with the mostest” and beat the AFL-CIO to the punch and got the bargaining unit. That might have something to do with some attitudes in this House about whether or not we want to protect what they have done.

They are not affiliated with any other union. They are an independent union, representing Treasury agents, IRS agents, and similar types of Federal employees.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. Yes, I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, I was going to point out that in the second part of my amendment the language is addressing the prohibition against be-

longing to a labor organization that expressly advocates the election or defeat of a candidate for Federal office, and we left out that portion about being “affiliated with.”

So we could have in this instance a union local that is affiliated with the AFL-CIO, and the AFL-CIO could advocate the election or defeat of a candidate and not violate this particular amendment.

What we are saying is that the union local representing the FEC employees should not advocate the election or defeat of a candidate for office. I think it is quite apparent that they ought not do that. We ought not have the regulators under our Federal election laws advocating the election or defeat of the very people who are running for office and subject to their jurisdiction.

Mr. SOLARZ. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to ask the gentleman from Illinois (Mr. ERLENBORN), the author of the amendment, a few questions.

I gather it is the purpose of this amendment to in effect deal exclusively with the FEC, and with no other Federal agency.

Mr. ERLENBORN. If the gentleman will yield, that is correct.

Mr. SOLARZ. If that is in fact the case, I wonder if the gentleman could explain what seems to me to be a potentially significant ambiguity in this amendment. As I read the amendment, it says that any employee who is engaged in the administration, interpretation, and enforcement of the Federal Election Campaign Act of 1971 shall not be represented by any labor organization which maintains a political action committee, and then it goes on. Now, it seems to me that this might very easily be interpreted to apply, for example, to employees in the Justice Department who have the responsibility for the enforcement of the criminal penalties in the FEC law, and that, in this sense, the gentleman's amendment might not only prohibit the employees of the FEC from being represented by a labor union, but might also prohibit, unintentionally and unwittingly, but nevertheless inescapably, employees of the Justice Department, who are engaged in the administration and enforcement of this law, from being represented by unions as well.

Mr. ERLENBORN. If the gentleman will yield, as the gentleman now calls my

attention to it, that might very well be the interpretation. The language, by the way, of this amendment is not language that I drafted but, rather, is an amendment drafted by the Federal Election Commission and suggested by them.

Let me point out to the gentleman that the Udall substitute to which this amendment is being offered has language relative to the exclusion of a similar nature for those units of Government administering Federal labor-management relations laws. And let me quote. It excludes from any bargaining unit employees engaged in "administering any provision of law relating to labor-management relations."

I think, likewise, there you might have the Solicitor's office, or possibly even the Justice Department, administering in some fashion the criminal law, the criminal sections in the National Labor Relations Act. So the same sort of language is used by the committee and by the gentleman from Arizona (Mr. UDALL).

Mr. SOLARZ. This is the gentleman's amendment, and I do not think that it would be appropriate for us to pass an amendment of this nature unless we had a very specific idea of what it meant and what it did not mean.

Is it the gentleman's intention that this amendment apply solely to the FEC?

[From 124 Cong. Rec. H 9643
(daily ed. Sept. 13, 1978):]

Mr. ERLÉN BORN. That is my intention.

Mr. SOLARZ. I thank the gentleman for that clarification. I think it makes the amendment less unfortunate than it otherwise would have been, but I do at this point, having received that clarification, nevertheless want to indicate that I support the observations made by the gentleman from Michigan. I urge my colleagues, this clarification notwithstanding, to vote against the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLÉN BORN) to the amendment offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. ERLÉN BORN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 166, noes 217, not voting 49, as follows:

[Roll No. 763]

AYES—166

Abdnor	Goodling	Myers, John
Andrews, N.C.	Gradison	Neal
Andrews, N. Dak.	Grassley	O'Brien
Archer	Gudger	Pease
Ashbrook	Guyer	Pettis
AuCoin	Hagedorn	Poage
Badham	Hall	Pressler
Bafalis	Hammer-	Preyer
Barnard	schmidt	Pursell
Baucus	Hansen	Quayle
Bauman	Hefner	Quillen
Beard, Tenn.	Hightower	Rallsback
Blouin	Hillis	Regula
Bowen	Holt	Rhodes
Breckinridge	Horton	Rinaldo
Brown, Mich.	Hughes	Robinson
Brown, Ohio	Hyde	Rogers
Broyhill	Ichord	Rose
Buchanan	Ireland	Rousselot
Burgener	Jeffords	Rudd
Butler	Jenkins	Runnels
Carter	Jones, N.C.	Ryan
Cavanaugh	Jones, Okla.	Santini
Cederberg	Kazen	Satterfield
Clausen,	Kelly	Sawyer
Don H.	Kemp	Schulze
Cleveland	Kindness	Sebelius
Cohen	Kostmayer	Sharp
Coleman	Lagomarsino	Skuster
Collins, Tex.	Latta	Skubitz
Corcoran	Leach	Smith, Nebr.
Coughlin	Lent	Spence
Crane	Livingston	Stangeland
Cunningham	Lott	Stelger
D'Amours	Lujan	Stockman
Daniel, R. W.	Lundine	Symms
de la Garza	McClory	Taylor
Derwinski	McCloskey	Thone
Devine	McDade	Treen
Dickinson	McDonald	Trible
Dornan	McEwen	Waggonner
Duncan, Oreg.	McKay	Walgren
Duncan, Tenn.	Madigan	Walker
Edwards, Ala.	Mahon	Walsh
Edwards, Okla.	Mann	Watkins
Emery	Marks	White
English	Marriott	Whitehurst
Erlenborn	Martin	Whitley
Ertel	Mazzoli	Wilson, Bob
Evans, Del.	Michel	Winn
Findley	Milford	Wylder
Forsythe	Miller, Ohio	Wylie
Fountain	Mitchell, N. Y.	Young, Fla.
Frey	Montgomery	Young, Tex.
Gephardt	Moore	
Glickman	Moorhead,	
Goldwater	Calif.	
	Myers, Gary	

NOES—217

Addabbo	Foley	Nix
Akaka	Ford, Mich.	Nowak
Alexander	Ford, Tenn.	Oakar
Anderson,	Fowler	Oberstar
Calif.	Fuqua	Obey
Annuzio	Gammage	Ottinger
Applegate	Gaydos	Panetta

Ashley	Giarmo	Patten
Aspin	Gilman	Patterson
Baldus	Ginn	Pattison
Bedell	Gonzalez	Pepper
Bellenson	Green	Perkins
Benjamin	Hamilton	Pickle
Bennett	Hanley	Pike
Bevill	Hannafor	Price
Biaggi	Harkin	Pritchard
Bingham	Harrington	Rahall
Blanchard	Harris	Rangel
Boggs	Harsba	Reuss
Boland	Heckler	Roberts
Bolling	Heffel	Rodino
Bontor	Holland	Roncalio
Bonker	Holtzman	Rooney
Brademas	Howard	Rosenthal
Brinkley	Hubbard	Rostenkowski
Brodhead	Jacobs	Roybal
Brooks	Jenrette	Russo
Brown, Calif.	Johnson, Calif.	Scheuer
Burke, Mass.	Jones, Tenn.	Schroeder
Burlison, Mo.	Jordan	Seiberling
Burton, John	Kastenmeler	ShIPLEY
Burton, Phillip	Keys	Sikes
Carney	Kildee	Simon
Carr	Krebs	Sisk
Chappell	Le Fante	Skelton
Chisholm	Lederer	Smith, Iowa
Clay	Leggett	Snyder
Collins, Ill.	Levitas	Solarz
Conte	Lloyd, Calif.	Spellman
Corman	Lloyd, Tenn.	Stagers
Cornell	Long, La.	Stanton
Cornwell	Long, Md.	Stark
Cotter	Luken	Steed
Daniel, Dan	McCormack	Steers
Danielson	McFall	Stokes
Davis	McHugh	Stratton
Delaney	Maguire	Studds
Dellums	Markey	Thompson
Dent	Mathis	Thornton
Derrick	Mattox	Traxler
Dicks	Meeds	Tucker
Diggs	Metcalfe	Udall
Dingell	Meyner	Ullman
Dodd	Mikulski	Van Deerlin
Downey	Mikva	Vanik
Drinan	Mineta	Vento
Early	Minish	Volkmer
Eckhardt	Mitchell, Md.	Wampler
Edgar	Moakley	Waxman
Edwards, Calif.	Moffett	Weaver
Eilberg	Mollohan	Welas
Evans, Colo.	Moorhead, Pa.	Whitten
Evans, Ga.	Moss	Wilson, C. H.
Evans, Ind.	Mottl	Wilson, Tex.
Fascell	Murphy, Ill.	Wirth
Fenwick	Murphy, N.Y.	Wolf
Fish	Murphy, Pa.	Wright
Fisher	Murtha	Yates
Fithian	Myers, Michael	Yatron
Flippo	Natcher	Young, Mo.
Flood	Nedzi	Zablocki
Florio	Nichols	Zerferetti
Flynt		

NOT VOTING—49

Ambro	Flowers	Qule
Ammerman	Fraser	Richmond
Anderson, Ill.	Frenzel	Risenhoover
Armstrong	Garcia	Roe
Beard, R.I.	Gibbons	Ruppe
Breaux	Hawkins	Sarasin
Broomfield	Hollenbeck	Slack
Burke, Calif.	Huckaby	St Germain
Burke, Fla.	Johnson, Colo.	Stump
Burleson, Tex.	Kasten	Teague
Byron	Krueger	Tsongas
Caputo	LaFalce	Vander Jagt
Clawson, Del	Lehman	Whalen

Cochran	McKinney	Wiggins
Conable	Marlenee	Young, Alaska
Conyers	Miller, Calif.	
Fary	Nolan	

The Clerk announced the following pairs:

On this vote:

Mr. Breaux for, with Mr. Fary against.
 Mr. Teague for, with Mr. Richmond against.
 Mr. Broomfield for, with Mr. Hawkins against.
 Mr. Burke of Florida for, with Mr. Krueger against.
 Mr. Del Clawson for, with Mr. Ammerman against.
 Mr. Frenzel for, with Mr. Garcia against.
 Mr. Ruppe for, with Mr. St Germain against.
 Mr. Vander Jagt for, with Mr. Beard of Rhode Island against.
 Mr. Wiggins for, with Mr. Miller of California against.
 Mr. Burleson of Texas for, with Mrs. Burke of California against.
 Mr. Risenhoover for, with Mr. Conyers against.

Mr. EDGAR changed his vote from "aye" to "no."

Messrs. HIGHTOWER, WHITE, SHARP, D'AMOURS, BLOUIN, and GLICKMAN changed their vote from "no" to "aye."

So the amendment to the amendment offered as a substitute for the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there other amendments?

AMENDMENT OFFERED BY MR. ERLBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. ERLBORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLBORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Newly designated section 7104(f) (1) of subpart F of part III of title V, United States Code, is amended by inserting before the final period the words "only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office".

Mr. ERLBORN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

(Mr. ERLNBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLNBORN. Mr. Chairman, this amendment will add a requirement to the exercise of the authority by the President to remove the General Counsel for the Federal Labor Relations Authority. Under the National Labor Relations Act the Board has a General Counsel very similar to the General Counsel created by this act. In the instance of the General Counsel for the NLRB, he may be removed only upon notice and hearing and good cause. The members of the Federal Labor Relations Authority themselves are subject to removal for cause only. This amendment will merely add the language that is already in the act relative to the members of the Authority and apply it to the General Counsel so that the General Counsel could be removed only for cause.

[From 124 Cong. Rec. H 9644
(daily ed. Sept. 13, 1978):]

I would hope that the amendment would be adopted.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield to me?

Mr. ERLNBORN. I will be happy to yield to the gentleman from Michigan.

Mr. FORD of Michigan. I thank the gentleman for yielding.

I must say to the gentleman that I believe that I offered a similar amendment in the committee, and it was defeated. I am honor bound by the agreement to support the compromise that has been worked out to vote against the gentleman's amendment, but I obviously have no quarrel with it in principle and wish that I had won in the committee.

Mr. ERLNBORN. If I understand the gentleman correctly, then he would be very pleased if the amendment were adopted. I hope the amendment will be adopted.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLNBORN) to the amendment offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

The CHAIRMAN. Are there other amendments?

AMENDMENT OFFERED BY MR. ERLNBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. ERLNBORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLNBORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Newly designated section 7111(b) of Subchapter II of subpart F of part III of title V, United States Code is amended by striking "(b)(1)" and substituting therefore "(b)"; and is further amended by striking from presently designated 7111(b)(1)(B) the words "Except as provided under subsection (e) of this section, if" and substituting therefore "if", and by striking the words "subject to paragraph (2) of this subsection"; and by striking all of paragraph (2), including (2)(A) and (2)(B).

Mr. ERLNBORN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

(Mr. ERLNBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLNBORN. Mr. Chairman, the Udall substitute before us has a provision that would mandate the conduct of an election for recognition purposes even though there may be unresolved outstanding issues such as who is eligible to vote, what the proper unit is for conducting the election, and so forth.

The thrust of my amendment is to remove the requirement for the election under these circumstances so that the election would be held only when these

unresolved issues have been resolved, and it would also be my understanding that there would be an expedited resolution of the outstanding issues so that we would not have a delay in the conduct of the election. It is not my purpose to add to any delay in conducting a recognition election, but rather to see that when the election is held we know what the proper unit is for conducting the election and who within that unit is eligible to vote, because should these questions be resolved in some way contrary to the way the election was conducted, it would throw the election out and merely delay

matters and force the holding of another election anyhow. So this would have us resolve these questions in an expedited election and then hold the election in the best interests of all the parties.

I would hope that the amendment would be agreed to.

Mr. CLAY. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I will be happy to yield to the gentleman from Missouri.

Mr. CLAY. I thank the gentleman for yielding.

It is not the gentleman's intention to oppose expedited elections; is it?

Mr. ERLENBORN. In response to the gentleman, certainly not. I want these elections to be held within a reasonable period of time, but I want to see that the questions as to eligibility, and so forth, are resolved before the election is held.

Mr. CLAY. Mr. Chairman, if the gentleman will yield further, it would also be the gentleman's intention that the FLRA should no all within their power to expedite elections?

Mr. ERLENBORN. Yes, absolutely. I want the authority to expedite the resolution of these questions, so that the election may be held at an early day.

Mr. CLAY. Mr. Chairman, I have no objection to the amendment.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. Mr. Chairman, would I be properly stating the intent of the gentleman's amendment to be predicated on the fact that under existing law and the law as it would remain with the passage of this bill, unlike the private sector, management, in this case the Federal Government, must remain neutral, completely neutral, and not participate in any way in encouraging or discouraging the acceptance or selection of a union by its employees and, therefore, the sense of concern that was in the Labor Reform Act does not exist here.

The gentleman intends that they should expedite the elections as early as possible, but the protection for the employer to have time to campaign is not necessary here, so that a specific time as we had set up in the bill really is unnecessary.

Mr. ERLENBORN. Mr. Chairman, I think the gentleman is correct. I would agree with that.

The CHAIRMAN. The question is on

the amendment offered by the gentleman from Illinois (Mr. ERLENBORN) to the amendment offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

AMENDMENT OFFERED BY MR. ERLENBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. ERLENBORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Newly designated section 7111(b)(1)(B) of subchapter II of subpart F of part III of title V, United States Code is amended by striking the words "Except as provided under subsection (e) of this Section, if", and substituting therefor "If"; and section 7111 is further amended by striking all of subsection (e) and redesignating the subsequent subsections accordingly.

Mr. ERLENBORN (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with, and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman, this amendment strikes sections of the Udall substitute which allow certification of a labor organization without an election of the employees of the unit, where in the terms of the amendment a free election cannot be held because of unfair labor practices by an agency.

Now, first of all, it is very unlikely that you would find a Federal agency engaging in unfair labor practices prior to the holding of a certification election.

The amendment goes on to say in the second condition where the authority determines without an election, that the union has a majority. I think it is impossible for the authority to be able to find that a majority of the employees wish to belong to a union without the holding of an election.

The Udall substitute would allow the certification of a union under these circumstances without the holding of an election.

Mr. Chairman, so that I not be misunderstood, I am not addressing myself to a bargaining order. As far as I understand, the authority would still be able to order the agency to engage in bargaining with the union, even though an election had not been held, if they find these conditions exist; so that what we want to get to here is the certification, not a bargaining order. The certification, of course, carries with it certain rights to certain further recognition of the union. For instance, I understand if they are certified, that closes the question as to exclusive representation for a year. If there is a bargaining order, those same conditions do not prevail.

[From 124 Cong. Rec. H 9645
(daily ed. Sept. 13, 1978):]

Mr. Chairman, I would be happy to yield to the gentleman from Michigan, if the gentleman has any comment or question.

Mr. FORD of Michigan. Mr. Chairman, as I understand the intent of the gentleman's amendment is not to reverse entirely what is here coming from the Supreme Court decision in NLRB against Gissell, but really to eliminate the card check provision in lieu of an election for the initial recognition; but that the gentleman does agree that in the event a Federal agency interfered in some fashion or did not cooperate in the holding of the election and going forward, that the labor authority would continue to have the authority to step in and tell them to start playing fair and issue bargaining orders and require the agency to begin bargaining with the union.

Mr. ERLENBORN. Yes. I would agree that the authority would have the right to find if there were an unfair labor practice by the agency, and as I understand it, they may even be able to order bargaining with the unit. But this gets only to the question of certification, and it does conflict with the Gissel decision.

Mr. FORD of Michigan. Mr. Chairman, I thank the gentleman. With that understanding, I have no objection to the gentleman's amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLENBORN) to

the amendment offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

AMENDMENT OFFERED BY MR. ELLENBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT BY MR. COLLINS OF TEXAS

Mr. ERLENBORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Amend newly designated section 7103 of subpart F of part III of title V, United States Code by striking the "or" after subparagraph 7103(a)(4)(B); by inserting an "or" after subparagraph 7103(a)(4)(C); and by inserting the following new subparagraph 7103(a)(4)(D):

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

Mr. ERLENBORN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. FORD of Michigan. Mr. Chairman, reserving the right to object, I have a printed copy of the gentleman's amendment. I understand that the staff has worked out some change in its original typed copy. My copy does not show any changes.

Am I correct in my understanding?

Mr. ERLENBORN. Mr. Chairman, if the gentleman will yield, my understanding is not that there was any change in the wording of the amendment, but I think in the interpretation of the amendment it gets to the question as to whether decertification is automatic or not.

Mr. FORD of Michigan. Mr. Chairman, continuing under my reservation, counsel over here indicates that the words, "or" and "assists" were deleted.

Mr. ERLENBORN. Mr. Chairman, if the gentleman will yield further, let me amend my statement. I understand there is an agreement to remove the words,

"assists, or". So the amendment will read: "an organization which participates in the conduct of a strike * * *"

I understand the amendment that was submitted at the desk has been so changed.

Mr. FORD of Michigan. Yes, Mr. Chairman, I thank the gentleman, and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. CLAY. Mr. Chairman, reserving the right to object, so I may clarify the understanding, the agreement was to remove the words, "assist, or," is that correct?

Mr. ERLENBORN. Mr. Chairman, if the gentleman will yield, that is correct. The amendment at the desk has been so changed.

Mr. CLAY. Mr. Chairman, we have no objection to the amendment, and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to ask the gentleman this question: It is the understanding of the gentleman from Illinois (Mr. ERLENBORN) that it would still be up to the labor authority to determine whether or not this provision applies?

Mr. ERLENBORN. Mr. Chairman, if the gentleman will yield, yes, that is correct. This would leave the discretion in the FLRA as to whether or not the decertification should be applied. It will not happen automatically.

Mr. FORD of Michigan. Mr. Chairman, I thank the gentleman for his answer. We have no objection to the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLENBORN) to the amendment offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment to the amendment offered as a substitute for the amendment was agreed to.

AMENDMENT OFFERED BY MR. ERLENBORN TO THE AMENDMENT OFFERED BY MR. UDALL AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. COLLINS OF TEXAS

Mr. ERLENBORN. Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amend-

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN to the amendment offered by Mr. UDALL as a substitute for the amendment offered by Mr. COLLINS of Texas: Strike newly designated section 7113 of subpart F of part III of title V, United States Code, and redesignate the subsequent sections accordingly; and amend newly designated section 7117 by striking all of subsection (d).

Mr. ERLENBORN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. ERLENBORN. Mr. Chairman, let me initially say that I thank the gentleman from Michigan (Mr. FORD) for his cooperation, and I am certain that the Members of the House thank him for his cooperation in expediting the consideration of title VII. I am very pleased that I have been able to cooperate with the gentleman and that our staffs have worked together so well.

For the information of the House, this is the last amendment I am going to offer to title VII.

We have no agreement relative to this amendment, but I would like to have some colloquy so that we could understand what the bill and the Udall substitute mean in the section entitled, "National Consultation Rights."

Now, as I read this, a union representing a minority of the members may gain national consultation rights. Certain rights and privileges then attach to that union. One is that they must be informed before changes in pay and other working conditions are put into effect by the agency involved. My reading of this section of the Udall amendment and the bill would lead me to believe that this could happen: It may not be contemplated by the authors, but we could have national consultation rights attached to a minority union and then another union would be successful in a certification election and be certified as the exclusive bargaining agent, and thereafter the bargaining would take place. But before the agreement that was reached by the majority union and the agency could be put in place, the agency would have to go back to the minority union which is not certified as a bargaining agent and advise them and let them comment on the results of the negotiations.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield?

Mr. ERLLENBORN. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. Mr. Chairman, first, I would like to say, in response to the gentleman's very last statement, if there is an exclusive right to bargain, the consultation provision really is not applicable.

There are two ways in which the consultation works, and I should say to the gentleman that it is in the Udall substitute. I assume it is in the Collins substitute because it is in the existing executive order. This is in fact the law as it has been since 1962.

[From 124 Cong. Rec. H 9646
(daily ed. Sept. 13, 1978):]

Mr. ERLLENBORN. Could I ask the gentleman, is that what is commonly referred to as meet and confer?

Mr. FORD of Michigan. Meet and confer. It works in two ways. If, in a large agency, the agency promulgates an agency-wide regulation, but a particular union, while it represents a majority of the people in a bargaining unit, does not represent the majority of the people in the total agency, the agency has no obligation to negotiate in any way with the union, but before promulgating an agency-wide regulation that would affect the rights of that bargaining unit, they would meet and confer with the representatives of those employees. They could ignore what they say, but at least they would have to get their input and discuss it with them. They are not compelled to bargain over the issue, nor are they in any way bound by the results of that conference.

The second way in which it works is the situation where we have 26 or more unions representing Federal employees, plus a number of associations and organizations that stand in the place of unions and function in the same fashion, and they may represent individual agencies, and then it is proposed to promulgate a Government-wide regulation that would affect all employees. In that instance the individual unions will be called into consultation to hear what they have to say about the proposed regulation. Again, there is no requirement on the Government to negotiate the matter, simply advise them they are about to do it and hear what their reaction to it is.

It really is nothing but meet and confer.

Mr. ERLLENBORN. Mr. Chairman, I thank the gentleman for the clarification of the committee's intent. I found this section difficult to understand, and I think this clarification will help in the interpretation.

Mr. Chairman, pursuant to our agreement, I ask unanimous consent to withdraw this amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. EDWARDS of Alabama. Mr. Chairman, I move to strike the last word.

(Mr. EDWARDS of Alabama asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of Alabama. Mr. Chairman, I would like to have the attention of the gentleman from Michigan (Mr. FORD) and/or the gentleman from Arizona (Mr. UDALL).

Mr. Chairman, I am directing my inquiry to section 7106 of the Udall substitute. I would like to refer, first, Mr. Chairman, to the Executive order from which this section was taken and modified, and I will read in part from the Executive order.

However, the obligation to meet and confer does not include matters with respect to the mission of an agency, its budget, its organization, the number of employees and the numbers, types and grades or positions of employees assigned to an organizational unit, work project, or tour of duty, the technology of performing its work, or its internal security practices.

Now, as I read the Udall substitute, that portion of the Executive order has been, in effect, split up into two parts. The Udall substitute says, under "management rights," section 7106:

"(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

Then it drops down in subsection (b) and says:

"(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;

My first question, then, to the gentleman from Michigan is, why was that particular part of the Executive order split into two parts, if the gentleman can give me an answer to that.

Mr. FORD of Michigan. I should say that the splitting of the two parts has no substantive effect on the status quo. In fact, we are picking up the language of the management rights clause, as it is referred to in the Executive order, by tailoring it to fit the structure of this bill so that it does not diminish the relative rights of either the employee organizations or the Government agency with respect to any of the contents of both sections the gentleman referred to.

Mr. EDWARDS of Alabama. The Executive order says that there shall be no obligation to meet and confer on "numbers, types, and grades of positions or employees assigned to an organizational unit, work project, or tour of duty," and so forth; in other words, down at the base level in the case of a defense facility, for example. Yet, in the Udall substitute it says they are not "precluded" from meeting and conferring which suggests that under the heat of bargaining they in fact could negotiate and bargain at that level. Is the Defense Department or any other Federal agency, for that matter, required to bargain on those particular subjects?

Mr. FORD of Michigan. Will the gentleman yield?

Mr. EDWARDS of Alabama. I yield.

Mr. FORD of Michigan. It is permissible, and it is in exactly the same status as the existing law. I might say that not only are they under no obligation to bargain, but in fact they can start bargaining and change their minds and decide they do not want to talk about it any more, and pull it off the table. It is completely within the control of the agency to begin discussing the matter or terminate the discussion at any point they wish without a conclusion, and there is no appeal or reaction possible from the parties on the other side of the table.

It is completely, if you will, at the pleasure and the will of the agency. Where an agency wants to resolve a particular problem with an organization and come to some agreement, it can choose to do so. There are circumstances where that has been done, but very rarely.

Mr. EDWARDS of Alabama. Is it an issue that could go forward to the Impasse Board?

Mr. FORD of Michigan. No, it cannot. Mr. EDWARDS of Alabama. So that, if I understand the gentleman correctly—and I will use the Defense Department again as an example—if the Defense Department chooses not to negotiate on the subject of "numbers, types and grades of positions or employees assigned to an organizational unit, work project, or tour of duty," and so forth, as provided in that subsection (b) (1), then there is no way that they can be forced to negotiate on those subjects?

Mr. FORD of Michigan. That is correct.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

(At the request of Mr. FORD of Michigan and by unanimous consent, Mr. EDWARDS of Alabama was allowed to proceed for 2 additional minutes.)

Mr. EDWARDS of Alabama. And if they in fact start negotiating on those subjects and conclude at some point that they should not negotiate further, there is no way to force them to negotiate further?

Mr. FORD of Michigan. That is correct. It is completely within the discretion of one side of the table, and there is no appeal from their decision.

Mr. EDWARDS of Alabama. It is the gentleman's opinion, if I understand the gentleman correctly, that the intention of the drafters of this particular section of the Udall substitute is that, in practical effect, they have intended to carry out the original language of the Executive order, but have just rearranged it in a different way.

Mr. FORD of Michigan. I believe that those of my colleagues who have worked on the bill could concur with me that it was not our intention to substantively affect the status quo with respect to specific items contained in either of the sections involving items that are permissibly negotiable.

Mr. EDWARDS of Alabama. I thank the gentleman.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Chairman, I concur with the interpretations of the gentleman from Michigan and I would say regarding the management rights it may be argued that we should be moving more favorably toward the management rights than away from them.

Mr. EDWARDS of Alabama. I thank

the gentleman.

Mr. LOTT. Mr. Chairman, I move to strike the last word, and I rise in support of the Collins amendment.

(Mr. LOTT asked and was given permission to revise and extend his remarks.)

Mr. LOTT. Mr. Chairman, I rise in support of this title VII amendment, which would continue the successful labor management program established by Executive order in 1962.

[From 124 Cong. Rec. H 9647
(daily ed. Sept. 13, 1978):]

The language of the amendment is, with minor changes, identical to that of the Executive order and to the title VII approved by the Governmental Affairs Committee of the other body.

Title VII as reported to the House contains some extremely controversial material and cannot properly be called a mere codification of the Executive order. Title VII as reported would allow the FLRA, under certain conditions, to extend exclusive recognition to a union without an election by the employees concerned; it would allow a union with as little as 10 percent representation to negotiate with an agency for a voluntary dues checkoff; it would nullify the Executive order's decertification provisions against unions which condone or participate in strikes; and it would even allow the so-called "informational" picketing of an agency.

Mr. Chairman, these are not provisions which we can make consistent with the general principles of civil service reform. We should repeal them by passing this amendment. It has already been pointed out how much further title VII as reported goes beyond the Executive order, the President's initial request, and concessions granted by the other body in its bill. I just have some general remarks on the substance of title VII as reported and the need for replacing it with the Collins amendment.

I think most of us agree that Federal employee unionism cannot fairly be compared to collective bargaining in the private sector. The Federal Government is not a private corporation responsible to a few stockholders, but a sovereign entity responsible to all taxpayers, unionized or nonunionized. Picketing a private company whose products the public may buy or not buy is very different from picketing a Government agency which the law

compels us to support with our tax dollars. The public has a right to uninterrupted, unimpeded enforcement of the people's laws, and the picketing of any agency should continue to be considered the unfair labor practice that it is.

This is done by the Collins amendment and I strongly urge its enactment.

Mr. TAYLOR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as most of the Members know, this title of the bill was one of the reasons most of us in the minority voted against reporting the bill to the floor from the committee.

I rise in support of the amendment offered by my colleague on the committee from Texas (Mr. COLLINS), and I would caution the Members to be wary of our distinguished committee vice chairman's substitute.

This is at least the second time that I know that he has taken on the role of "compromiser," offering language that supposedly strikes a "middle ground" between opposing points of view of the Carter administration and the various labor unions that operate in the Federal Government.

If the Members will refer to the individual and minority views in the committee report, they will see that the Committee's bill greatly increases the role of Federal employee unions and goes far beyond what the Carter administration originally proposed in the way of a legislated program for Federal labor-management relations.

We are being asked today to rewrite the bill; yet, the Udall substitute still contains provisions that will widen the scope of bargaining and will lead to increased unionization of Federal employees at the expense of the taxpayers.

I want to make it clear that I am not personally opposed to unions in the Federal Government. I support their efforts to improve collective bargaining, and I do believe that statutory protection of Federal employees' right to organize and bargain collectively through labor organizations is in the public interest.

But I do not believe it is in the public interest to have the taxpayer shoulder the burden of some of the incidental costs associated with maintaining a union.

The committee bill requires the deduction of union dues, and at no cost to the union or the employee. The Collins amendments continue our present arrangement of allowing—but not requiring—bargaining on this issue, and it is

generally felt that agency management would negotiate a service charge of some sort for this service. The Udall substitute makes no change in the committee bill in this respect, and asks the taxpayer to help pay for unions of Federal employees.

In another area, the committee bill allows the new Federal Labor Relations Authority to certify a union as the exclusive representative without an election. The Collins amendments would require a secret ballot election in all cases where a union seeks exclusive recognition status for the first time, which I think is the fair way to go about it. The Udall substitute, on the other hand, makes no change in the committee bill and would be another area where union power would be increased.

I urge my colleagues to support the Collins amendment.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words.

(Mr. FORD of Michigan asked and was given permission to revise and extend his remarks.)

Mr. FORD of Michigan. Mr. Chairman and members of the committee, I sense that we are very close to the time for a vote on the substitutes and the bill itself and title VII.

I would like, as briefly as I can, to repeat some of the things I said the other night about how we got to where we are.

Along with our colleagues, the gentleman from Missouri (Mr. CLAY), the gentleman from New York (Mr. SOLARZ), and other members of the committee, I have worked with the gentleman from Arizona (Mr. UDALL) and representatives of the administration throughout consideration of this legislation from the time it was introduced by the President.

I should say that I have tried to be supportive of the efforts of the administration because I think that the purposes stated by the President, when he sent the legislation to us, are purposes we can all agree with. But, as I stated before, in attempting to give the executive branch greater flexibility and greater power in terms of their ability to manage the Federal work force we have in fact, if we did nothing more than that, changed the balance that has established itself over a period of time between the employees' individual rights and their collective rights, vis-a-vis the powers and prerogatives of management.

For this reason, while considering the increased powers for management, we al-

ways had in mind that we would put together a totality here, a total package that we hoped—and obviously we had great disagreement during the months that we have considered this, on just what the final product should look like—that we hoped would represent a fair package of balanced authority for management, balanced with a fair protection for at least the existing rights the employees have.

I do not think that at this point, after all the hard work that has gone into this legislation, that we want to jeopardize the opportunity for this historic breakthrough in the reform of the American Government's backbone, its administrative work force, by letting it fall apart here in title VII.

For that reason, and not with great alacrity, I am going to support the Udall substitute even with the amendments that have been added by the gentleman from Illinois (Mr. ERLBORN) which have been considerable.

I want you to know that my staff and I know how far we have moved from our original position to come to this position.

But I have to tell you, in all honesty, that I could not, in good conscience support moving any further because there really is not much left that we can represent to the Federal employees as a retention of fair play for them.

I think it is absolutely essential at this point that we reject the Collins of Texas amendment and adopt the Udall substitute, as amended by the Erlenborn amendments, so that at least it can be shown that we did the best that was possible here to compromise conflicting views between those who feel, for whatever their reasons, that Federal employees do not need the same kind of protection that other citizens in this country have.

There are those of us who believe that ultimately, some day, we will see the time when Federal employees are no longer second-class citizens.

Mr. Chairman, let me call the Members' attention to this further fact: When we were talking about the Senior Executive Service and the power of the administration to hire career and non-career people and to shift them around and to change their careers in very dramatic ways, and when we were talking about merit pay to be given or withheld from employees in the mid-level positions as an incentive for more effective and efficient performance on their part,

we were not talking about the people who were affected by title VII. That is why the bill has to be considered in its totality.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has expired.

(By unanimous consent, Mr. FORD of

[From 124 Cong. Rec. H 9648
(daily ed. Sept. 13, 1978):]

Michigan was allowed to proceed for 3 additional minutes.)

Mr. FORD of Michigan. To continue, Mr. Chairman, the bill has to be considered as a totality because we are here talking about literally the workers themselves. These are not policymaking people. I might say that they are not bureaucrats. The complaint all across the land is against the Federal bureaucracy. They are not complaining about the people who maintain the plumbing and the electrical systems of our airbases and our military installations. These are the kinds of people we are talking about in title VII. We are talking about everybody from the janitor to the technician who keeps the airplanes operating, the people who are, in fact, keeping our Defense Establishment going day by day, who are ordinary working technicians, who do a job. They do not make decisions which affect the American public directly. They are not people within an "In" box full and an "Out" box empty on a desk occupied by a large bureaucrat. They are the people who actually do the work everyday, the work which keeps this Government operating. They are not the glamor jobs. They are just the people who take orders from almost everybody, all the way up to the President, and carry those orders out as best they can.

Mr. Chairman, what we are trying to say with title VII is that they should be reassured that their ability to function and that whatever rights the Congress from time to time gives them are protected and that they can protect themselves in their relationship with the several levels of management and that those protections are not in any way diminished and are, in fact, to a slight degree enhanced because we will be saying for the first time—and I think this is important and we ought to be very proud of it—that it is Congress that sets policy in this area. Of course, in 1962 John Kennedy took a great step forward when he issued an Executive order which said

finally that Federal employees down at the level which we are describing could join a union and engage in collective bargaining with their employer in a fashion similar to, but far short of, of course, the fashion of their brothers and sisters in the private sector.

Mr. Chairman, from time to time that Executive order has been changed. We have had succeeding administrations from both parties who have found it possible to live with and operate under the conditions of the Executive order dealing with collective bargaining.

We are not here conferring for the first time on Federal employees a new right to collective bargaining; but what we are doing for the first time as a Congress is recognizing by statute that this is the same kind of right, although different in form and substance, as exists in the private sector.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. FORD) has expired.

(On request of Mr. UDALL and by unanimous consent, Mr. FORD of Michigan was allowed to proceed for 1 additional minute.)

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. Yes, I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I think we are going to do something historic and far-reaching and important for the country today if this bill is written into the law books, as I hope it will be.

Mr. Chairman, I just want to say as strongly as I can that the gentleman from Michigan (Mr. FORD) has made it possible. Perhaps more than anyone else in this House, he has played a key, critical role. The gentleman has one of the finest minds in this House. He is articulate, and I always like to be on his side when I can. However, he has been caught in a difficult position between his strong feelings about the rights of the common ordinary Federal worker to whom he has referred and his desire to see some changes made in the nature and the direction of efficiency.

Mr. Chairman, I want to tell him how proud I am of his work and how proud the House is and the country ought to be for the role he played in bringing us to the position in which we are today.

Mr. FORD of Michigan. Mr. Chairman, I thank the gentleman from Arizona (Mr. UDALL) for his remarks. Now, I am

sure, the Members see why I am supporting the Udall substitute, even though I do not think it goes far enough.

It has been with great reluctance that I lent my support to the Udall substitute for title VII of H.R. 11280. As I said when we first had general debate on this bill, I felt that the bill as it was reported by the committee was a modest step forward in labor-management relations in the Federal sector. The Udall substitute is the product of long negotiations between the gentleman from Arizona, the administration, other Members with special interest in title VII and myself. This substitute represents an important step in getting the title and the bill passed, because it reconciles the differences between the administration's proposal and H.R. 9094, a bill with much support in this House.

While this substitute is a further compromise away from provisions that I believed to be reasonable and appropriate, there are some advances forward made in the bill over the present Executive order. It was only in light of these benefits over and beyond the Executive order that I have agreed to this amendment. In order to clarify my intentions in supporting this substitute, I would like to discuss, as a sponsor of H.R. 9094 and a major participant in the fashioning of this substitute of title VII, some specific sections of the title.

The revised management rights clause is an important element of the compromise approach by the Committee on Post Office and Civil Service and by Mr. CLAY and myself in working out and supporting the Udall compromise on title VII of H.R. 11280.

Experience under the Executive order and the interpretations of its management rights clauses by the Federal Labor Relations Council has not been particularly successful for either agency management or employee.

Originally, the order was designed to achieve a balance. On the one hand, agencies were given broad authority—and required—to negotiate over working conditions and personnel policies and practices. On the other hand existed management prerogatives that were not to be bargained away by agency administrators.

Unfortunately, this balance was never struck. Instead, the Federal Labor Relations Council interpreted the order's management rights provisions in such a way as to eliminate many subjects of

bargaining sought by both agency management and employees. In the hands of the Council, many of the management rights were interpreted so broadly that their existence in the order precluded flexibility and responsiveness needed by agency administrators.

Too often the Council interpreted the management rights clauses so broadly as to stifle an attempt by both management and employees to address commonly recognized problems. The original intention merely to insure that essential aspects of managing the agency were not subject to negotiations has been thwarted. Many agency administrators, however, found that this broad interpretation of the order prevented agency managers from addressing problems and concerns that they, as agency heads, believed required supervisory attention.

A developing trend involves sidestepping litigation before the Council in order to avoid its decisions which may be too rigid for management flexibility. Instead, agency administrators and employees representatives have simply reached agreement on contracts with provisions that were beneficial to both parties but unlikely to withstand rigid scrutiny by the Council.

Thus, agency administrators have proposed and agreed on contract terms such as flexible working schedules for employees, procedures preventing arbitrary assignment of work, standards for promotion that require performance at the next higher level for advancement. Agency administrators have determined that negotiating these non-monetary employee benefits have increased the effectiveness and the efficiency of the Government operations entrusted to them even though they implicate "management rights" as construed by the Council.

In drafting a revision of H.R. 9094 as title VII of this bill, Mr. CLAY and I attempted to alleviate these problems with the Executive order in three ways. First, some of the management rights listed in the order were omitted from title VII. Typically, these rights are those that have served to preclude agency flexibility in addressing problems recognized by both agency administrators and employees. Second, we expressly provided in the language of title VII itself that negotiations may occur over the adverse impact caused by exercise of any of the management rights in title VII and that procedures may be negotiated for the exercise of those rights. Third, we at-

[From 124 Cong. Rec. H 9649
(daily ed. Sept. 13, 1978):]

tempted to make clear that the purpose of the management rights clause is to preserve the ultimate exercise of the management functions listed. As such, the management rights clause operates as an exception to the general obligation to bargain in good faith over conditions of employment.

Adoption of this basic approach is an essential element in our working out the Udall compromise. The debate in drafting title VII focused on whether the pure exercise of an essential management function would better be protected by a case-by-case determination without statutory guidance, as under the National Labor Relations Act, or by inclusion of a management rights clause. We and the committee decided to include such a clause, but to make clear its intention that the scope of bargaining would be substantially broadened from that permitted agency management under the order. (See House Rept. No. 95-1403 at pp. 43-44.)

This approach specifically rejects the experience of the Federal Labor Relations Council and its broad interpretations of such clauses, interpretations that have tied the hands of agency management in effectively addressing agency concerns. While we very reluctantly support the Udall compromise, we do so with the clear understanding that the Authority will interpret the management rights clause within present and future labor-management realities and in no way is bound to the Council's past decisions.

A principal goal in revising the management rights clause is to change the current situation and, wherever possible, encourage both parties to work out their differences in negotiations. (See House Rept. No. 95-1403 at p. 44.) In retaining a management rights clause in our original draft of title VII, Mr. CLAY and I, as well as the committee intended however, that this section be read very narrowly. In agreeing to the Udall compromise of adding several more portions to this section, we fully intend that the committee's original position go unchanged and that this section be narrowly construed.

In adopting this course, in the Udall compromise, we implement the rationale of several decisions of relevant oversight

agencies for Federal sector labor relations. The Federal Labor Relations Council, for example, has ruled that a proposal must directly relate to the "numbers, types, and grades of positions or employees" before that proposal can be ruled nonnegotiable because it infringes on the management right under the Executive order to determine those matters. Thus, the Council has stated:

(I)t does not appear that the basic work-week for employees here proposed is integrally related in any manner to the numbers and types of employees involved. Absent this integral relationship to staffing pattern, the proposal does not conflict with section 11(b) . . . *Federal Employees Metal Trades Council of Charleston and U.S. Naval Supply Center, Charleston, South Carolina*, 1 FLRC 235, 244 (FLRC No. 71A-52) (1972).

Section 12(b)(4) of the Executive order makes nonnegotiable the management right "to maintain the efficiency of the Government operations entrusted to them." In interpreting this section of the order, the Federal Labor Relations Council has taken care to insure that this management right does not "swallow" the bulk of the bargaining obligation. Since some case can be made that virtually any change will reduce in some way the "efficiency of Government operations", the Council has required that management pass a balancing test in order to declare a proposal non-negotiable under this section. Thus, the Council has stated:

In general, agency determinations as the negotiability made in relation to the concept of efficiency and economy in section 12(b)(4) of the Order and similar language in the statutes require consideration and balancing of all the factors involved, including the well-being of employees, rather than an arbitrary determination based only on the anticipation of increased costs. Other factors such as the potential for improved performance, increased productivity, responsiveness to direction, reduced turnover, fewer grievances, contribution of money-saving ideas, improved health and safety, and the like, are valid considerations. We believe that where otherwise negotiable proposals are involved the management right in section 12(b)(4) may not properly be invoked to deny negotiations unless there is a substantial demonstration by the agency that increased costs or reduced effectiveness in operations are inescapable and significant and are not offset by compensating benefits.

Local Union No. 2219, International Brotherhood of Electrical Workers AFL-CIO and Department of the Army, Corps of Engineers, Little Rock District, Little

Rock Ark., 1 FLRC 219,225 (FLRC No. 71A-46) (1972). *Accord*, American Federation of Government Employees, National Joint Council of Food Inspection Locals and Office of the Administrator, Animal and Plant Health Inspection Service, U.S. Dept. of Agriculture, 1 FLRC 616, 620-21 (1973), *aff'd on remand* 3 FLRC 325, 345-46 (1975) (FLRC No. 73A-36). See also AFGE Local 2595 and Immigration and Naturalization Service, U.S. Border Patrol, Yuma Sector (Yuma, Arizona), 1 FLRC 71, 73-74 (FLRC No. 7-A-10) (1971).

As the sectional analysis makes clear, the Udall substitute is drafted so as to embody in the statute the approach of these and similar decisions, decisions from which the Council has unfortunately departed in the main.

The management rights section if, loosely construed, as it has too often been under the order, could tie the agency's hands in dealing with any issue. The committee equally intended then that the listed management rights were to be narrowly construed exceptions to the general obligation to bargain in good faith over conditions of employment and that section 7106 "be read to favor collective bargaining whenever there is doubt as to the negotiability of a subject or proposal." *Id.* at 44. Title VII itself is remedial legislation and those supporting the Udall change in the management rights clause continue to fully intend title VII to be broadly construed to achieve these remedial objectives. These goals are also consistent with few decisions of the relevant oversight bodies for labor-management relations in the Federal sector, as demonstrated by a recent decision of the Labor Relations Umpire in the Library of Congress.

The Library, of course, is not covered by Executive Order 11491. In 1975, the Library established by an internal regulation its own program patterned after the order and containing identical management rights clauses. However, the Library lacked statutory authority to vest final decisions in an agency outside the Library. The Library's regulation makes appropriate decisions of the Federal Labor Relations Council precedents in the Library's labor relations program.

In a recent decision, the Library's Labor-Management Relations umpire articulated, in the labor relations context of the Library, the general principles that we embodied in the substitute's management rights clause.

(I)t is certainly appropriate to apply the (management rights) concept narrowly to effectuate its apparent purpose. This same approach is dictated by accepted principles of statutory construction. Plainly, Regulation 2026 is remedial in character, designed to grant rights to employees and to unions, in an effort to improve labor relations which became exacerbated under the Library's unilateral control. The coverage or scope of such a regulation should therefore be broadly construed. See, e.g., *McComb v. Super-A Fertilizer*, 165 F. 2d 824, 826 (ast Cir. 1948), and cases there cited. Conversely, any exception to the scope of the bargaining obligation created by Regulation 2026 must be narrowly and strictly construed, and be granted only to matters unmistakably within the terms and spirit of the exception. See *A. H. Phillips Co. v. Walling*, 324 U.S. 490, 493.

In approaching issues of negotiability therefore, the Umpire starts with the premise that the Library bears a heavy burden of establishing that a matter relevant to terms and conditions of employment is nevertheless removed from the scope of bargaining. Of course, proposals which directly and explicitly go to the number of employees assigned to an organizational unit, for example, will be held non-negotiable. Where the "non-negotiability" argument is strained, or where it is presented as a conceivable secondary or tertiary result of a union proposal, however, it will be rejected. Also, the tactic of negotiating over a subject and then belatedly discovering that it is "non-negotiable" is not calculated to inspire either confidence in the labor organizations as to the good faith of the past negotiations, or confidence in reviewing authorities that the claim of non-negotiability is anything more than an expression that the proposal is unacceptable on its merits. In a program initially flawed, at least in theory, by the retention of all final reviewing authority in the hands of top management, any abuse of the doctrine of "non-negotiability" would result in turning the Library's labor relations program into what Justice Jackson colorfully described as "only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will." *Edwards v. California*, 314 U.S. 160 at 186, concurring opinion.

Library of Congress and American Federation of State, County & Municipal Employees, Locals Nos. 2477 and 2910, 5, 6-7 (decision of the labor-management relations umpire, May 17, 1978) (slip option). The structure of the substitute's management rights clause dictates that the new authority will closely [From 124 Cong. Rec. H 9650 (daily ed. Sept. 13, 1978):] scrutinize agency claims of "management rights" at least to the degree the claims

were analyzed in the above decision and in AFSCME, Local 2910 and Library of Congress, 2-4, 6-7 (decision of the labor-management relations umpire, September 5, 1978) (slip option).

It is our expectation and that of others supporting the substitute's management rights clause that such a clause will adequately protect genuine managerial prerogatives but that, construed strictly, such a clause will also allow the flexibility that is the hallmark of a successful labor-management program. Thus, although management has the right to direct the work force, proposals aimed at lessening the adverse impact on employees of an exercise, perhaps arbitrary, of that right are fully negotiable. Moreover, agency administrators are fully authorized to negotiate procedures for adequate supervision without avoiding the act. This eliminates the need for agency management to shunt the authority as it has sometimes shunned the Council and conclude an agreement without reference to the order because management cannot live with the strait-jacket that many Council decisions impose on management bargaining.

Finally, it is hoped that the Federal Labor Relations Authority will oversee a flexible Federal labor-management program responsive to changing and particularized circumstances. The concept of negotiability is and must be a dynamic and growing one. If not, Federal sector labor relations must fail because the energies of management and labor will be diverted from consideration of important labor relations problems to the litigation of the scope of the exceptions to the general bargaining obligation. Years of public and private sector collective bargaining indicate this should not happen.

The compromise position in section 7117 was accepted with the understanding that the provision in subsection (a) (3) will be broadly construed such that the compelling need test will be permitted to be raised in only a limited number of cases. If an exclusive representative represents a unit including at least a majority of the employees affected by the issuance of a regulation, the compelling need test could not be raised. This would permit, for instance, overseas schoolteachers to negotiate all agency regulations (that at least specifically apply only to them), without the possibility of having the compelling need test raised by management.

By also permitting negotiation of matters that are the subject of agency regulations that are not Government-wide rules or regulations, problems such as those that have occurred with overseas schoolteachers should be eliminated. While these teachers are employees of the Defense Department, the Department of State has been given the authority, in some instances, to issue regulations regarding these teachers. The Defense Department has indicated that they could not negotiate on these matters, since they did not issue the regulations. The State Department will not negotiate on the matters, since the employees organizations representing these teachers do not have exclusive recognition with State. Title VII prevents management from continuing this practice or from extending this type of maneuver to other agencies in order to avoid the duty to bargain by making "matters" that are the subject of non-Government-wide regulations (as opposed to regulations themselves) negotiable. It is intended that the Authority shall not permit such a maneuver to derogate the obligation of management to bargain in good faith on these matters.

Again, an essential element in performance of the authority's responsibilities is an extremely close scrutiny of agency claims that proposals are barred by the management rights clause. The two decisions of the labor-management umpire contain the level of scrutiny we expect from the Authority as a minimum.

Section 7117 sets forth the duty to bargain in good faith, especially with respect to regulations. Under the compromise version, Government-wide rules and regulations are no longer subject to bargaining as they were under the committee print of title VII (except for those supported by a compelling need). In this fashion, Government-wide rules and regulations are thus a major exception to the duty to bargain. In making this change, however, the committee at no time expanded the definition of "Government-wide" as contained in the committee's report.

Section 7103(a) (14) (D) removes from the definition of "conditions of employment" those policies, practices and matters to the extent such matters are specifically provided for by Federal statute. The committee print of title VII contained the word "specifically," also found in the compromise version, in or-

der to clarify the intention of the committee on the scope of this exception to conditions of employment. Where a Federal statute specifically establishes procedures and standards for a condition of employment, section 7103(a)(14)(D) bars negotiations in contravention of those procedures and standards. On the other hand, where a statute merely provides particular authority for an agency official (with that authority to be exercised at the official's discretion and in such manner as the official deems appropriate), that authority and its exercise are not included within the definition in section 7103(a)(14)(D) because it is not "specifically provided for by Federal statute."

Section 7113(b)(2) requires that an agency consider the views or recommendations of any labor organization with national consultation rights before taking final action on any matter for which the views or recommendations were presented. The action resulting in the compromise version of title VII with respect to negotiations over Government-wide and agency regulations reduces the scope of bargaining with respect to such regulations from that in the committee print of title VII. This action was agreed to in part because we believed that section 7113(b)(2) insured genuine consideration by agency officials of views and recommendations presented by labor organizations. It is our intention that it ought to be obvious from the contents of the written statement required under subsection (b)(2)(B) that the agency has in fact considered the views and recommendations of the labor organizations. This aspect of the written statement is also necessary for the agency to establish an adequate record for later judicial review of the lawfulness of its promulgation of the regulation.

Section 7116(b)(7) contains language adopted in lieu of the Federal Labor Relations Council policy statement in this area.

Section 7114(a)(3)(A) specifically provides that an exclusive representative shall be given the opportunity to appear at formal discussion between agency representatives and employees. This subsection must be read in conjunction with subsection 7114(l)(1), requiring that a labor organization which has been accorded exclusive recognition is the exclusive representative for employees in its bargaining unit, and with subsection 7116(a)(8) which makes it an unfair la-

bor practice for an agency to fail to comply with any provision of title VII, including the exclusivity rights of labor organizations with exclusive recognition. The compromise inserts the word "formal" before discussions merely in order to make clear that this subsection does not require that an exclusive representative be present during highly personal, informal meetings such as counseling sessions regarding performance. Of course, nothing in this section bars an agency and an exclusive representative from negotiating an agreement providing for a greater role for the representative than that minimally mandated by title VII. Moreover, nothing in this section authorizes agency management to bypass the rights of the exclusive representative and engage in direct communications with unit members.

Section 7132(b) of the compromise precludes the use of official time by employees for conducting the internal business of a labor organization. This subsection specifically provides that employees shall not solicit membership, engage in electioneering, or collect dues on official time. The inclusion of these three categories reflects the general intention that "the internal business of a labor organization" encompasses those activities directed to the institutional structure of such organizations. This section does not, therefore, apply to activities of labor organizations that involve an "interface" with agency management, such as negotiations, grievances, negotiability disputes, and unfair labor practices. Nor does this section apply to preparation for such "interface" activities. Management, of course, engages in all these activities, including preparation, on official time, and subsection 7132(d)(2) makes the use of official time by employees for these activities a subject of negotiated agreement between the agency and the exclusive representative.

Section 7136(1)(1) of the compromise version provides that nothing in title VII will preclude the renewal or continuation of an exclusive recognition or a lawful agreement. This subsection re-

[From 124 Cong. Rec. H 9651
(daily ed. Sept. 13, 1978):]
fects the intention that successful on-going labor-management relationships shall not be disputed by enactment of title VII. Since the purpose of this title is principally to encourage the development of successful labor-management

programs, it would have been inappropriate for this new legislation, designed to encourage collective bargaining, to operate in such a way as to thwart successful collective bargaining programs already in existence. The intention is to encourage development of these already successful programs while at the same time encourage the development of such relationships between other agencies and labor organizations. Certainly, it is important in this regard to consider the past bargaining relationship in deciding how the new legislation impacts on labor-management relations within such an existing relationship.

Section 7136(b) provides that procedures and decisions issued under the enumerated Executive orders shall continue in effect until revised or revoked by the President or unless superseded by specific provisions of title VII or by regulations or decisions issued by the new Federal Labor Relations Authority.

A primary reason for this legislation in general is dissatisfaction with the state of labor-management relations in the Federal Government under the Executive order and its enforcement bodies. There was great concern that the new authority would simply "rubber-stamp" the decisions and procedures of the Federal Labor Relations Council that it replaces. The "superseded" language is intentionally included to make clear that the new authority, acting under its own statutory charter, is not to repeat past mistakes in the area of labor-management relations. Title VII as a whole, and the management rights clause in particular, mandates a new approach to labor relations in the Federal Government, an approach that will be more successful for both agency management and labor organizations.

This subsection is included as drafted because of the concern that the development by the new authority of the contours of the new labor-management program will necessarily take time. During that time, questions about the legal efficacy of existing regulations and decisions could prove quite disruptive. Consequently, this subsection provides that such regulations and decisions will continue in force until superseded by regulations and decisions issued under title VII.

Mr. ROUSSELOT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Collins substitute for title VII, the so-

called Labor-Management Relations title of the Civil Service Reform Act of 1978, and in opposition to the Udall substitute. Evidence has not been presented which would convince me that the current labor-management relations program in the Federal Service is in need of change.

As my colleagues know from reading the incisive, informative views of many of the minority members of the Post Office and Civil Service Committee, we were assured by the President, in personal meetings and through his surrogates, that the labor title of the Civil Service Reform Act would not go beyond the principles embodied in Executive Order 11491 and the current practice of labor-management relations in the civil service. While I realize that the President does not exercise complete control over House Members of his own party, we should follow through on his original request and codify the original Kennedy Executive order.

The substitute offered by my colleague from Texas (Mr. COLLINS), is a reasonable compromise between those seeking the continuation of present Federal labor-management relations (as provided by the Executive order) and those labor loyalists on the committee who sought expanded union rights and authority and a diminished management role. It is a compromise adopted by the Senate Governmental Affairs Committee and only slightly modified by the full Senate. It is a compromise acceptable to those who believe that the unions already have sufficient power to protect and promote the rights of their Federal members. The Collins substitute will further the cause of civil service reform. A vote for the committee version of title VII or the Udall substitute would be a vote for "non-reform".

The gentleman from Texas has carefully described the provisions of his substitute and its effect on the scope of bargaining; changes in grievance arbitration; judicial review of decisions of the Federal Labor Relations Authority; the exclusive recognition of unions; the definition of unfair labor practices and the prohibition against picketing; and the terms for dues withholding and use of appeal time for union activities. In many cases, this substitute merely codified the present program and grants some expansion of union rights. Hopefully, these changes will not seriously endanger the stability of the civil service or jeopardize the delivery of Government services to the public.

Supporters of title VII claim that the Congress must act to achieve equity between public and nonpublic employees. Federal employee unions have been pushing legislation which would supposedly "equalize" public sector and private sector labor relations. The basic problem with this argument is that the Government is not a business, and attempting to apply the labor practices of a competitive business just will not work.

The competitive marketplace of the private sector is absent in Government employment. Funds from which wages, salaries and money-related benefits are paid or extended to Federal employees come primarily from taxes. Through the budgetary process, the President and elected legislators are responsible for the allocation of such funds. Adding the right to bargain over wages, salaries and other money-related benefits to the free access public employees and their unions already have to Congress, would give Federal workers excess power which would inequitably subordinate the budgetmaking process to the worker's interests and against the interests of the American taxpayers.

The primary reason for Government services is to supply the public with certain essentials of life which cannot reasonably be supplied by the average citizen himself, or to him by private enterprise. Fundamentally, these essentials are usually police and fire protection, education, water, sewage, highways and the like (primarily reserved for State and local governments) and the public defense (reserved, constitutionally, for the Federal Government). Because these services are essential to the health, welfare and safety of the public, the expenditure of public funds for their provision becomes justifiable. Equally because they are so essential, it becomes intolerable that they be interrupted. Precisely because these services are not available from competing sources, as products or services in the private sector are, Federal labor-management relations are not comparable to private sector labor-management relations.

Public employees occupy a status entirely different from their counterparts in the private sector. Public employees are the agents of government, and in reality, exercise a part of the sovereignty entrusted to government. While serving a mission different from the private employee, the public employee enjoys benefits not necessarily available to the pri-

vate employee. Governments do not go out of business. The public employee has, therefore, enjoyed a security of employment not assured to those in the private sector. In addition, by legislative enactment, the public employee has been guaranteed such things as employment and promotion on a merit basis, grievance procedures through which his complaints can be resolved, classification and pay plans assuring equal pay for equal work, liberal holiday and vacation schedules, sick leave programs rarely matched by private employers, and retirement systems more liberal than those commonly found in the private sector. And unlike the private sector, all of these benefits are protected by law in the public sector. It is my guess that many private employees would be willing to trade benefits with the average Federal employee and would not be overly concerned by the differences between public and private sector labor relations.

In October 1975, the Sacramento Bee printed an editorial admitting that the paper's earlier support for collective bargaining for public employees was wrong. I urge my colleagues to review with me the main points of this editorial and support efforts to maintain Federal labor-management relations on a level that will protect the responsible, dedicated employee and the taxpaying public which provides and pays for the jobs.

[From the Sacramento Bee, Oct. 19, 1975]
COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES
IS WRONG

The recent collapse of law and order in San Francisco, brought on by an illegal policemen's strike, and numerous other strikes and threats of strikes by various municipal employees' unions require a major re-evaluation of the relationship between public employees and the public they are presumed to serve.

It is pertinent to mention that federal and state employees are performing their jobs without destructive and illegal upheavals.

[From 124 Cong. Rec. H 9652
(daily ed. Sept. 13, 1978):]

Why, then, have illegal municipal and school strikes spread like the bubonic plague throughout much of the nation, wreaking havoc on innocent school children, ordinary citizens and the very fabric of government?

The answer is pretty clear. There has been a growing acceptance that unions representing public employees should have the right to bargain collectively with government. And with this development has come the weakening of the civil service system and the plac-

ing of union leaders in positions where they can dictate to elected officials. When this happens decisions are made not on the basis of what is good for the public but rather what will satisfy the labor leaders and their followers. New York City's present financial debacle is the end result of leaders of municipal labor unions imposing their will on elected officials.

Recently The Bee supported a bill giving public employes the right to join together and bargain collectively. We also endorsed a bill specifically giving teachers the right to bargain collectively. It now seems clear our position in both instances was wrong.

The Meyers-Millas-Brown Act now requires municipal governments to "meet and confer" with employe groups. To a large degree, this has become the equivalent of a collective bargaining requirement. This law should be revised to halt the trend towards forced collective bargaining by municipalities.

The granting of collective bargaining to public employes is not necessary and dangerously weakens the public's ability to protect its most essential services, services that should not be poker chips traded back and forth between public officials and union leaders.

When an individual goes to work for a governmental unit, he is entering into a relationship that is entirely different from one getting a job in private enterprise. Civil service gives the government employe far greater job protection. His retirement pay and other fringe benefits generally are higher than in private enterprise.

Most important, the government worker has gone to work for the people. In accepting a job as a public servant, he has accepted a public trust. The idea of firemen, teachers, public health employes, policemen or city garbage collectors going on strike is an affront to that public trust. If an individual does not feel he is willing to trade the special benefits of government employment for a commitment to obey that public trust, then he should seek other employment.

No one can deny public employes the right to organize and lobby in behalf of their members. The California State Employes Association has done this ably and effectively for years. But the next step, giving an employes' group the right to bargain with government, is fraught with peril and should be avoided.

This is the primary lesson to be learned from the recent illegal strike of policemen in San Francisco. Mayor Joseph Alioto, after personally bargaining with the policemen's association and other labor leaders, caved in to their demands.

The dynamics of the bargaining situation, by its very nature, creates pressures on public officials they find difficult to withstand. Alioto's surrender probably was inevitable.

A recent statement by Legislative Analyst A. Alan Post strongly opposes collective bargaining for public employes. He said the state's present policy of "attempting to maintain parity with the results of collective bargaining in the more relevant private

sector has been extraordinarily effective." Possibly there must be refinements developed to ensure pay and working conditions are truly comparable to similar jobs in the private sector but only ill will come from putting the fate of critical public services in the hands of union negotiators.

Government is not in a position to successfully bargain collectively. If a private business enterprise is faced with wage demands so unreasonable that it will be forced out of business, the private business can say so, even if it means a strike. But government is different. Often unreasonable demands cannot be turned down by government because the public cannot tolerate the loss of essential public services.

The man negotiating for the public is not like the representative of a private company. He is a public servant, subject to political pressures. There is nothing to prevent him from caving in to threats. And when he does, he does not pay the bill. The bill simply will be handed on to the taxpayer who had no effective voice in the negotiations.

Generally, public employes have earned the respect of the public they serve. This is true whether you are talking about the city garbage collector, the state highway patrolman or a forest service ranger.

It would be tragic if the inevitably destructive consequences of collective bargaining are permitted to jeopardize the best interests of public employes and the public they serve.

The time is late but the issue is critical. The Bee believes the public, elected officials and public employes should pause before they turn their fate over to collective bargaining and labor leaders who sometimes care too much about power and too little about the general welfare.

Mr. Chairman, the Udall substitute differs from the Collins substitute and the Executive order in three major areas: Provisions allowing so-called informational picketing by Federal union members—which could be almost anything; the exclusive recognition of a union without an election; and provisions requiring an agency to deduct dues of members without cost to the exclusive union.

The Udall substitute provides that—
"§ 7115. Allotments to representatives

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

So for the first time we are going to allow the Treasury to pay for union activity. This is certainly not the case in the private sector. But under the Udall substitute, we would allow these organizing and membership efforts to be financed out of the Federal Treasury. My colleagues who support the Udall substitute claim that this will provide equity between Federal union members and private sector union members. That is not true. We are giving more than equity—we are allowing Federal employee unions to dip into the Federal Treasury to provide for this dues checkoff.

Additionally, as I have mentioned, the Udall substitute allows, for the first time, informational picketing. As described in the substitute, this can mean almost anything.

My colleagues, the gentleman from Michigan (Mr. FORD) and the gentleman from Arizona (Mr. UDALL), claim that there are no great differences between the Udall substitute and the Executive order. There are substantial differences, and I urge my colleagues to seriously consider the differences.

I know my colleague from Arizona, a supporter of this legislation, has had a difficult time negotiating compromises of the various differences among the Members. But his title VII substitute does plow new ground with regard to Federal labor-management relations, and it is not completely clear how his changes will affect the current practice of Federal labor-management relations.

So, I urge my colleagues to support the Collins substitute because it does exactly what my colleague from Michigan (Mr. FORD) is talking about—it provides for the basic concepts and codifies the Executive order originally issued by President John F. Kennedy and supported by all Presidents since, including the present incumbent, Mr. Carter. That is what President Carter asked for, and I think we should give him that by passing the Collins substitute.

I urge support of the Collins substitute.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Chairman, the Members will recall that on Monday we had a very long session, but by and large it was a session marked by statesman-

ship and fine, high-level debate. But I must observe that with the return of the gentleman from California (Mr. ROUSSELOT) the debate today has risen to even greater heights of statesmanship, and his wisdom and his powers of observation are doing much to help expedite this bill.

I suggest, Mr. Chairman, that we have done a very fine job in amending the Udall substitute. I would point out, as the gentleman from California (Mr. ROUSSELOT) properly did, that the present Executive order is in fact what the gentleman from Texas (Mr. COLLINS) is proposing. So what we have really are two very fine amendments. Either way we are going to a great civil service reform.

Mr. COLLINS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, we have come a long way today and the gentleman from Illinois (Mr. ERLBORN) has completed the amendments that are most important. Many of those were accepted, which made the substitute amendment of the gentleman from Arizona (Mr. UDALL) much stronger and much better legislation.

We still have three major differences that exist. I am impressed with how far we have gone with what the committee brought to the floor for us to consider. We still, of course, if civil service reform passes, have a conference; but I want to bring out three major differences that exist. One is on the matter of dues check-off. It is proposed that this be a negotiable item. Under the substitute amendment of the gentleman from Arizona (Mr. UDALL), the gentleman states that the Government must pay for them. In other words, dues check-off must be

[From 124 Cong. Rec. H 9653
(daily ed. Sept. 13, 1978):]

paid by the Government, that it is not a negotiable item. Normally this should be a negotiable item, in that dues check-off will be made at no cost to the union or the employee. That is a tremendous concession and the gentleman asks that we go further which handicaps the civil service or any agency that is involved.

The second one that comes up; it seems to me in any type of voting for a union that the secret ballot election is absolutely essential. Under the substitute amendment of the gentleman from Arizona (Mr. UDALL), in one particular

situation they can be declared a union. If an agency has created an unfair labor practice, they can declare a union, regardless. That is a tremendous move, to allow that a union be declared without a secret election.

The third issue, which still stands in the substitute amendment of the gentleman from Arizona (Mr. UDALL) is on this matter of picketing. The gentleman from Arizona provides that you can have informational picketing. Knowing how the courts are so broad in their interpretation, anything could be considered as informational picketing. We must remember that the people involved here in Civil Service are employees. They are dedicated professionals. These are the civil servants of the United States Government. There is a complete difference between working for the U.S. Government and being an employee working for a shirt factory or working in an automobile plant. These civil servants are working for the U.S. Government. To have them out picketing, whether they call it informational picketing or whatever it is, is completely contrary to the principles of the Constitution. In our country, the Government is supreme. The Government is the law of the land.

So I want to commend the gentleman from Arizona for the gentleman's broad-mindedness and openmindedness. I know how far the gentleman has gone to try to provide a workable solution. I would hope that in the conference, we could take up these three very serious issues that still stand in the gentleman's substitute amendment.

● Mr. BIAGGI, Mr. Chairman, I would like to emphasize, at this point, that the "Definition of Agency" provision of title VII, the "Labor-Management Relations" title of H.R. 11280, as written into the bill and reported by the House Committee on Post Office and Civil Service, represents a fair and equitable approach to labor-management relations for Federal employees. It therefore should remain in the final version of the bill. I strongly urge my colleagues to support this particular provision as it is currently written so that when this legislation becomes law, it will apply to all those Federal employees we in the House intended to include in its coverage.●

The CHAIRMAN. All time has expired.

The question is on the amendment, as amended, offered by the gentleman from Arizona (Mr. UDALL) as a substitute for the amendment offered by the gentleman from Texas (Mr. COLLINS).

The amendment, as amended, offered as a substitute for the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. COLLINS), as amended.

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. COLLINS of Texas. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 381, noes 0, answered "present" 1, not voting 50, as follows:

[Roll No. 764]

AYES—381

Abdnor	Daniel, R. W.	Hefner
Addabbo	Danielson	Hertel
Akaka	Davis	Hightower
Alexander	de la Garza	Hillis
Ambro	Delaney	Holland
Anderson,	Dellums	Hollenbeck
Calif.	Dent	Holt
Anderson, Ill.	Derrick	Holtzman
Andrews, N.C.	Derwinski	Horton
Andrews,	Devine	Howard
N. Dak.	Dickinson	Hubbard
Annunzio	Dicks	Hughes
Applegate	Diggs	Hyde
Archer	Dingell	Ichord
Ashbrook	Dodd	Ireland
Ashley	Dornan	Jacobs
Aspin	Downey	Jeffords
AuCoin	Drinan	Jenkins
Badham	Duncan, Oreg.	Jenrette
Bafalis	Duncan, Tenn.	Johnson, Calif.
Baldus	Early	Jones, N.C.
Barnard	Eckhardt	Jones, Okla.
Baucus	Edgar	Jones, Tenn.
Bauman	Edwards, Ala.	Jordan
Beard, R.I.	Edwards, Calif.	Kastenmeier
Bedell	Ellberg	Kazen
Bellenson	Emery	Kelly
Benjamin	English	Kemp
Bennett	Erlenborn	Keys
Bevill	Ertel	Kildee
Biaggi	Evans, Colo.	Kindness
Bingham	Evans, Del.	Kostmayer
Blanchard	Evans, Ga.	Krebs
Blouin	Evans, Ind.	Lagomarsino
Boggs	Fascell	Latta
Boland	Fenwick	Le Fante
Bolling	Findley	Leach
Bonior	Fish	Lederer
Bonker	Fisher	Lent
Bowen	Fithian	Levitas
Brademas	Flippo	Livingston
Brinkley	Flood	Lloyd, Calif.
Brodhead	Florio	Lloyd, Tenn.
Brooks	Flynt	Long, La.
Brown, Calif.	Foley	Long, Md.
Brown, Mich.	Ford, Mich.	Lott
Broyhill	Ford, Tenn.	Lujan
Buchanan	Forsythe	Luken
Burgener	Fountain	Lundine
Burke, Mass.	Fowler	McClory
Burleson, Tex.	Frey	McCloskey
Burlison, Mo.	Fuqua	McCormack
Burton, John	Gammage	McDade
Burton, Phillip	Garcia	McDonald

Butler
Byron
Carney
Carr
Carter
Cavanaugh
Cederberg
Chappell
Chisholm
Clausen,
Don H.
Clay
Cleveland
Cohen
Coleman
Collins, Ill.
Collins, Tex.
Conte
Conyers
Corcoran
Corman
Cornell
Cornwell
Cotter
Coughlin
Cunningham
D'Amours
Daniel, Dan

Mollohan
Montgomery
Moore
Moorhead,
Calif.
Moorhead, Pa.
Moss
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Myers, Gary
Myers, John
Myers, Michael
Natcher
Neal
Nedzi
Nichols
Nix
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pattison
Pease
Pepper
Perkins
Pettis
Pickle
Pike
Poage
Pressler
Freyer
Price
Fritchard
Pursell
Quayle
Quillen
Rahall
Rallsback

Gaydos
Gephardt
Gialmo
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Grassley
Green
Guyer
Hagedorn
Hall
Hamilton
Hammer-
schmidt
Hanley
Hannaford
Hansen
Harkin
Harrington
Harris
Harsha
Hawkins
Heckler

Rangel
Regula
Reuss
Rhodes
Rinaldo
Roberts
Robinson
Rodino
Roe
Rogers
Roncallo
Rooney
Rose
Rosenthal
Rostenkowski
Rousselot
Roybal
Rudd
Runnels
Ruppe
Russo
Ryan
Satterfield
Scheuer
Schroeder
Schulze
Sebelius
Selberling
Sharp
Shuster
Sikes
Simon
Sisk
Skelton
Skubitz
Smith, Iowa
Smith, Nebr.
Snyder
Solarz
Spellman
Spence
St Germain
Stagers
Stangeland
Stanton
Stark
Steed

McFall
McHugh
Madigan
Maguire
Mahon
Mann
Markey
Marks
Mazienne
Marriott
Martin
Mathis
Mattox
Mazzoli
Meeds
Metcalf
Meyner
Michel
Mikulski
Mikva
Milford
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett

Steers
Steiger
Stockman
Stokes
Stratton
Studds
Symms
Taylor
Thompson
Thone
Thornton
Traxler
Trible
Tucker
Udall
Ullman
Van Deerlin
Vanik
Vento
Waggonner
Walgren
Walker
Walsh
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolf
Wright
Wylder
Wyllie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NOT VOTING—50

Ammerman	Frenzel	Santini
Armstrong	Gibbons	Sarasin
Beard, Tenn.	Gudger	Sawyer
Breaux	Huckaby	Shibley
Breckinridge	Johnson, Colo.	Slack
Broomfield	Kasten	Stump
Brown, Ohio	Krueger	Teague
Burke, Calif.	LaFalce	Treen
Burke, Fla.	Leggett	Tsongas
Caputo	Lehman	Vander Jagt
Clawson, Del.	McEwen	Volkmer
Cochran	McKay	Whalen
Conable	McKinney	Whitten
Crane	Miller, Calif.	Wiggins
Fary	Qule	Young, Alaska
Flowers	Richmond	Young, Tex.
Fraser	Risenhoover	

So the amendment, as amended, was agreed to.

The result of the vote was announced as above recorded.

* * * * *

[From 124 Cong. Rec. H 9668 (daily ed. Sept. 13, 1978):]

Mr. RUDD. Mr. Chairman, I will vote in favor of H.R. 11280, as amended in the Committee on the Whole.

In balance, I believe that this is a good bill. Congress desperately needs to reform the bureaucratic inefficiency and abuses that are rampant in the civil service system. We need to cut through the inaction and delays that make it virtually impossible to get rid of incompetent workers, to reward quality work, and to expedite personnel actions.

This bill is certainly not the answer to every problem with the Federal civil service. But it accomplishes a great deal of good. Creation of a personnel management office and Merit Protection Board, a senior executive service, an incentive system for pay increases based on performance rather than mere tenure, and a speedier disciplinary system are all urgently needed reforms.

The House has taken other action on this bill which I support, and which have led to my "yes" vote for this legislation. The proposed repeal of Hatch Act prohibitions against political activities of Federal employees has been removed from the bill, and properly so. Proposed changes in the veterans preference law have been dropped, and current veterans preference provisions will remain intact.

My amendment adding a firm anti-strike provision that will deny any protection or benefits under this bill for any striking Federal worker has been adopted. A similar provision governing

NOES—0

ANSWERED "PRESENT"—1
Edwards, Okla.

labor unions exists in this and the Senate version of the bill.

Furthermore, the bill now includes an important provision requiring a cut of 112,000 employees from the over-bloated Federal workforce, so that total Federal Government civilian employment returns to the January, 1977, level.

Mr. Speaker, these are the good aspects of this bill. As I have said, in balance, the good far outweighs the bad, and that is why I am voting in favor of the bill. I am voting "yes," despite my strong disapproval of the legislation's statutory protection of unionization and collective bargaining for Federal employees.

Such protection does not belong in the statutes, and should not be Federal Government policy. But this is a battle that will have to be fought next year.

Unionization and collective bargaining for Federal Government workers are unnecessary, and create an undesirable adversary labor-management situation that has no place in Government, where service to the people is the first and only priority.

Federal workers are paid more, and receive more benefits, than just about any other employees, in or out of Government. They have no reason for collective bargaining, other than to protect the continued employment of less capable performers and to reap more benefits for themselves at the expense of the taxpayers.

Labor-management disputes resulting in lower quality or disrupted service to the people are inevitable when Government employee unionization and collective bargaining are allowed. Government service is unique, for which there is no alternative supply. Some of these services are so critical that their disruption threatens the public well-being and causes extreme hardship to our people and the economy.

Labor unions want unionization and collective bargaining for Federal employees, because this increases their own power and serves as a convenient vehicle for their own domination of Government and the legislative process.

This is dangerous to our democratic processes and institutions, and to our free society itself.

I am sorry that this bill gives statutory protection to Federal employee unions and collective bargaining. I am voting for the bill in spite of this provision, because of the need for the many good features of this legislation.

But I intend to work hard to reverse this policy in the future.

● Mr. FISHER. Mr. Chairman, civil service legislation is grounded in the belief that the public should be served by a professionally and impartially operated Government. Except for the top leadership which should be chosen freely by the President and subject to change at every election, the Government workers should be chosen for their ability alone and should serve as long as they perform well.

* * * * *

[From 124 Cong. Rec. H 9669 (daily ed. Sept. 13, 1978):]

Another major feature of the civil service reform bill is the labor-management relations section. A labor relations program already exists in the Federal Government, operating under a Presidential Executive order. As passed by the House by a unanimous vote, the new labor program codifies the existing program and adds a few new features. Through some carefully developed compromises, the Members who wanted to expand the role of employee unions and those who opposed this were able to resolve their differences. The bill that the House approved does not contain such controversial features as the right to strike or bargain for pay and benefits, both of which I oppose. It does contain safeguards such as secret ballot elections for union representation.

* * * * *

While this is not in all respects the bill I would have written to improve the civil service system, it is on balance a bill that I can support. After the new system goes into effect I hope that the Congress will keep a close watch on it and make the necessary additional improvements.●

The CHAIRMAN. Are there any other amendments to the bill?

If not, the question is on the Committee amendment in the nature of a substitute, as amended.

The Committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and

the Speaker having resumed the chair, Mr. DANIELSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 11280) to reform the civil service laws, pursuant to House Resolution 1307, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

* * * * *

[From 124 Cong. Rec. H 9670
(daily ed. Sept. 13, 1978):]

The SPEAKER. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY
MR. ASHBROOK

Mr. ASHBROOK. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. ASHBROOK. I am, Mr. Speaker.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. ASHBROOK moves to recommit the bill, H.R. 11280, to the Committee on Post Office and Civil Service.

The SPEAKER. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER. The question is on the passage of the bill.

Mr. UDALL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 385, nays 10, not voting 37, as follows:

[Roll No. 767]

YEAS—385

Abdnor	Dicks	Kastenmeyer
Addabbo	Diggs	Kazen
Akaka	Dingell	Kelly
Alexander	Dodd	Kemp
Ambro	Dornan	Keys
Anderson,	Downey	Kildee
Calif.	Drinan	Kindness
Anderson, Ill.	Duncan, Oreg.	Kostmayer
Andrews, N.C.	Duncan, Tenn.	Krebs
Andrews,	Early	LaFalce
N. Dak.	Eckhardt	Lagomarsino
Annunzio	Edgar	Latta
Applegate	Edwards, Ala.	Le Fante
Archer	Edwards, Calif.	Leach
Ashley	Edwards, Okla.	Lederer
Aspin	Ellberg	Leggett
AuCoin	Emery	Lent
Badham	English	Levitas
Bafalis	Erlenborn	Livingston
Baldus	Ertel	Lloyd, Calif.
Barnard	Evans, Colo.	Lloyd, Tenn.
Baucus	Evans, Del.	Long, La.
Bauman	Evans, Ga.	Lott
Beard, R.I.	Evans, Ind.	Lujan
Bedell	Fascell	Luken
Belenson	Fenwick	Lundine
Benjamin	Findley	McClory
Bennett	Fish	McCormack
Bevill	Fisher	McDade
Blaggi	Fithian	McDonald
Bingham	Filippo	McEwen
Bingham	Flood	McFall
Blouin	Florio	McHugh
Boggs	Flynt	McKay
Boiland	Foley	Madigan
Bolling	Ford, Mich.	Maguire
Bonior	Ford, Tenn.	Mahon
Bonker	Forsythe	Mann
Bowen	Fountain	Markey
Brademas	Fowler	Marks
Breckinridge	Frey	Marlenee
Brinkley	Fuqua	Marriott
Brodhead	Gammage	Martin
Brooks	Garcia	Mathis
Brown, Calif.	Gaydos	Mattox
Brown, Mich.	Gephardt	Mazzoli
Brown, Ohio	Giaino	Meeds
Broyhill	Gilman	Meyner
Buchanan	Ginn	M'chel
Burgener	Glickman	Mikulski
Burke, Mass.	Goldwater	Mikva
Burleson, Tex.	Gonzalez	Milford
Burlison, Mo.	Goodling	Miller, Ohio
Burton, John	Gore	Mineta
Burton, Phillip	Gradison	M'nish
Butler	Grassley	Mitchell, N.Y.
Byron	Green	Moakley
Carney	Gudger	Moffett
Carr	Guyer	Mollohan
Carter	Hagedorn	Montgomery
Cavanaugh	Hall	Moore
Cederberg	Hamilton	Moorhead,
Chappell	Hammer-	Calif.
Chisholm	schmidt	Moorhead, Pa.
Clausen,	Hanley	Mottl
Don H.	Hannaford	Murphy, Ill.
Clay	Hansen	Murphy, N.Y.
Cleveland	Harkin	Murphy, Pa.
Cohen	Harrington	Murtha
Coleman	Harsha	Myers, John
Collins, Ill.	Hawkins	Myers, Michael
Collins, Tex.	Heckler	Natcher
Conable	Hefner	Neal
Conte	Heftel	Nedzi
Conyers	Hightower	Nichols

Corcoran	Hillis	Nix
Corman	Holland	Nolan
Cornell	Hollenbeck	Nowak
Cornwell	Holtzman	O'Brien
Cotter	Horton	Oakar
Coughlin	Howard	Oberstar
Crane	Hubbard	Obey
Cunningham	Hughes	Ottinger
D'Amours	Hyde	Panetta
Daniel, Dan	Ichord	Patten
Daniel, R. W.	Ireland	Patterson
Danielson	Jacobs	Pattison
de la Garza	Jeffords	Pease
Delaney	Jenkins	Pepper
Dellums	Jenrette	Perkins
Dent	Johnson, Calif.	Pettis
Derrick	Jones, N.C.	Pickle
Derwinski	Jones, Okla.	Pike
Devine	Jones, Tenn.	Poage
Dickinson	Jordan	Pressler

The Clerk announced the following pairs:

Mr. Ammerman with Mr. Richmond.
 Mr. Lehman with Mr. Metcalfe.
 Mr. Krueger with Mr. Beard of Tennessee.
 Mrs. Burke of California with Mr. Caputo.
 Mr. Breaux with Mr. Vander Jagt.
 Mr. Fary with Mr. Broomfield.
 Mr. Flowers with Mr. Sarasin.
 Mr. Teague with Mr. Del Clawson.
 Mr. Risenhoover with Mr. Treen.
 Mr. Huckaby with Mr. Burke of Florida.
 Mr. Tsongas with Mr. Young of Alaska.
 Mr. Gibbons with Mr. Wiggins.
 Mr. Long of Maryland with Mr. Kasten.
 Mr. Fraser with Mr. McCloskey.
 Mr. Stump with Mr. Cochran of Mississippi.
 Mr. Frenzel with Mr. McKinney.
 Mr. Miller of California with Mr. Quie.

[From 124 Cong. Rec. H 9671
 (daily ed. Sept. 13, 1978):]

Preyer	Schulze	Tucker
Price	Sebelius	Udall
Pritchard	Seiberling	Ullman
Pursell	Sharp	Van Deerin
Quayle	Shipley	Vanik
Quillen	Shuster	Vento
Rahall	Sikes	Volkmer
Raulsback	Simon	Waggonner
Rangel	Sisk	Walgren
Regula	Skalton	Walker
Reuss	Skubitz	Walsh
Rhodes	Slack	Wampler
Rinaldo	Smith, Iowa	Watkins
Roberts	Smith, Nebr.	Waxman
Robinson	Snyder	Weaver
Rodino	Solarz	Weiss
Roe	Spence	Whalen
Rogers	St Germain	White
Roncalio	Staggers	Whitehurst
Rooney	Stangeland	Whitley
Rose	Stanton	Whitten
Rosenthal	Stark	Wilson, Bob
Rostenkowsk	Steed	Wilson, Tex.
Roussetot	Steiger	Winn
Roybal	Stockman	Wirth
Rudd	Stokes	Wolf
Runnels	Stratton	Wright
Ruppe	Studds	Wylder
Russo	Symms	Wyllie
Ryan	Taylor	Yates
Santini	Thompson	Yatron
Satterfield	Thone	Young, Fla.
Sawyer	Thornton	Young, Mo.
Scheuer	Traxler	Zablocki
Schroeder	Trible	Zeferetti

So the bill was passed.
 The result of the vote was announced as above recorded.
 The title was amended so as to read: "A bill to reform the civil service laws, and for other purposes."
 A motion to reconsider was laid on the table.

* * * * *

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 11280

Mr. UDALL. Mr. Speaker, I ask unanimous consent that the Clerk, in the engrossment of the bill H.R. 11280, be authorized and directed to make such changes in section numbers, cross references, and other technical and conforming corrections as may be required.
 The SPEAKER. Is there objection to the request of the gentleman from Arizona?

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous matter, on the bill just passed, H.R. 11280.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

NAYS—10

Ashbrook	Mitchell, Md.	Steers
Davis	Moss	Wilson, C. H.
Harris	Myers, Gary	
Holt	Spellman	

NOT VOTING—37

Ammerman	Frenzel	Richmond
Armstrong	Gibbons	Risenhoover
Beard, Tenn.	Huckaby	Sarasin
Breaux	Johnson, Colo.	Stump
Broomfield	Kasten	Teague
Burke, Calif.	Krueger	Treen
Burke, Fla.	Lehman	Tsongas
Caputo	Long, Md.	Vander Jagt
Clawson, Del	McCloskey	Wiggins
Cochran	McKinney	Young, Alaska
Fary	Metcalfe	Young, Tex.
Flowers	Miller, Calif.	
Fraser	Quie	

**CIVIL SERVICE REFORM ACT
OF 1978**

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2640) to reform the civil service laws, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

MOTION OFFERED BY MR. UDALL

Mr. UDALL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. UDALL moves to strike all after the enacting clause of S. 2640 and insert in lieu thereof the provisions of H.R. 11280 as passed, as follows:

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Service Reform Act of 1978".

SEC. 2. The table of contents is as follows:

* * * * *

[From 124 Cong. Rec. H 9672
(daily ed. Sept. 13, 1978):]

FINDINGS AND STATEMENT OF PURPOSE

SEC. 3. It is the policy of the United States that—

(1) the merit system principles which shall govern in the competitive service and in the executive branch of the Federal Government should be expressly stated to furnish guidance to Federal agencies in carrying out their responsibilities in administering the public business, and prohibited personnel practices should be statutorily defined to enable Government officers and employees to avoid conduct which undermines the merit system principles and the integrity of the merit system;

(2) Federal employees should receive appropriate protection through increasing the authority and powers of the independent Merit Systems Protection Board in processing hearings and appeals affecting Federal employees;

(3) the authority and power of the Special Counsel should be increased so that the Special Counsel may investigate prohibited personnel practices and reprisals against Government employees for the lawful disclosure of certain information and may file complaints against agency officials and employees who engage in such conduct;

(4) the function of filling positions and other personnel functions in the competitive service and in the executive branch should

be delegated in appropriate cases to the agencies to expedite processing appointments and other personnel actions, with the control and oversight of this delegation being maintained by the Office of Personnel Management to protect against prohibited personnel practices and the use of unsound management practices by the agencies;

(5) a Senior Executive Service should be established to provide the flexibility needed by agencies to recruit and retain the highly competent and qualified managers needed to provide more effective management of agencies and their functions, and the more expeditious administration of the public business;

(6) in appropriate instances, pay increases should be based on quality of performance rather than length of service;

(7) research programs and demonstration projects should be authorized to permit Federal personnel management concepts in congressional review, with new and different personnel management concepts in controlled situations to achieve more efficient management of the Government's human resources and greater productivity in the delivery of service to the public; and

(8) the training program of the Government should include retraining of employees for positions in other agencies to avoid separations during reductions in force and the loss to the Government of the knowledge and experience that these employees possess.

* * * * *

[From 124 Cong. Rec. H 9693
(daily ed. Sept. 13, 1978):]

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. Reporting requirements for standards of conduct.

"7132. Official time.

"7133. Subpenas.

"7134. Compilation and publication of data.

"7135. Regulations.

"7136. Continuation of existing laws, recognitions, agreements, and procedures.

"SUBCHAPTER I—GENERAL PROVISIONS

"§ 7101. Findings and purpose

"(a) The Congress finds that 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 their safeguards the public interest and contributes to the effective conduct of public business. Such protection facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment. 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 Federal Government.

"§ 7102. Employees' rights

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

"(1) to act for a labor organization in the capacity of a representative and the right, in such 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,

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

"(3) to engage in other lawful activities for the purpose of establishing, maintaining, and improving conditions of employment.

"§ 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 sub-

[From 124 Cong. Rec. H 9694
(daily ed. Sept. 13, 1978):]

stantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

"(1) 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 of International Development, or the International Communication Agency;

"(v) any person who participates in a strike in violation of 5 U.S.C. 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—

"(A) the General Accounting Officer;

"(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 whose basic purpose is entirely social, fraternal, or limited to special interest objectives which are only incidentally related to conditions of employment;

"(B) 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; or

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

"(D) an organization which participates in the conduct of a strike against the Government of the United States 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 confer, 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 part 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 discrimination in employment on the basis of race, color, religion, sex, age, national origin, or handicapping condition, within an agency subject to the jurisdiction of the Equal Employment Opportunity Commission;

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

"(C) relating to the clarification of any position; or

"(D) 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

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

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

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

"§ 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 misconduct, 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 Au-

thority 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 by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office.

"(2) The General Counsel may—

"(A) investigate alleged violations of this chapter,

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

"(C) intervene before the Authority in

[From 124 Cong. Rec. H 9695
(daily ed. Sept. 13, 1978):]

proceedings brought under section 7118 of this title, and

"(D) 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.

"(4) If a vacancy occurs in the office of General Counsel, the President shall promptly designate an Acting General Counsel and shall submit a nomination for General Counsel to the Senate within 40 days after the vacancy occurs, unless the Congress adjourns sine die before the expiration of the 40-day period, in which case the President shall submit the nomination to the Senate not later than 10 days after the Congress reconvenes.

"§ 7105. Powers and duties of the Authority

"(a) 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.

"(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.

"(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 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 the 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—

"(1) hold hearings; and

"(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7133 of this title.

"(h) The Authority shall, by regulation, establish standards which shall be applied in determining the amount and circumstances in which reasonable attorney fees and reasonable costs and expenses of litigation may be awarded under section 7118(a)(6)(C) or 5596(b)(1)(B) of this title in connection with any unfair labor practice or any grievance processed under a procedure negotiated in accordance with this chapter.

"(1) 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. "§ 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—

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

"(1) any other appropriate source; and

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

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

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

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

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

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

"§ 7111. Exclusive recognition of labor organizations

"(a) Exclusive recognition shall be accorded to a labor organization which has been selected by a majority of employees in an appropriate unit who participate in an election in conformity with the requirements of this chapter.

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

"(1) by any person alleging—

"(A) in the case of an appropriate unit for which there is an 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, conduct an election on the question by secret ballot and shall certify the results

thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

"(c) A labor organization which—

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

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

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

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

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

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

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

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

"(e) Any labor organization described in section 7103 (a) (16) (B) (ii) of this title may petition for an election for the determination of that labor organization as the exclusive representative of an appropriate unit.

"(f) 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.

"(g) 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 orga-

nization 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 recogni-

[From 124 Cong. Rec. H 9696
(daily ed. Sept. 13, 1978):]

tion is filed not more than 120 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.

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

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

"(a) (1) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to insure 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 insure 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 7136(a) (2) of this title, any management official or supervisor, except that, with respect to a unit a majority of which is composed of firefighters or nurses, a unit which includes both supervisors and employees may be considered appropriate;

"(2) a confidential employee;

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

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

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

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

"(7) any employee primarily engaged in investigation or audit functions relating to

the work of individuals employed by an agency whose duties directly affect the internal security of the agency but only if the functions are undertaken to insure 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.

"(e) In the case of the reorganization of one or more units for which, before the reorganization, a labor organization was the exclusive representative of any such unit, the labor organization shall continue to be the exclusive representative for each such unit until new elections are held or a period of 45 days has elapsed, whichever first occurs.

"§ 7113. National consultation rights

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

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

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

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

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

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

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

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

"§ 7114. Representation rights and duties

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

"(2) Before any representative of an agency commences any investigatory interview of an employee in a unit concerning misconduct which could reasonably lead to suspension, reduction in grade or pay, or removal, the employee shall be informed of that employee's right under paragraph (3) (B) of this subsection to be represented by an exclusive representative.

"(3) 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 practice or other general condition of employment; or

"(B) any investigatory interview of an employee in the unit by a representative of the agency if—

"(1) the employee reasonably believes that such interview may result in disciplinary action against the employee; and

"(2) the employee requests such representation.

Any agency and any exclusive representative of any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purpose of arriving at a collective bargaining agreement. The rights of an exclusive representative under the preceding provisions of this subsection shall not be construed to preclude an employee from being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any appeal action under procedures other than procedures negotiated pursuant to 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 conditions 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.

"§ 7115. Allotments to representatives

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

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

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

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

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

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

[From 124 Cong. Rec. H 9697
(daily ed. Sept. 13, 1978):]

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

"§ 7116. Unfair labor practices

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

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

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

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

"(4) to discipline or 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, confer, 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 prescribe any rule or regulation which restricts the scope of collective bargaining permitted by this chapter or which is in conflict with any applicable collective bargaining agreement; 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, confer, or nego-

tiate in good faith with an agency as required by this chapter;

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

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

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

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

Nothing in paragraph (7) 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 may properly be raised under—

"(1) an appeals procedure prescribed by or pursuant to law; or

"(2) any grievance procedures negotiated pursuant to section 7121 of this title; may, at the election of the aggrieved party, be raised either—

(A) under such appeals procedure or such grievance procedure, as appropriate; or

(B) if applicable, under the procedure for resolving complaints of unfair labor practices under section 7118 of this title.

An election under the preceding sentence shall be made at such time and in such manner as the Authority shall prescribe. Any decision under subparagraph (B) of this subsection on any such issue shall not be construed to be a determination of an unfair labor practice under this chapter or a precedent for any such determination.

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

"(a) (1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject to 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 this 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, after a hearing under this subsection, that a compelling need for the rule or regulation does not exist.

"(3) Any hearing under this subsection 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 any agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

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

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

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

"(3) On or before the 15th 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) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

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

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

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

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

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

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

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

"§ 7118. Prevention of unfair labor practices

"(a) (1) If an 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—

"(A) of the charge;

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

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

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

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

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

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

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

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

"(5) The 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.

"(6) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose)

[From 124 Cong. Rec. H 9698
(daily ed. Sept. 13, 1978):]

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) directing that a collective bargaining agreement be amended and that the amendments be given retroactive effect;

"(C) requiring an award of reasonable attorney fees;

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

"(E) including any combination of the actions described in subparagraphs (A) through (D) 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.

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

"(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request from the Director of the Office of Personnel Management an opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management. Any interpretation under the preceding sentence shall be advisory in nature and shall not be binding on the Authority.

"§ 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.

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

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

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

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

"(ii) assist the parties in resolving 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 7133 of this title; and

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

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

"§ 7120. Standards of conduct for labor organizations

"(a) A labor organization representing or seeking to represent employees pursuant to this chapter shall adopt, maintain, and enforce governing requirements containing explicit and detailed provisions to which it shall subscribe, which include provisions for—

"(1) the maintenance of democratic procedures and practices, including—

"(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

"(B) provisions defining and securing the right of individual members to—

"(i) participate in the affairs of the labor organization,

"(ii) fair and equal treatment under the governing rules of the organization, and

"(iii) fair process in disciplinary proceedings;

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

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

"(b) 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 or a supervisor, 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.

"SUBCHAPTER III—GRIEVANCES

"§ 7121. Grievance procedures

"(a) Any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Any employee who has a grievance and who is covered by a collective bargaining agreement may elect to have the grievance

[From 124 Cong. Rec. H 9699
(daily ed. Sept. 13, 1978):]

processed under a procedure negotiated in accordance with this chapter.

"(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) Any party to a collective bargaining agreement aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the negotiated grievance procedure provided in the agreement may file a petition in the appropriate United States district court requesting an order directing that arbitration proceed pursuant to the procedures provided therefor in the agreement. The court shall hear the matter without jury, expedite the hearing to the maximum extent practicable, and issue any order it determines appropriate.

"(d) 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.

"(e) The processing of a grievance under a procedure negotiated under this chapter shall not limit the right of an aggrieved employee to request the Equal Employment Opportunity Commission to review a final decision under the procedure—

"(1) pursuant to section 3 of Reorganization Plan Numbered 1 of 1978; or

"(2) where applicable, in such manner as shall otherwise be prescribed by regulation by the Equal Employment Opportunity Commission.

"§ 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. If upon review the Authority finds that the award is deficient because

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

"(2) it was obtained by corruption, fraud, or other misconduct;

"(3) the arbitrator exercised partiality in making the award; or

"(4) the arbitrator exceeded powers granted to the arbitrator;

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 60-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

"§ 7123. Judicial review; enforcement

"(a) Any person aggrieved by a final order of the Authority under—

"(1) section 7118 of this title (involving an unfair labor practice);

"(2) section 7122 of this title (involving an award by an arbitrator); or

"(3) 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.

"(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, 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 or 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 order) it considers just and proper.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"§ 7131. Reporting requirements for standards of conduct

"The provisions of subchapter III of chapter 11 of title 29 shall be applicable to labor organizations which have been or are seeking to be certified as exclusive representatives under this chapter, and to the organizations' officers, agents, shop stewards, other representatives, and members to the extent to which the provisions would be applicable if the agency were an employer under section 402 of title 29. In addition to the authority conferred on him under section 438 of title 29, the Secretary of Labor shall prescribe regulations, with the written concurrence of the Authority, providing for simplified reports for any such labor organization. The Secretary of Labor may revoke the provision for simplified reports of any such labor organization if the Secretary determines, after any investigation the Secretary considers proper and after reasonable

notice and opportunity for a hearing, that the purpose of this chapter and of chapter 11 of title 29 would be served thereby.

"§ 7132. Official time

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

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

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

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

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

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

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

"§ 7133. Subpenas

"(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 subpenas 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 writ-

[From 124 Cong. Rec. H 9700
(daily ed. Sept. 13, 1978):]

ten interrogatories, examine witnesses, and receive evidence.

"(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 requir-

ing 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.

"§ 7134. Compilation and publication of data

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

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

"§ 7135. Regulations

"The Authority, the Federal Mediation and Conciliation Service, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. The 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.

"§ 7136. Continuation of existing laws, regulations, agreements, and procedures

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

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

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

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

BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND GRIEVANCES

Sec. 702. Section 5698(b) of title 5, United States Code, is amended to read as follows:

"(b) 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 a part of the pay, allowances, or differentials of the employee—

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

“(A) 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, plus 5 percent, less any amounts earned by the employee through other employment during that period; and

“(B) reasonable attorney fees and reasonable costs and expenses of litigation 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 7105(h) of this title; and

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

“(A) 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

“(B) annual leave credited under subparagraph (A) of this paragraph 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.

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.”

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 703. (a) Subchapter II of chapter 71 of title 5, United States Code, is amended—

(1) by redesignating sections 7151 (as amended by section 312 of this Act), 7152, 7153, and 7154 as sections 7201, 7202, 7203, and 7204, respectively;

(2) by striking out the subchapter heading and inserting in lieu thereof the following:

“Chapter 72—ANTIDISCRIMINATION;
RIGHT TO PETITION CONGRESS

“SUBCHAPTER I—ANTIDISCRIMINATION
IN EMPLOYMENT

“Sec.

“7201. Antidiscrimination policy; minority recruitment program.

“7202. Marital status.

“7203. Handicapping condition.

“7204. Other prohibitions.

“SUBCHAPTER II—EMPLOYEES’ RIGHT
TO PETITION CONGRESS

“7211. Employees’ right to petition Congress.”;

and

(3) by adding at the end thereof the following new subchapter:

“SUBCHAPTER II—EMPLOYEES’ RIGHT
TO PETITION CONGRESS

“§ 7211. Employees’ right to petition Congress

“The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or member thereof, may not be interfered with or denied.”.

(b) The analysis for part III of title 5, United States Code, is amended by striking out—

“Subpart F—Employee Relations.

“71. Policies..... 7101”
and inserting in lieu thereof

“Subpart F—Labor-Management and
Employee Relations

“71. Labor-Management Relations... 7101

“72. Antidiscrimination; Right to
Petition Congress..... 7201”.

(2) Section 3302(2) of title 5, United States Code, is amended by striking out “and 7154” and inserting in lieu thereof “and 7204”.

(c) (1) Section 2105(c) (1) of title 5, United States Code, is amended by striking out “7152, 7153” and inserting in lieu thereof “7202, 7203”.

(3) Section 4540(c), 7212(a), and 9540(c) of title 10, United States Code, are each amended by striking out “7154 of title 5” and inserting in lieu thereof “7204 of title 5”.

(4) Section 410(b) (1) of title 39, United States Code, is amended by striking out “chapters 71, employee policies)” and inserting in lieu thereof the following: “chapters 72 (antidiscrimination; right to petition Congress)”.

(5) Section 1002(g) of title 39, United States Code, is amended by striking out “section 7102 of title 5” and inserting in lieu thereof “section 7211 of title 5”.

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following clause:

“(124) Chairman, Federal Labor Relations Authority.”.

(e) Section 5316 of such title is amended by adding at the end thereof the following clause:

“(145) Members, Federal Labor Relations Authority (2), and its General Counsel.”.

MISCELLANEOUS PROVISIONS

SEC. 704. (a) Except as provided in subsection (b) of this section, the amendments made by this title shall take effect on the first day of the first calendar month beginning more than 90 days after the date of the enactment of this title.

(c) Sections 7104, 7105, and 7136 of title 5, United States Code, as added by section 701 of this title, shall take effect on the date of the enactment of this title.

(c) The regulation required under section 7105(h) of this title shall be prescribed and made effective by the Authority not later than 90 days after the date of the enactment of this Act.

(d) (1) The wages, terms, and conditions of employment, and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92-392 applies shall be negotiated in accordance with prevailing rates and practices without regard to any provision of—

(A) chapter 71 of title 5, United States Code (as amended by this title);

(B) chapters 51, 53, and 55 of title 5, United States Code; or

(C) any other law, rule, regulation, decision, or order relating to rate of pay or pay practices with respect to Federal employees.

(2) No provision of chapter 71 of title 5, United States Code (as amended by this title), shall be considered to limit—

(A) any rights or remedies of employees referred to in paragraph (1) of this subsection under any other provision of law or before any court or other tribunal; or

(B) any benefits otherwise available to such employees under any other provision of law.

TITLE VIII—GRADE AND PAY RETENTION

GRADE AND PAY RETENTION

* * * * *

[From 124 Cong. Rec. H 9701 (daily ed. Sept. 13, 1978):]

“§ 5367. Appeals

“(a) (1) In the case of the termination of any benefits available to an employee under this subchapter on the grounds such employee declined a reasonable offer of a position the grade or pay of which was equal to or greater than his retained grade or pay, such termination may be appealed to the Office of Personnel Management under procedures prescribed by the Office.

“(2) Nothing in this subchapter shall be construed to affect the right of any employee to appeal—

“(A) under section 5112(b) or 5346(c) of this title or otherwise, any reclassification of a position; or

“(B) under procedures prescribed by the Office of Personnel Management, any reduction-in-force action.

“(b) For purposes of any appeal procedures (other than those described in subsection (a) of this section)—

“(1) any action which is the basis of an individual’s entitlement to benefits under this subchapter, and

“(2) any termination of any such benefits under this subchapter, shall not be treated as appealable under such appeals procedures.”

* * * * *

[From 124 Cong. Rec. H 9702 (daily ed. Sept. 13, 1978):]

SAVINGS PROVISIONS

SEC. 902. (a) Except as otherwise provided in this Act, all executive orders, rules, and regulations affecting the Federal service shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed by the President, the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority with respect to matters within their respective jurisdictions.

(b) No provision of this Act shall affect any administrative proceedings pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

(c) No suit, action, or other proceeding lawfully commenced by or against the Director of the Office of Personnel Management or the members of the Merit Systems Protection Board, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act, shall abate by reason of the enactment of this Act. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act had not been enacted.

* * * * *

[From 124 Cong. Rec. H 9703 (daily ed. Sept. 13, 1978):]

The motion was agreed to.

The Senate bill was ordered to be read a third time, and was read the third time and passed.

The title was amended so as to read:

“A bill to reform the civil service laws, and for other purposes.”

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES

Mr. UDALL. Mr. Speaker, I ask unanimous consent that the House insist on its amendment to the Senate bill (S. 240) to reform the civil service laws, and for other purposes, and request a conference with the Senate thereon.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

Mr. LEACH. Mr. Speaker, reserving the right to object, one of the amendments that overwhelmingly passed the House involved a cap on Federal employment. I consider this extremely important because it represents the only reflection in this bill of an attempt to deal with the size and scope of Government. Unfortunately there is no provision relating to this issue in the Senate bill nor any great sympathy for this amendment on behalf of the administration.

Accordingly, I have a motion to instruct the conferees on this issue, but would prefer not to go forth with this motion if the gentleman from Arizona can assure me that he will do his best to insist that the House position on this issue is upheld in conference.

Mr. UDALL. Mr. Speaker, will the gentleman yield?

Mr. LEACH. I yield to the gentleman from Arizona.

Mr. UDALL. I thank the gentleman for yielding. I will be happy to give the gentleman those assurances. I said in the debate that I believe we ought to have a cap on Federal employment. My objection to the gentleman's amendment was that we had not had adequate study, that the administration had not had an opportunity to tell us what an appropriate number might be. So speaking for myself I will go to the conference without any intention of simply capitulating to the Senate, but with the purpose of seeing if we cannot find some modification of the gentleman's language that would carry out the purpose that he was striving to achieve in offering his amendment.

Mr. LEACH. With those assurances, and with deep respect for the leadership of the gentleman from Arizona, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Arizona? The Chair hears none, and appoints the following conferees: Messrs. NIX, UDALL, HANLEY, FORD of Michigan,

and CLAY, Mrs. SCHROEDER, Mrs. SPELLMAN, and Messrs. DERWINSKI, ROUSSELOT, and TAYLOR.

* * * * *

[From 124 Cong. Rec. E 5200
(daily ed. Sept. 23, 1978):]

TRIBUTE TO CONGRESSMAN
MO UDALL'S LEADERSHIP

HON. WILLIAM LEHMAN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 22, 1978

● Mr. LEHMAN. Mr. Speaker, as a member of the Post Office and Civil Service Committee, it was my privilege to follow the genuinely unselfserving legislative leadership of Congressman Mo UDALL as he guided the civil service reform bill to final passage.

This was a delicate and often agonizing process. Mo UDALL used his considerable prestige and unique legislative skills to work through and around the roadblocks of special interest and pressure groups to produce legislation that will benefit the common good.

The following is an article from the Washington Post of September 20. It describes in greater detail the many obstacles met and overcome by Mo UDALL as he led the battle for civil service reform.

UDALL'S DELICATE COALITION PUSHED
THROUGH CIVIL SERVICE BILL

(By Kathy Sawyer)

In the double glow of television lights and victory last Wednesday, just after the House had given overwhelming approval to President Carter's landmark civil service overhaul legislation, Rep. Morris K. Udall spoke briefly on the phone with the President at Camp David.

As the lanky Arizonan listened, his face crinkled in a tired smile. The President had said "something about who might have been elected president in 1976," Udall said later.

It was Carter's acknowledgement of the irony that the man who had made this widely heralded triumph possible was his former adversary in the '76 campaign, who had only reluctantly bowed to the president's personal request last spring that he

take charge of this bill, a top domestic priority for Carter.

If Udall had declined that dubious honor, parties on all sides agree, the Civil Service Reform Act of 1978 would now be in the dusty grave so many had predicted for it all along. Instead it is in the hands of House-Senate conferees, meeting today and next week to resolve the conflicts between the two versions, before what is expected to be smooth final passage.

"The single most important factor in that bill's success has been Mo Udall's unbelievable integrity, and the fact that he kept on pushing," said one lobbyist, summing up the sentiments expressed by many.

Udall had himself taken up interest in the issue of government reform. Also, more importantly, the Arizonan was viewed as the only member of the Post Office and Civil Service Committee, which had jurisdiction over the bill, who could serve as a trusted mediator among the disparate elements that had threatened to sink the bill.

Udall is credited, among other things, with putting together, through arduous negotiation, the crucial compromise on a labor-management section of the bill—the issue that more than any other had threatened to kill the bill.

The "unsung hero" in this saga, Udall said, is Rep. William Ford (D-Mich.) who played a "quiet but critically important role" in that particular struggle.

It was Ford, a staunch supporter of labor, who fought from the beginning against a labor package, favored by the administration, that would satisfy the Republicans but would divide Democrats and would have the administration "running over" the federal employee unions, Udall said.

It was Ford's eventual approval of a compromise on the scope of bargaining to be given federal employee unions, plus his efforts to persuade other labor supporters to join him, that led to what Udall termed "that remarkable spectacle" last week of conservative Republicans, led by Rep. John Erlenborn (R-Ill.), and liberal Democrats, led by Ford and Rep. William Clay (D-Mo.), joining in a 380-to-0 House approval of the labor package.

"The bill would have sunk if Ford and Clay and organized labor had decided to go after it," Udall said. "As it is, they (labor) are coming out with substantial gains."

Ford called his feat "nothing fancy. It's the way the system is supposed to work around here."

He criticized the administration for some early misjudgments, such as not consulting properly with unions and their allies, baiting federal workers by emphasizing the need to "get rid of incompetents, and the like. He said he foresaw a resulting backlash "which would make it difficult for members to support the bill, especially Democrats."

"We urged that the new powers the bill would give to managers be balanced off with fair play for employees," he said. "But it took some time to convince the administration

that we were serious, and not just trying to spoil the president bill."

Some other sources on the committee still grumble about "bumbling" and a lack of political savvy in White House dealings with them. Last spring, for instance, just as Carter was gearing up to woo the committee on this bill, a top administration official went campaigning for the opponent of the committee chairman, Robert N.C. Nix, who was subsequently defeated.

Even Udall, who has praised administration efforts, this week went so far as to say "there was a certain naivete in the beginning" on the part of the Carter team.

However, he said that Civil Service Commission Chairman Alan K. Campbell "is extremely bright and learned quickly." Campbell has led a White House task force in pushing the president's plan on all fronts, including a massive nationwide public relations effort.

"I was naive," Campbell said yesterday, "but I got over it."

In the area of labor-management issues, he said the administration's early recommendations were the result of an intense dispute within the administration on how much to give the unions. This left the Carter forces "little room for bargaining and maneuvering."

As the bill progressed through one crisis after another, Udall said, the president kept in close touch with him. "But he also told me 'you're the quarterback' and gave me rather complete authority" to make decisions, including some not so pleasing to the administration.

For example, with time running short on the congressional calendar Udall made a "battlefield decision not to fight an amendment offered in committee by Rep. Gladys Noon Spellman (D-Md.) that had been vigorously opposed by the administration. The amendment limited Carter's new Senior Executive Service, a key part of his plan, to an initial experimental phase before it can expand throughout the government. That change is one of the major differences to be reconciled in conference.

It was partly because of what Udall called the "vicious crosscurrents in the committee" that he resisted the president's urging last spring that he become the bill's shepherd. Not only was he busy with major projects of his own, but he had "considerable doubts at the time that we could pull it off at all," Udall said this week.

But the president had appealed "to my patriotism and my friendship," Udall said. "I'm an old Hubert Humphrey Democrat—a sucker for that kind of appeal." ●

[From 124 Cong. Rec. H 11624
(daily ed. Oct. 5, 1978):]

**CONFERENCE REPORT ON S. 2640,
CIVIL SERVICE REFORM ACT OF
1978**

Mr. UDALL submitted the following conference report and statement on the Senate bill (S. 2640) to reform the civil service laws:

CONFERENCE REPORT (H. REPT. No. 95-1272)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2640) to reform the civil service laws, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Service Reform Act of 1978".

TABLE OF CONTENTS

SEC. 2. Table of contents is as follows:

* * * * *

[For conference provisions of the bill (as modified by S. Con. Res. 110), see pages 1-117 above. For the Joint Explanatory Statement of Managers, see pages 793-828 above.]

[From 124 Cong. Rec. H 11668
(daily ed. Oct. 5, 1978):]

**REQUEST TO MAKE IN ORDER ON
TOMORROW CONSIDERATION OF
CONFERENCE REPORT ON S. 2640,
CIVIL SERVICE REFORM ACT OF
1978**

Mr. UDALL. Mr. Speaker, I ask unanimous consent that it be in order to take up on Friday, October 6, 1978, the con-

ference report on the Senate bill (S. 2640) to reform the civil service law.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, I wonder if there is any objection to that request on the minority side.

Mr. UDALL. Mr. Speaker, I can tell the gentleman that I cleared it with the minority leader, the gentleman from Arizona (Mr. RHODES), the gentleman from Illinois (Mr. DERWINSKI) and the gentleman's floor leader, the gentleman from California (Mr. ROUSSELOT).

Mr. ASHBROOK. Mr. Speaker, on that basis I object.

The SPEAKER. Objection is heard.

[From 124 Cong. Rec. H 11820
(daily ed. Oct. 6, 1978):]

**CONFERENCE REPORT ON S. 2640,
CIVIL SERVICE REFORM ACT OF
1978**

Mr. UDALL. Mr. Speaker, I call up the conference report on the Senate bill (S. 2640) to reform the civil service laws.

The Clerk read the title of the Senate bill.

(For conference report and statement, see proceedings of the House of October 5, 1978.)

[From 124 Cong. Rec. H 11821
(daily ed. Oct. 6, 1978):]

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

The SPEAKER pro tempore. The gentleman from Arizona (Mr. UDALL) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. DERWINSKI) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Arizona (Mr. UDALL).

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of the conference report on the Senate bill S. 2640, Civil Service Reform Act of 1978.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Speaker, this bill passed the House several weeks ago by a large vote. We had five or six long sessions with the Senate. Basically we have brought back a bill that I think the Members of the House can approve. Most of the House provisions with regard to title VII, which was the most contentious matter before the conference, were resolved in favor of the position of the House.

The Senior Executive Service which was another key part of the bill, was maintained, in large part, in accordance with the position of the House, although we did modify the so-called Spellman amendment in order to meet objections by the Senate conferees.

All in all, I think this is a good conference report. I strongly recommend it to the House.

I reserve the balance of my time.

(Mr. ROUSSELOT asked and was given permission to revise and extend his remarks.)

Mr. ROUSSELOT. Mr. Speaker, I think that most Members on this side of the aisle were satisfied with the conference report.

I rise in support of the civil service reform conference report. My colleagues will recall that the House version of S. 2640 passed this body on September 13 by a vote of 385 yeas to 10 nays. I can assure those who voted against the bill at that time that the House-Senate conferees have produced a better bill than the one they earlier opposed. I can also assure those who voted for the bill that the House position was protected in most instances. Congressman UDALL, acting as chairman of the conference committee, performed his duties in a fair, reasonable manner to provide the fullest opportunity for debate and compromise on the various points of difference between the two bills.

Briefly, the Civil Service Reform Act of 1978—

* * * * *

Codifies to a large degree, the Federal labor-management program previously operated under an Executive order;

* * * * *

Mr. Speaker, I urge the adoption of the conference report to accompany S. 2640, the Civil Service Reform Act of 1978.

* * * * *

[From 124 Cong. Rec. H 11825 (daily ed. Oct. 6, 1978):]

● Mr. LEHMAN. Mr. Speaker, I rise in strong support of the conference report on the Civil Service Reform Act of 1978.

* * * * *

Mr. Speaker, a major criticism leveled against the civil service system dealt with employees rights. The press in particular was quick to pick up on employees who apparently abused the rules by prolonging a transfer, demotion, or dismissal. This will no longer be possible, however. Instead of the "preponderance of evidence rule" a manager now will only have to prove by "substantial evidence" that the employee is performing unsatisfactorily and therefore should be dismissed. The new standard adopted by the conferees will enhance a manager's authority to remove incompetent and inefficient workers within a reasonably shorter length of time.

As a counterbalance to these new procedures the conference report contains stronger measures to allow Federal workers to organize, join, and contribute to a union. Presently, labor-management relations are governed by an Executive order issued during the Kennedy administration. During this 16-year period the unions have acted responsibly on behalf of their members. As a result employee unions have earned the statutory recognition and protection provided under this bill.

Mr. Speaker, this is a good bill. It represents the collective efforts of many people. It has balanced the needs of the Federal employee to feel secure from political and personal reprisals against the public's expectations for an honest, hard-working, and efficient civil service system. I intend to support this bill and encourage my colleagues to do the same.●

● Mr. TAYLOR. Mr. Speaker, although I have mixed emotions about some of the "reforms" we are about to enact, I sup-

port the civil service conference report because I have reached the conclusion that Congress ought to give our current president some new tools with which to better manage the Federal Government's vast bureaucracy.

Whether President Carter's administration uses these new tools properly, or injects partisan politics into the top levels of Government and endangers the impartial administration of our laws, remains to be seen.

As a conferee who signed the report, I want to note that from the taxpayer's point of view, the measure has been substantially improved in conference with the Senate. It is better than the version of H.R. 11280 which the House passed, and it is certainly a far cry from the bill that was reported by the Post Office and Civil Service Committee.

There are several areas where the conference report improves the House-passed bill, by moving closer to language contained in the Senate version. There are also areas where the effect of some House provisions have been limited. In addition, amendments offered by our colleagues from Georgia (Mr. LEVITAS) and from Iowa (Mr. LEACH) are retained.

* * * * *

In the area of Federal labor-management relations, the conference report is

[From 124 Cong. Rec. H 11826 (daily ed. Oct. 6, 1978):]

closer to the Senate bill in several major areas, and as a result, does not go too far beyond the current Executive order.

There is no doubt in my mind that the conference report will increase to some degree the role of Federal employee unions in dealing with Government managers, and there are provisions that I personally would rather see left out.

However, the conference report does guarantee that each employee will have the freedom of choice to join or not to join a union; and the statement of managers specifically mentions that nothing in the conference report authorizes, or is intended to authorize, the negotiation of an agency shop or union shop.

* * * * *

Mr. Speaker, this legislation makes major changes in our Federal personnel

system. It takes the first step toward a goal of reforming the civil service into a system where merit will be rewarded and incompetence unprotected.

But this bill, which is being labeled as a major domestic victory for President Carter, is not the final step in that effort of reform.

It will be up to future Congresses to assure the American people that the Civil Service Reform Act of 1978 was worth all the effort. It will be up to future Congresses to maintain vigilant oversight over the new Office of Personnel Management, and over the new Merit Systems Protection Board, and over the new Federal Labor Relations Authority.

Mr. Speaker, I yield back the balance of my time.●

* * * * *

Mr. UDALL. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HARRIS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

[From 124 Cong. Rec. H 11827 (daily ed. Oct. 6, 1978):]

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 365, nays 8, not voting 59, as follows:

[Roll No. 887]

YEAS—365

Abdnor	Downey	Kelly
Addabbo	Drinan	Kemp
Akaka	Duncan, Oreg.	Keys
Ambro	Duncan, Tenn.	Kildee
Anderson,	Early	Kindness
Calif.	Eckhardt	Kostmayer
Anderson, Ill.	Edgar	Krebs
Andrews, N.C.	Edwards, Ala.	LaFalce
Andrews,	Edwards, Calif.	Lagomarsino
N. Dak.	Edwards, Okla.	Latta
Annunzio	Elberg	Le Fante
Applegate	Emery	Leach
Archer	English	Lederer
Ashbrook	Erlenborn	Lehman
Ashley	Ertel	Lent
Aspin	Evans, Colo.	Levitas

AuCoin	Evans, Del.	Livingston	Price	Shuster	Vanik
Badham	Evans, Ga.	Lloyd, Calif.	Fritchard	Sikes	Vento
Bafalis	Evans, Ind.	Lloyd, Tenn.	Pursell	Simon	Volkmer
Baldus	Fary	Long, La.	Quayle	Skubitz	Waggoner
Barnard	Fascell	Long, Md.	Quillen	Slack	Walgren
Baucus	Fenwick	Lott	Rangel	Smith, Iowa	Walker
Bauman	Findley	Luken	Regula	Smith, Nebr.	Wampler
Beard, R.I.	Fish	Lundine	Reuss	Snyder	Watkins
Beard, Tenn.	Fisher	McClory	Richmond	Solarz	Waxman
Beilenson	Fithian	McCloskey	Rinaldo	Spence	Weiss
Benjamin	Flippo	McCormack	Roberts	St Germain	Whalen
Bennett	Flood	McDade	Robinson	Stangeland	White
Bevill	Florio	McDonald	Roe	Stanton	Whitley
Biaggi	Flynt	McFall	Rogers	Stark	Whitten
Bingham	Foley	McHugh	Roncalio	Steed	Wilson, Bob
Blanchard	Ford, Mich.	McKinney	Rooney	Steiger	Wilson, Tex.
Blouin	Ford, Tenn.	Madigan	Rose	Stockman	Winn
Boggs	Forsythe	Maguire	Rostenkowski	Stokes	Wirth
Boland	Fountain	Mahon	Rousselot	Stratton	Wolf
Bolling	Fowler	Mann	Roybal	Studds	Wright
Bonior	Fraser	Markey	Runnels	Stump	Wylder
Bonker	Frenzel	Marks	Russo	Symms	Wylie
Bowen	Frey	Marlenee	Ryan	Taylor	Yates
Brademas	Fuqua	Marriott	Santini	Thornton	Yatron
Breaux	Garcia	Mathis	Satterfield	Traxler	Young, Alaska
Brinkley	Gaydos	Mattox	Sawyer	Treen	Young, Fla.
Brodhead	Gephardt	Mazzoli	Scheuer	Trible	Young, Mo.
Brooks	Gibbons	Meeds	Schroeder	Tucker	Young, Tex.
Broomfield	Gilman	Metcalf	Schulze	Udall	Zablocki
Brown, Calif.	Ginn	Meyner	Sebelius	Ullman	Zeferetti
Brown, Mich.	Glickman	Michel	Seiberling	Van Deerlin	
Brown, Ohio	Goldwater	Mikulski	Sharp	Vander Jagt	
Buchanan	Gooding	Milford			
Burgener	Gore	Miller, Calif.			
Burke, Fla.	Gradison	Miller, Ohio			
Burke, Mass.	Grassley	Mineta			
Burleson, Tex.	Green	Minish	Davis	Holt	Steers
Burlison, Mo.	Gudger	Mitchell, Md.	Gonzalez	Myers, Gary	Wilson, C. H.
Burton, John	Guyer	Mitchell, N.Y.	Harris	Spellman	
Burton, Phillip	Hall	Moakley			
Butler	Hamilton	Moffett			
Byron	Hammer-	Mollohan	Alexander	Gammage	Rhodes
Carr	schmidt	Montgomery	Ammerman	Gialmo	Risenhoover
Carter	Hanley	Moore	Armstrong	Hagedorn	Rodino
Cavanaugh	Hannaford	Moorhead, Pa.	Bedell	Harrington	Rosenthal
Cederberg	Hansen	Calif.	Brekinridge	Hillis	Rudd
Chisholm	Harkin	Moorhead, Pa.	Broyhill	Hollenbeck	Ruppe
Clausen,	Harsha	Mottl	Burke, Calif.	Krueger	Sarasin
Don H.	Hawkins	Murphy, N.Y.	Caputo	Leggett	Shipley
Clawson, Del	Heckler	Murphy, Pa.	Carney	Lujan	Sisk
Clay	Hefner	Murtha	Chappell	McEwen	Skelton
Coleman	Heftel	Murphy, John	Cleveland	McKay	Staggers
Collins, Tex.	Hightower	Myers, Michael	Cochran	Martin	Teague
Conable	Holland	Natcher	Cohen	Mikva	Thompson
Conte	Holtzman	Neal	Collins, Ill.	Moss	Thone
Corcoran	Horton	Nedzi	Conyers	Murphy, Ill.	Tsongas
Corman	Howard	Nichols	Cotter	Panetta	Walsh
Cornell	Hubbard	Nix	Crane	Pettis	Weaver
Cornwell	Huckaby	Nolan	Dicks	Quie	Whitehurst
Coughlin	Hughes	Nowak	Diggs	Rahall	Wiggins
Cunningham	Hyde	O'Brien	Flowers	Railsback	
D'Amours	Ichord	Oakar			
Daniel, Dan	Ireland	Oberstar			
Daniel, R. W.	Jacobs	Obey			
Danielson	Jeffords	Ottlinger			
de la Garza	Jenkins	Patten			
Delaney	Jenrette	Patterson			
Dellums	Johnson, Calif.	Pattison			
Dent	Johnson, Colo.	Pease			
Derrick	Jones, N.C.	Pepper			
Derwinski	Jones, Okla.	Perkins			
Devine	Jones, Tenn.	Pickle			
Dickinson	Jordan	Pike			
Dingell	Kasten	Poage			
Dodd	Kastenmeier	Fressler			
Dornan	Kazen	Preyer			

NAYS—8

Davis
Gonzalez
Harris

Holt
Myers, Gary
Spellman

Steers
Wilson, C. H.

NOT VOTING—59

Alexander
Ammerman
Armstrong
Bedell
Brekinridge
Broyhill
Burke, Calif.
Caputo
Carney
Chappell
Cleveland
Cochran
Cohen
Collins, Ill.
Conyers
Cotter
Crane
Dicks
Diggs
Flowers

Gammage
Gialmo
Hagedorn
Harrington
Hillis
Hollenbeck
Krueger
Leggett
Lujan
McEwen
McKay
Martin
Mikva
Moss
Murphy, Ill.
Panetta
Pettis
Quie
Rahall
Railsback

Rhodes
Risenhoover
Rodino
Rosenthal
Rudd
Ruppe
Sarasin
Shipley
Sisk
Skelton
Staggers
Teague
Thompson
Thone
Tsongas
Walsh
Weaver
Whitehurst
Wiggins

The Clerk announced the following pairs:

Mr. Ammerman with Mr. Broyhill.
Mrs. Burke of California with Mr. Caputo.
Mr. Cotter with McEwen.
Mr. Flowers with Mr. Quie.
Mr. Murphy of Illinois with Mr. Sarasin.
Mr. Leggett with Mr. Thone.
Mr. Mikva with Mr. Walsh.
Mr. Harrington with Mr. Wiggins.
Mr. Moss with Mr. Cohen.
Mr. Shipley with Mr. Martin.
Mr. Rodino with Mr. Railsback.

Mr. Tsongas with Mr. Crane.
 Mr. Glaimo with Mr. Rudd.
 Mr. Krueger with Mr. Lujan.
 Mr. Staggers with Mr. Ruppe.
 Mr. Teague with Mr. Whitehurst.
 Mr. Thompson with Mr. Cleveland.
 Mr. Weaver with Mr. Cochran of Missis-
 sippi.

Mr. Skelton with Mr. Hagedorn.
 Mr. McKay with Mrs. Pettis.
 Mr. Diggs with Mr. Hillis.
 Mr. Dicks with Mr. Hollenbeck.
 Mrs. Collins of Illinois with Mr. Bédell.
 Mr. Conyers with Mr. Alexander.
 Mr. Chappell with Mr. Carney.
 Mr. Gammage with Mr. Panetta.
 Mr. Sisk with Mr. Rahall.
 Mr. Rosenthal with Mr. Breckinridge.
 Mr. Risenhoover with Mr. Rhodes.

So the conference report was agreed to.

The result of the vote was announced as above recorded.

MOTION OFFERED BY MR. UDALL

Mr. UDALL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. UDALL moves that the House recede from its amendment to the title of the bill S. 2640.

The motion was agreed to.

A motion to reconsider was laid on the table.

[From 124 Cong. Rec. H 12255
 (daily ed. Oct. 11, 1978):]

DIRECTING THE SECRETARY OF THE SENATE TO MAKE CORRECTIONS IN ENROLLMENT OF S. 2640

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate concurrent resolution (S. Con. Res. 110) directing the Secretary of the Senate to make corrections in the enrollment of S. 2640, and ask for its immediate consideration.

The Clerk read the title of the Senate concurrent resolution.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 110

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (S. 2640), to reform the civil service laws, the Secretary of the Senate shall make the following corrections:

* * * * *

[For S. Con Res. 110,
 see pages 611-619 above.]

[From 124 Cong. Rec. H 12256
 (daily ed. Oct. 11, 1978):]

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

[From 124 Cong. Rec. 13605
 (daily ed. Oct. 14, 1978):]

STATEMENT OF MR. FORD OF MICHIGAN ON CIVIL SERVICE REFORM ACT OF 1978

(Mr. FORD of Michigan asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. FORD of Michigan. Mr. Speaker, yesterday, I was present with the other managers on S. 2640, the Civil Service Reform Act of 1978, as the President signed the legislation into law. The legislation is important and marks a significant accomplishment of the 95th Congress. The conferees on S. 2640 had our final meeting on October 3, and the conference report and statement of managers were completed on October 4 for Senate floor action later that day. Waiving the 3-day rule, the House completed action on the bill on October 6. Unfortunately, the complexity of the legislation and the understandable end-of-session rush to secure passage this Congress forced the conference documents to be less helpful than normal in elaborating the underlying intention of the managers on specific issues of the bill.

As a conferee on S. 2640, as a major participant in the fashioning of the House language on title VII, and as a long-time sponsor of collective-bargaining legislation for Federal employees, I would like to discuss some of the par-

ticular features of the bill signed by the President yesterday.

The approaches taken by the two Houses of Congress toward the labor-management program could not have been more divergent. As is made clear by the report of the Committee on Governmental Affairs, the Senate adopted the position that title VII should simply codify the existing practices and decisions of the current program under Executive Order 11491, Senate Report No. 95-989, at pages 99 to 114.

The House on the other hand, rejected the stifling experience under the order and its administrative entities and decreed a new beginning, free from the mistakes of the past, for labor-management relations in the Federal sector. The House approach to title VII is reflected in the substitute amendment worked out by Mr. UDALL, the administration, Mr. CLAY, and others especially interested in the title, and myself. During the House debate on September 13, Mr. CLAY and I articulated at great length the understandings embodied in and the intentions behind the Udall compromise. We did so in order that no one might claim surprise over the scope and approach implicit in the substitute language. During the debate on title VII, my colleague from Arizona noted that the House was "going to do something historic and far reaching and important for the country * * *"

After full debate, and after rejecting an alternative substitute embodying the Senate's approach, the Udall substitute was adopted by the House, 381 to 0.

I am pleased to report to my colleagues that the conference report adopted by both Houses late last week contains almost intact the House provisions on title VII as outlined in the September 13 debate. During the conference, there were moments when it seemed that agreement between the conflicting views on title VII threatened to destroy the entire bill. But under the statesmanship of the chairman of the conference committee, Mr. UDALL of Arizona, mutual understanding was obtained. I share with Mr. CLAY of Missouri, with whom I have had the privilege of working shoulder-to-shoulder for collective bargaining legislation for the last several Congresses, some of his doubts about the precise tack taken in this legislation. But everyone owes Mr. CLAY a debt of gratitude for his steadfast commitment and enormous contribution he has made on behalf of the ordinary worker who happens to be a Federal em-

ployee. I would also like to acknowledge the important contributions made by Mr. SOLARZ of New York throughout consideration of the bill by the House.

The House conferees were able, after meetings even longer than normal, to persuade the Senate that the new beginning for Federal labor relations mandated by the House bill was necessary, justified, and fully appropriate. Eventually, the conference committee shared the House acknowledgement that this new labor-management program with expanded rights for employees and their representatives was an essential response to the expansion of management prerogatives in other titles of the bill. Even where changes were accepted by the House conferees, these changes also embody the basic House approach outlined on September 13.

Section 7101 establishes the basic policy of the Government on labor-management relations and representation by including the congressional finding that labor organizations and collective bargaining serve the public interest. This section also includes general language about "governmental efficiency" placed here rather than as a separate management right to maintain the efficiency of Government operations. The statement of managers makes clear that agencies may exercise their "lawful prerogatives concerning the efficiency of the Government," but under title VII as revised by the conference committee, one of the agencies' lawful prerogatives is no longer the right to declare a bargaining proposal nonnegotiable because it is barred by the management right to maintain efficiency. The conference committee, by removing one barrier to effective collective bargaining, increases the likelihood that the Government's efficiency will be enhanced. It is the intention of the conference committee that agencies and employee representatives should spend their efforts resolving mutual problems and improving performance instead of litigating over barriers to negotiation.

Section 7103(a)(3) includes the Li-
[From 124 Cong. Rec. H 13606
(daily ed. Oct. 14, 1978):]

brary of Congress and the Government Printing Office among the agencies subject to title VII. Although these two agencies were not covered under the Executive order, each has had a labor-man-

agement program patterned after the order. In each instance, however, the chief management official retained final review authority over the program because of certain statutory anomalies. The temptations inherent in giving one side of the bargaining table ultimate authority proved irresistible and led the conference committee to adopt the House provision placing both agencies under title VII. It is our expectation that these agencies will now negotiate fully with their certified representatives to achieve a rapid and orderly transition to the complete enjoyment of those employee rights that led us to include them, especially the right to participate in a labor relations program that is genuinely bilateral, especially providing for third-party resolution of all negotiability disputes.

Because the Library is not subject to many personnel regulations applying to most other Federal agencies, the scope of collective bargaining at the Library has been significantly greater than that enjoyed by those other agencies under the Executive order. It is our firm intention that the Library will bargain, through impasse if necessary, over all conditions of employment except to the precise extent that the conditions are subject to specific requirements imposed on the Library by an outside agency that leaves the Library without authority to agree to a bargaining proposal.

The conference considered and rejected language aimed at narrowing the scope of bargaining from that previously existing at the Library. We noted that in over 2 years of collective bargaining, the Library has never asserted a compelling interest for any of its internal regulations.

In section 7103(a) (14) the conference committee expanded the scope of bargaining by removing an exception to the definition of "conditions of employment." As reported by the Committee on Post Office and Civil Service, conditions of employment did not include "policies, practices, and matters—relating to discrimination in employment . . ." The discussion drafts of the Udall substitute continued this limitation on the scope of collective bargaining.

During final negotiations over the Udall compromise, the language was changed to make clear that this prohibition against negotiations involving discriminatory practices did not apply to

the Library of Congress, because the Library is not subject to the Equal Employment Opportunity Commission (EEOC). Instead, the Librarian has final administrative review authority in civil rights matters involving the Library.

The committee participants in the drafting of the Udall substitute discussed at length this situation and the fact that virtually the only force pushing for genuine equal opportunity for all employees has been the labor organizations, especially the union in the Congressional Research Service. Although removing the Librarian's final review authority under 42 U.S.C. sec 2000e-16 was beyond the scope of the discussion, the drafters of the Udall compromise determined that the work of the Library unions in this important area should not be impeded. Hence, the language was changed in the Udall substitute as finally presented and adopted by the House.

In view of the efforts of the Library and other Federal sector unions to eliminate discrimination in employment, the conferees decided to remove the exclusion of discrimination matters from the definition of conditions of employment. The effect of the conferees' actions must be stated precisely.

The Equal Employment Opportunity Act of 1972, Public Law 92-261, codified at 42 U.S.C. sec. 2000e-16, requires that each Federal agency maintain an affirmative program of equal opportunity for all employees. Our examination of the act led to the conclusion that the act mandates a program of benefits for Federal employees. As such, the precise contours and contents of affirmative action and equal opportunity plans and programs is currently a mandatory subject of collective bargaining where employees have selected an exclusive representative. In order to avoid interference with EEOC's enforcement authority, the House originally precluded these negotiations in agencies subject to the Commission's jurisdiction.

The conferees, however, decided that under the new labor relations program, Federal sector unions should shoulder their full obligation to help achieve equality of employment opportunity in their agencies. It is the intention of the conferees that the removal of the discrimination exclusion would obligate both agencies and unions to bargain fully over the contents, procedures, and effects

of affirmative action and equal opportunity plans and programs regardless of the management rights clause. Management enjoys no retained rights to continue discriminatory employment practices—or their effects—or to thwart genuine equal employment opportunity for all employees. Moreover, the primary adverse effect of a less-than-satisfactory equal opportunity program is the continuation of discrimination or its impact.

It should be stressed that the authority to bargain in this area is the authority to increase and advance, not hinder or delay, equal employment opportunity for all employees. Moreover, in agencies subject to EEOC's jurisdiction, negotiations and agreements on equal opportunity plans and programs must be consistent with EEOC requirements.

Sections 7103(a) (9), 7121(a) (1), and 7121(d) also provide for union involvement in discrimination matters because they require agencies to establish a grievance procedure covering discrimination complaints—except where a union elects not to include such complaints within the procedure. Sections 7131(c) and 7131(d) requires use of official time for such grievances as either negotiated between the parties or prescribed by the authority.

The definition of Management Official in section 7103(a) (11) is derived from the decisions of the Assistant Secretary of Labor for Labor-Management relations under Executive Order No. 11491, as amended.

The Assistant Secretary has stated that employees should not be excluded from units of exclusive recognition as management officials if their role is actually that of a professional or expert making recommendations or providing resource information with respect to the policy in question. The exclusion should only apply where the role extends beyond that to the point of active participation in the ultimate determination as to what the policy in fact will be. Any other application of this definition would result in the exclusion from bargaining units employees who merely give advice, but have no authority to make or effectively influence the making of policy.

Section 7105(a) (2) makes clear that the authority's action in prescribing criteria and resolving issues shall be consistent with title VII and the approach taken therein. Fidelity on the part of the authority to title VII is especially im-

portant in the establishment of new criteria defining "compelling need." Under no circumstances is the authority merely to "rubber stamp" the criteria earlier established by the Federal Labor Relations Council. The authority is to develop its own criteria which, after the exercise of the FLRA's independent judgment, may be similar to that of FLRC. The House committee's description of "compelling need" has continued to be the intention behind this provision. House Report No. 95-1493 at page 51. Judicial review of the authority's actions in prescribing and applying the "compelling need" criteria will assure that the intention of the conferees and the Congress will be preserved.

Section 7105(a) (2) (G) requires that the Authority "resolve complaints of unfair labor practices" and section 7118 (a) (7) requires the authority to impose enumerated remedies or "such other action as will carry out the purpose" of title VII. The conferees changed somewhat the remedies specified in the section but left intact the general power under subsection 7118(a) (7) (D) in order to insure that all possible remedies, including any dropped from the enumerated list, would be employed where the purposes of the title would be served thereby. This linguistic revision of the section was acceptable because of the expectation that the courts will oversee the work of the Authority in this area (as well as others) in order to insure that the Authority vigorously enforces the purpose and provisions of title VII by adopting remedies sufficiently strong and suitable to make real the promise of the title and the obligations of its provisions. (An "aggrieved" person under 7123 includes a person aggrieved by the failure to grant appropriate remedial relief.) In this regard, it is important that subsection 7118(a) (7) (D) does not read "take such other action as may be determined by the Authority will carry out the purpose of this chapter." The mandatory nature of the remedial power in section 7118 on unfair

[From 124 Cong. Rec. H 13607
(daily ed. Oct. 14, 1978):]

labor practices is intentional and is in marked contrast to the general discretionary authority given the FLRA under section 7105(g) (3).

Remedies, among others, which we fully expect will be applied as when they

will carry out the purpose of Title VII include, tailored to the violation, status quo ante orders as in *Fibreboard Paper Products Corp.*, 138 NLRB 550, 555, 51 LRRM 1101 (1962), enforced, 322 F. 2d 411, 53 LRRM 2666 (D.C. Cir. 1963), affirmed, 379 U.S. 203, 215-17, 57 LRRM 2609 (1964), *Town and Country Mfg. Co.*, 136 NLRB 1022, 1030, 49 LRRM 1918 (1962), enforced, 316 F. 2d 846, 53 LRRM 2054 (5th Cir. 1963), *North Western Publishing Co.*, 144 NLRB 1069, 1073, 54 LRRM 1182 (1963), enforced, 343 F. 2d 521, 58 LRRM 2759 (7th Cir. 1965), and *Richland, Inc.*, 180 NLRB No. 2, 73 LRRM 1017 (1969); make whole orders as in *Mooney Aircraft Co.* 156 NLRB 326, 61 LRRM 1071 (1965), enforced, 375 F. 2d 402, 64 LRRM 2837 (5th Cir. 1967), cert. denied 389 U.S. 859, 66 LRRM 2308 (1967), *Stackpole Components Co.*, 232 NLRB No. 117, 96 LRRM 1324 (1977), and *Baptist Memorial Hospital*, 229 NLRB No. 1, 95 LRRM 1043 (1977); and orders requiring, at the unions election, retroactive execution of an agreement as in *Huttig Sash & Door Co.*, 151 NLRB 470, 475, 58 LRRM 1433 (1965).

In addition, the conference report specifically alloys, where title VII's purpose would be served, remedial orders like that banned under the National Labor Relations Act as interpreted by the Supreme Court in *H. K. Porter Co. v. NLRB*, 397 U.S. 99, 73 LRRM 2561 (1970). Where a failure to bargain in good faith has prevented agreement on a provision, the Authority is fully empowered under section 7118(a)(7)(B) to issue an order requiring the violator to agree to the provision unless the charging party waives, in whole or part, agreement on the provisions during negotiations. (The language of this subsection was revised to insure that the charging party would have the opportunity to waive agreement if it deemed such a waiver advisable in light of continued negotiations.) The conference report took this position despite the presence in both title VII and the National Labor Relations Act of the statement that the bargaining obligation "does not compel either party to agree to a proposal or require the making of a concession." By this action, we made clear our intention that remedies for employer violations under title VII (where the employer is always an official violating the policy of his employer—the Government—against unfair labor practices) will not be limited by the caseload development under the National Labor

Relations Act governing private employers.

The mandatory language used in section 7118(a)(7) reflects the intention of the conferees that where a violation has been found, the Authority must issue a remedy appropriate to the violation, as in *Auto Workers v. NLRB (Omni Spectra, Inc.)*, 427 F.2d 1330, 74 LRRM 2481 (7th Cir. 1970), and *United Steelworkers v. NLRB*, 866 F.2d 981, 66 LRRM 2417 (D.C. Cir. 1967). The conferees thus rejected the approach reflected in *Renton News Record*, 136 NLRB 1294, 1297-98, 49 LRRM 1972 (1962), and *New York Mirror*, 151 NLRB 834, 841-42, 58 LRRM 1468 (1965).

The conferees also adopted the approach to the management rights clause taken by the House, an approach which I could just barely support but that was essential to passage of the bill. Accepting the House's clear intention that FLRC decisions interpreting the Executive order's management rights provisions were to be ignored, even where the order's language is identical to that in title VII, was an essential threshold to resolution of the differences on this title and the entire bill. (This allowed the conferees to adopt language without the interpretative gloss added by the Council.) We were able to agree on inclusion of sometimes identical language because we fully intended that the new Authority will start its interpretation of that language with a clean slate. Moreover, the provision for judicial review insures that this understanding will be implemented.

In addition, the entire structure of the management rights clause is markedly different from that in the order. By the clear language of the bill itself, any exercise of the enumerated management rights is conditioned upon the full negotiation of arrangements regarding adverse effects and procedures. As is made clear by the absence of the phrase "at the election of the agency," procedures and arrangements are mandatory subjects of collective bargaining. Only after this obligation has been completely fulfilled is an agency allowed to assert that a retained management right bars negotiations over a particular proposal. This approach was dictated both by the FLRC's history of interpretative abuse of the order's management rights provisions and by logic itself.

In negotiating appropriate arrange-

ments for employees adversely affected by exercise of a management right, it may obviously be necessary to address the substance of the exercise itself. If, for example, an agency initially contemplates transferring 10 employees into quarters suitable for only half that number, an "appropriate arrangement" cannot be negotiated without changing (at least somewhat) the number of employees to be relocated. Thus, the need for giving first priority to negotiating the arrangements for the adversely affected employees even if these negotiations impinge on the management right to transfer. In the example cited, the agency enjoys a retained management right to transfer all 10 employees only after procedures and appropriate arrangements are agreed upon.

Because of the increased stature for "adverse effect" negotiations, and for other reasons, neither the conference report nor the statement of managers includes a *de minimus* proviso allowing an agency to escape from its bargaining obligation. It is fully the expectation that where the adverse effects are "de minimus" negotiations will occur but that both parties will see that they proceed with appropriate dispatch.

The House debate clearly set forth the interpretative principles embodied in the House management rights clause. Only bargaining proposals which directly related to the actual exercise of the enumerated management rights are to be ruled nonnegotiable. An indirect or secondary impact on a management right is insufficient to make a proposal nonnegotiable. This principle was followed by the Council in FLRC No. 71A-52, 1 FLRC 235, 244 (1972) and the Labor-Management *Empire* in his May 17, 1978 decision at pages 5, 6-7. These cases were discussed during the House debate. 124 CONGRESSIONAL RECORD H9638-39, H9649-50, H9651 (Sept. 13, 1968) (daily ed.) That the conference committee adopted this approach is reflected in the statement of managers that, in negotiations, "the parties may indirectly do what the (management rights) section prohibits them from doing directly." H-*Rept.* No. 95-1717 at page 158.

The "to decide or act" language of the Senate bill was omitted as redundant. The management authority in section 7106(a) and 7106(b)(1) is obviously the authority "to decide or act." Equally obviously, procedures and arrangements

are to be negotiated with regard to both the decisionmaking and implementation phases of any exercise of management's authority.

It should also be noted that procedures and arrangements are to be negotiated for the "permissible" subjects of bargaining in subsection 7106(b)(1), including both methods and means and the grades of employees or positions assigned to any organizational unit. This allows, for example, a labor organization to negotiate procedures insuring a fair grading of positions and employees based upon complete information as to the duties performed and qualifications required. Under section 7121(c)(1), a grievance may be filed regarding a classification that results in a reduction in pay or grade of an employee. This grievance may allege not only procedural violations but also improper classification criteria. In addition, where the criteria are applied in violation of the Equal Employment Opportunity Act of 1972, a discrimination grievance or appeal may also be filed.

The Senate version of title VII continued the order's reference to "personnel policies and practices and matters affecting working conditions." Because of council decision, virtually eliminating any obligation to bargain over "working conditions," the House framed the bargaining obligation in terms of "conditions of employment." This House expansion of bargaining beyond the limited term "working conditions" was accepted by the conferees.

Section 7112(b) in effect excludes certain employees from an appropriate unit. Subsection 7112(b)(7) excludes certain investigative (or audit) employees. Subsection 7112(b)(6) excludes employees engaged in investigation or security work which directly affects national security. It is our intention that, in order for an employee to be excluded under subsection 7112(b)(6) because of investigation work, that work must directly affect na-

[From 124 Cong. Rec. H 13608 (daily ed. Oct. 14, 1978):]

tional security. (If this had not been the case then the reference in subsection 7112(b)(7) to employees engaged in certain investigation functions would have been surplusage because these employees would already have been excluded by the preceding subsection.)

The conferees agreed that the written statement required of an agency under section 7113(b)(2)(B) or under 7117(d)(3)(B), need not be detailed, although the statement must make clear from its contents that the views of an organization with consultation rights were in fact considered.

As agreed upon by the conferees, section 7114(a)(5)(A) gives employees the right to be represented by a person other than the exclusive representative unless a grievance procedure has been negotiated. Under section 7121(b)(3), an employee must either be his own representative or select the exclusive representative when a negotiated grievance procedure is in effect.

House section 7114(a)(2), which only applied to misconduct cases, was dropped in the conference report in lieu of an annual notification to employees of their rights under this section. In adopting House section 7114(a)(3), there was considerable discussion by the conferees to the effect that the (a)(3) right should similarly be limited to misconduct cases. The conferees rejected this approach and continued to apply this right in both misconduct and nonperformance cases. Furthermore, in exchange for dropping the (a)(2) right, the term "investigatory interview" in (a)(3) was replaced by the term "examination," a much broader term that will encompass more situations.

In dropping the (a)(2) right, we want to make clear, however that agencies and employee representatives can continue to negotiate stronger rights into their contracts, such as the one in AFGE Local 2752 contract with the Defense Contract Administration. The need for codifying these rights was made necessary by the fact that agencies in some circumstances may be unable to bind investigators to this right by the collective bargaining contract when the investigators are from outside that agency or from outside the level of management at which the union has exclusive representation. This codification is intended particularly to cover these situations.

Section 7114(b)(4) requires that the agency provide certain information not otherwise prohibited by law relating to negotiations. There is no exemption from this requirement for information, whether or not deemed "confidential" by the agency unless that information constitutes guidance, advice, counsel, or training, each specifically related to collective bargaining.

Section 7114(c) was added to the House version of title VII by the conferees. Once again, the conferees adopted the general House approach of incorporating selected language from the Executive order while rejecting the interpretative gloss placed on that language by the Federal Labor Relations Council. This section must be read in conjunction with section 7114(b)(2) requiring that an agency be represented in collective bargaining by representatives fully prepared and empowered to negotiate. Nothing in section 7114(c) or in section 7106 gives an agency the right to frustrate negotiations by imposing a cumbersome consultation process between agency representatives and agency headquarters or by precluding negotiations in permissible areas without reference to the particularized context in which any proposal on a permissible subject is raised.

In section 7114(b)(2), agencies are placed on notice that they may not allow negotiations to proceed with untrained agency representatives while the agency relies on section 7114(c) to "save the day" by having the agency head refuse to approve the negotiated agreement. Furthermore, the agency head shall approve that agreement if it is in accordance with applicable law, rule, or regulation. Thus, the discretion to disapprove the agreement is a very limited discretion.

It is also our clear intention that agency regulations governing conditions of employment will not, as a general rule, be supported by a "compelling need" and therefore bar negotiations. The principal thrust of this title is to enlarge the rights of employees and their representative beyond that under Council interpretations of the Executive order. Since most "conditions of employment" are subjects of agency regulations—in well-managed agencies anyway—allowing most regulations to bar negotiations would totally defeat the purpose of title VII.

In general, agency negotiators are to be fully empowered to agree to exceptions to agency regulations concerning conditions of employment, including portions of agency regulations supported by compelling need where the need does not apply to the portion of the regulation. Moreover, section 7114(b)(2) requires that the agency "discuss" in the negotiations any proposal regarding conditions of employment even if that proposal is nonnegotiable. The agency is not required to "negotiate" over nonnegotiable proposals. It is, however, required to "dis-

cuss" them.

In this way, the conferees attempted to construct a statutory program where both labor and management will devote their efforts cooperatively to resolving mutual problems instead of having energies diverted into wasteful, continuous litigation of the management rights clause. Everyone—the employees, the agency, and the public—will benefit from these discussions and negotiations. Particularly in the public sector with its lack of a profit incentive, employee organizations are often the only group that effectively encourages management to rationalize its operations.

Agency management, unfortunately, is too often antiquated and satisfied to maintain the status quo. Supervisors are not asked often enough why they continue doing what they are doing—or not doing—even though the employees and the public suffer from their mismanagement. Full discussions and negotiations will help keep management "on its toes" and force it to reexamine its policies and procedures. In this way, the broadest scope of collective bargaining and discussing will facilitate the efficiency of Government operations.

Section 7116(b)(7) of the conference report adopts the House provision with respect to the circumstances under which picketing may form the basis of an unfair labor practice charge against a union. The House rejected the FLRC major policy statement on picketing and provided that only picketing which has in fact interfered with an agency's operations may be considered an unfair labor practice. There is, in other words, no "prior restraint" against proposed picketing which the agency, however reasonably, believes will interfere with its operations. Picketing is a well-recognized, long-established first amendment right. This fact must be kept in mind in assessing whether picketing has in fact "interfered" with an agency's operations. For example, embarrassment to the agency obviously does not constitute interference.

The language in section 7116(e) providing for the expression of personal views is intended to be narrowly construed. It was not the intention of the managers of this legislation to give agency management a license to become a party to an exclusive recognition election. Rather, it was intended to incorporate the policy under Executive Order

11491, as amended, which requires that agency management maintain a posture of neutrality in any representation election campaign. Antilles Consolidated School, Roosevelt Roads, Celba, Puerto Rico, A/SLMR No. 349 (1974).

The legislation permits agency management, acting as a neutral, to make nonpartisan statements which are intended to encourage employees to vote in elections as long as they do not attempt to coerce, or otherwise influence an employees' free choice. Moreover, they can make statements intended to clarify any misleading statements, as long as they do not use it as a means to act as a partisan. Finally, they can express the Government's view on labor-management relations which according to the statement of purpose in title VII is to recognize that collective bargaining is in the public interest.

Section 7117 of the conference report and paragraph 6 under "Additional amendments" in the statement of managers (H. Rept. No. 95-1717 at page 158) represents the final stage in the evolution of "government-wide rules and regulations" as a bar to negotiations. Throughout all versions of this section, from the House committee print, to the Udall substitute as adopted by the House and now the conference report, the intention as to the definition of "government-wide" has been constant and clear. The committee report states:

The term "Government-wide" shall be construed literally; only those regulations which affect the Federal civilian work force as a whole are "Government-wide" regulations. H. Rept. No. 95-1403 at P. 51.

During the debate on the Udall substitute, I stressed that the definition of "government-wide" remained the same and that even greater fidelity to that

[From 124 Cong. Rec. H 13609 (daily ed. Oct. 14, 1978):]

definition was required in view of the larger impact on negotiations that the substitute gave to "government-wide" regulations.

The Senate approved a different definition of "government-wide," and the issue of which definition to adopt received the attention of the conferees. The statement of managers correctly notes that the "conference report follows the House approach throughout this section * * *"

The Senate wished to label the Federal Personnel Manual a "government-wide regulation" even though many, if not most, of the policies in the Manual do not apply to "the Federal civilian workforce as a whole." Those policies typically do not even cover all of the agencies covered under the House and conference version of title VII, let alone civilian employees outside those agencies.

The Senate was also concerned that "binding policies" be included within the definition of "government-wide rules and regulations." Eventually, the conferees were able to agree that genuinely binding policies imposed on officials and agencies by an outside agency—as defined in section 7103(a)(3) including the Authority—would be regarded as rules and regulations. The House definition of government-wide," however, was left untouched.

Section 7118 sets forth the procedure for Authority actions specifically relating to unfair labor practices. The General Counsel is responsible for prosecuting unfair labor practice complaints, similar to the system at the National Labor Relations Board. As at the Board, it is our expectation that the charging party will be allowed—in part—to appear, introduce evidence, question witnesses, and make and file arguments on the case. The role of the charging party is especially important in view of the likely staffing difficulties in the first few years of the Authority. Even afterward, however, the charging party will play a crucial role in assuring the diligence of the General Counsel's efforts. In most cases—based on past history—the General Counsel will be a Government official "prosecuting" other Government officials. The temptations in such situations are obvious and the role of the charging party essential.

Furthermore, I fully expect the administration to seek additional moneys in the next Congress to assure a strong and effective labor relations program. The added responsibilities of the Authority, the creation of the office of General Counsel, and the fact that support services heretofore made available to FLRC by the Civil Service Commission must now be handled internally, all place a greater financial burden on this program.

Section 7118(a)(4) provides that no complaint shall issue on an unfair labor practice charge filed more than 6 months after the occurrence of the practice. This timelimit applies to unfair labor prac-

tices with a clearly definable date of occurrence; continuing unfair labor practices—much as continuing discriminatory practices under the civil rights laws—may be prosecuted upon a charge filed within 6 months of the last event in the continuing conduct.

Section 7118(a)(6) requires that a transcript be kept of the proceedings. It is our expectation that this transcript will be furnished to both the charging and responding parties without cost and in time for use in presenting post-hearing briefs.

Under section 7119(a)(5)(B)(iii), the Federal Services Impasses Panel is given full authority to resolve negotiation impasses. The conferees considered and rejected allowing appeals from the Panel to the Authority on negotiability issues. While the Panel must approve binding arbitration procedures other than those of the Panel itself, third-party mediation, including factfinding and recommendation may be entered into at the mutual agreement of the parties.

Section 7121 describes the negotiated grievance procedure that is required of the parties. The grievance procedure constitutes the single most important burden on a labor organization that has been selected as an exclusive representative. As the statement of managers makes clear, the conferees adopted the House approach requiring a broad scope for the grievance procedure through the definition of "grievance" found in section 7103(a)(9). Under the conference report, the negotiated grievance procedure replaces all statutory appeals procedures except for those concerning discrimination complaints under 2302(b)(1), adverse actions and actions based on unacceptable performance. Where a negotiated grievance procedure covers a matter which would also arise under the appeals procedures just listed, an employee has the option of which avenue to pursue.

The labor organization is required to meet a duty of fair representation for all employees, even if not dues-paying members, who use the negotiated grievance procedure. The costs involved in the procedure, which may well involve arbitration, are high. Although the basic House approach of stating in the statute the scope of the procedure was followed, the conferees also adopted a provision aimed solely at allowing the exclusive representative, at its option, to propose and

agree to a reduced coverage for the negotiated grievance procedure—perhaps for financial reasons. Of course, the union may also negotiate changes in the appeals procedure to the extent that the agency has the authority to revise that procedure, instead of replacing the appeals with a negotiated procedure.

We can analogize this situation to management's "permissible" areas of bargaining under section 7106(b)(1), except that permitting the reduction in the scope of the grievance procedure was included in the conference report as a means to insure union flexibility. That is, the union is free to propose a narrowed scope of grievances, is free to withdraw that proposal at any time, and is free to insist to impasse on the narrowed scope if the agency does not agree. An agency, however, may not insist to impasse that the union agree to a reduced scope of grievances under the negotiated procedure. The unions do not have to negotiate in those statutory appeals that will be replaced by a grievance and arbitration procedure; they may negotiate out certain or all of these appeals.

Section 7103(a)(9) includes within the definition of "grievance," "any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment." Under this definition as adopted by the conferees, so long as a rule or regulation "affects conditions of employment", infractions of that rule or regulation are fully grievable even if the rule or regulation implicates some management right. This interpretation of the definition is required both by the express language of the section and by the greater priority given the negotiability of procedures over the right of management to bar negotiations because of a retained management right.

Section 7121(d) authorizes an employee who has pursued a grievance involving discrimination to request the Equal Employment Opportunity Commission to review a final decision under the grievance procedure if the discrimination falls within the areas of EEOC enforcement. This section applies to both the so-called pure discrimination cases and the so-called mixed cases. Much of the conferees' attention was focused on the competing jurisdictional claims of EEOC and the MSPB in the "mixed" cases. In order solely to avoid an apparent denigration of the Board in the

"mixed" cases, the conferees agreed in section 7702 upon an elaborate and cumbersome appeals procedure for mixed cases that begin with a hearing before the Board—House Report 95-1717 at pages 139-142.

The statement of managers notes that arbitration on matters that could have been appealed to the Board is designed to replace the Board in the resolution of the covered matters. In order to promote consistency, the arbitrator is required, where lawful, to follow the same rules governing burden of proof and standard of proof that obtain before the Board—House Report No. 95-1717 at page 157. The Government is likely to derive significant savings and other benefits from the typically expedited arbitration procedures instead of the statutory hearing. It would have vitiated these benefits if the conferees had agreed to have "mixed" cases proceed from arbitration through the Board to the EEOC and, ultimately, to court.

Since the Board has already yielded its authority to an arbitrator under a negotiated grievance procedure—except for discretionary review—the conferees' action in allowing a "mixed" case to go directly to EEOC involves no derogation of the Board's authority. Section 7121(f) reflects this understanding of the conferees by providing that judicial review of section 7702 matters decided by an arbitrator shall occur "in the same manner and under the same conditions as if the matter had been decided by the Board." Since the conferees did not have the same concerns about the arbitrator's authority as they did about that of the Board, subjecting employees to the cumbersome, multi-step appellate procedure would have achieved no reasonable goal.

Thus, the procedure in "mixed" cases

[From 124 Cong. Rec. H 13610
(daily ed. Oct. 14, 1978):]

under a negotiated grievance procedure is that the employee gets a final decision under that procedure, then may request the EEOC to review the decision or may invoke judicial review including the right to a trial de novo. If EEOC is requested to review the decision, the normal time-limits for seeking judicial action apply.

Section 7121(e)(1) recognizes that some agencies, have internal appeals procedures similar to those applied to other

agencies in sections 4303 and 7512. Section 7121(e) (1) allows an employee to raise matters under the applicable internal appeals procedure or under a negotiated grievance procedure. The Authority has implicit power under section 7105(a) (2) (I) to hear appeals from these internal procedures. Again, if a union may negotiate a complete bypass, through the grievance procedure, of the internal appeals procedure, the union may also negotiate revision of the internal appeals procedure to the extent that the revisions are within the authority of the agency to implement.

Section 7131(b) of the act requires that activities of employees solely related to the internal business of a union be conducted while the employee is in a nonduty status. The House debate on this language made clear that any activities involving an "interface" with management, including preparation for such activities, were not the "internal business" of a union and thus could be performed on official time as negotiated between the parties pursuant to section 7131(d). Although the Senate also made this distinction, the House language was adopted by the conferees. Senate Report No. 95-969 at pages 112-113, interpreting section 7232 of S. 2640 as reported by the Committee on Governmental Affairs. The section remained the same as passed by the Senate on August 24.

In adopting the House language, the conferees did so with the understanding that "contract administration" was also an activity excluded from the definition of "internal business of a labor organization." The House provision was adopted also in order to make clear that neither defining "internal business" nor agreeing to grant official time for non-internal business was a matter of agency discretion. Instead, the granting of official time is subject to negotiations between the parties.

Section 7131(a) contains a statutory grant of official time for the exclusive representative in negotiating a collective bargaining agreement. The statutory grant is limited to the same number of employees for the union as management sends to the negotiations. However, the parties may agree to provide additional official time under section 7131(d).

Section 704 relating to certain prevailing wage rate employees was added by me during committee markup and

was retained in the House passed bill. There was no comparable Senate provision. After long and involved discussions with committee staff members, however, we agreed to accept the revised language in the conference report, but only after

certain assurances as to the intent of the revisions were made explicit.

Throughout the final discussions it was clearly understood that while we compromised on the cut-off date of August 19, 1972, for determining the scope of bargaining, section 704(a) in return should be read to provide that issues negotiated prior to that date would continue to be negotiated thereafter "without regard to whether any particular collective bargaining unit had bargained over all of these issues." While this specific language was in the statement of managers language submitted to me for final approval, I suspect that, along with numerous other typographical errors in the conference documents, this statement was inadvertently omitted in the rush to have the conference report prepared for Senate floor consideration a few short hours later. For example, the correct Comptroller General decisions overruled by this same section should read case numbers B-189782 and B-191520 and not as incorrectly cited in the report.

Although we understand the staffing problems involved, we have not been sanguine about the impending transfer of Council employees to the new Authority. This action increases the bureaucratic tendency, already present in any agency, simply to continue the old ways. It was this tendency in the civil service as a whole that led to the major reforms in this and other titles of the Civil Service Reform Act.

We hope that the mere existence of judicial review by the courts of appeals will encourage the new Authority to make the innovative decisions required by title VII. But if, in the beginning or later, the Authority refuses to follow its mandate, we expect the courts to vigorously defend the rights of employees and their representatives under title VII against misinterpretation or half-hearted enforcement by the Authority.

In the best sense, title VII is remedial legislation designed to give employees and their representatives rights that they have not enjoyed under the Executive order. Title VII also impose obligations on employee representatives that serve

both the public interest and the public business. The House debate makes clear that, as remedial legislation, title VII is to be construed broadly to achieve its remedial purposes. Exceptions to the legislation, such as those in the management rights clause, are to be construed narrowly. In the past, parties benefiting from remedial legislation have been able to enforce the remedial purposes even against the agency administering the legislation. We fully expect this to be the case with title VII as well. For this reason, we declined to bar judicial review of the remedial actions of the Authority.

Our ultimate hope is that, under prodding from the courts, the Authority will develop fidelity to title VII and the interpretative principles it embodied and that then, except for occasional lapses, parties will not need to seek judicial review of Authority decisions. But when a party arrives in court claiming a failure of the Authority to follow title VII, we expect the court to consider the party's claim and evaluate the Authority's decision thoroughly.

The House should be pleased by its work and that of its committee and conferees in establishing a statutory labor-management program for Federal employees. Title VII gives Federal agencies, employee representatives, the Federal Service Impasses Panel, and the new Federal Labor Relations Authority complete powers to implement a viable and productive labor relations program. We have precluded the intrusion of nonlabor relations entities, such as the Comptroller General, into the bargaining and dispute resolution process at both the agency and Authority levels. We have, in short, given Federal agencies and the new Authority the tools to get the job done. We have high hopes that the agencies and the Authority will adhere to the provisions of title VII and the legislative history interpreting those provisions.

We are, however, also realistic in our recognition that the Authority's task is far more difficult than that of the National Labor Relations Board. When the Authority is deciding an unfair labor practice charge against an employer, for example, it is weighing the possible misconduct of another Government agency. We are not blind to the sympathy that may develop between these two Federal entities. But we have made as clear as we can our expectation that the Authority is to perform vigorously its "special prosecutor" functions.

Moreover, in establishing judicial review we expect that the courts will scrutinize the actions of the Authority with less of the deference given other administrative agencies. This is especially important during the initial years of the Authority when it will have to establish superceding decisions mandated by title VII, departing from the experience with the Federal Labor Relations Council under the Executive order.

Finally, I would like to make a comment regarding title II of the act. This title sets forth procedures for disciplining and discharging employees, and for review of those actions by the MSPB. Under those procedures, if an agency charges an employee with inefficiency, it must prove that charge by substantial evidence before the Board. I emphasize, however, that the burden is on the agency to prove its case and that the employee has an absolute statutory right to a hearing, unless he or she waives that right. The conferees agreed that the term "substantial evidence" would be interpreted in light of the meaning given the term in administrative law.

Courts reviewing decisions of administrative bodies will reverse those decisions if they find that the decision is not supported by substantial evidence. In *Universal Camera v. NLRB*, 340 U.S. 474 (1951), the Supreme Court reversed a decision of the Board, and in so doing found that the substantial evidence standard in the National Labor Relations Act has the same meaning as that enunciated in the Administrative Procedures Act. The APA says that—

[From 124 Cong. Rec. 13611
(daily ed. Oct. 14, 1978):]

A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts cited by a party and supported by and in accordance with the reliable, probative and substantial evidence. (Section 556(d)).

Thus substantial evidence must be reliable. It must be probative. And it must be derived from the whole record.

In another case, *Consolidated Edison v. NLRB*, 305 U.S. 59 (1938), the Supreme Court held that substantial evidence "means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

Regarding the question of whether or not hearsay may constitute substantial

evidence, the Fifth Circuit Court of Appeals in *Cohen v. Perales*, 412 F.2d 44, 53 (1969), said that such evidence must have "rational probative force" to be admissible. The Court of Claims also examined that question in *Jacobowitz v. U.S.*, Ct. Cl. No. 134-68, (April 17, 1970). It held the Government's case to be based on insubstantial evidence because the hearsay on which the proof was based "was uncorroborated hearsay and was objected to by the plaintiff; it was contradicted by direct legal and competent evidence at the hearing; and it was not such relevant evidence as a reasonable mind might accept to support a conclusion."

Thus hearsay, to be accepted as substantial evidence, must have rational probative force. If it is uncorroborated, objected to, contradicted or irrelevant, it may not qualify as substantial evidence.

The application of the substantial evidence standard under the civil service reform bill is distinguishable from its use by Federal courts. In the courts, the test is generally used to review an existing record developed by a lower tribunal or administrative hearing. The courts will consider the lower court's record or the record of the administrative hearing as a whole to determine whether or not the decision is supported by "such relevant evidence as a reasonable mind might accept as adequate to support the conclusion." Under this act, there will be no decision and no record for the MSPB or an arbitrator to review. Thus, it is the responsibility of an administrative law judge, hearing officer or arbitrator to apply the substantial evidence standard as an initial trier of fact. Therefore, their burden in applying the standard is greater than that of an appellate body because they are the ones responsible for developing the record.

In reaching the decision, the administrative law judge, hearing examiner or arbitrator must decide prior to admitting evidence whether the evidence offered by an agency at the hearing is reliable, probative, and relevant. Then they must determine whether this evidence is adequate to persuade them that the employee's performance is in fact below acceptable standards.

In this manner the neutral decision-maker is to carefully weigh the evidence. "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." *Universal Camera v. NLRB*, 340 U.S. 474, 488 (1951).

I have not discussed other House provisions discussed during the House debate. Those provisions, as well, have been adopted in the conference report with the underlying intent as expressed in the House debate.

[From 124 Cong. Rec. E 5724
(daily ed. Oct. 14, 1978):]

FEDERAL LABOR-MANAGEMENT
RELATIONS PROGRAM

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 14, 1978

● Mr. CLAY. Mr. Speaker, I am pleased to note the statement by Mr. FORD of Michigan on the Civil Service Reform Act of 1978 with special focus on title VII of that act. Mr. FORD and I were House conferees on this bill and have both worked shoulder to shoulder over the years to insure a strong Federal labor-management relations program. Struggling with the major differences in conference between the Senate and the House on this detailed legislation was so time consuming that many of us feared we would be unable to come back with a conference report early enough to insure passage before adjournment. In fact, the conference documents were finished only hours before final Senate floor action.

With this in mind, we contented ourselves with a statement of managers that was not as complete as we would have preferred. Consequently, I am pleased that Mr. FORD, who has already made significant contributions to the understanding and enactment of title VII of this legislation during House debate, has offered a more detailed summary of the actions of the conference with particular focus on the statutory labor-management relations program. As my colleague from Arizona noted in the House debate on September 13, Mr. FORD, as a major contributor to title VII, is in a unique position to explain with thoroughness and understanding the work of

[From 124 Cong. Rec. E 5725
(daily ed. Oct. 14, 1978):]

the conference on title VII. It is my hope that this statement will help to guide others in understanding the important legislation.●

[From 124 Cong. Rec. E 5727
(daily ed. Oct. 14, 1978):]

CIVIL SERVICE REFORM

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 13, 1978

● Mrs. SCHROEDER. Mr. Speaker, as a conferee on the Civil Service Reform bill and one who had a particular interest in several sections of the bill, including the labor relations portion, I was pleased to see Mr. Ford's statement today amplifying the intention of the conferees on title VII of that bill. In conference we were confronted with not only a long, but a particularly intricate bill, and because our work fell close to adjournment, we were forced to settle for a statement of managers that is somewhat brief.

As a former employee of the National Labor Relations Board, I found Mr. Ford's statement reflected a thorough understanding of the work of the conference on title VII. It is my hope that this statement will serve to complete the record about the actions of the conferees on S. 2460.●

**PROCEEDINGS IN THE SENATE FROM THE
CONGRESSIONAL RECORD**



[From 123 Cong. Rec. S 4575
(daily ed. Mar. 22, 1977):]

By Mr. INOUE:

S. 1090. A bill to provide for improved labor-management relations in the Federal service, and for other purposes; to the Committee on Governmental Affairs.

Mr. INOUE. Mr. President, today I am introducing a bill which, if enacted, would establish by law a system whereby Federal employees may join a labor union, participate in its management, and bargain collectively on matters affecting the conditions of their employment. The bill is entitled the Federal Service Labor-Management Act of 1977.

This bill will put Federal workers unions on equal footing with management in labor disputes during contract negotiations and during consultations. With the present system, which is based on Executive order rather than statutory law, disputes between individual employees and an agency are often management dominated. This bill will bring objectivity to grievances, arbitrations, impasses, unfair labor practice charges and adverse action appeals. Further, it will give the individual Federal worker a larger role in making decisions regarding his or her working conditions.

This is a well-balanced labor relations program which, I believe, will increase efficiency and morale of Government workers by providing them with the opportunity for meaningful participation in the conduct of business in general and the conditions of their employment.

This bill is strongly endorsed by Federal employees though their elective leaders.

The major provisions of the bill are as follows:

Establishes the rights of employees to join or not to join an employee organization, to participate in its management, and to bargain collectively over conditions of employment.

Establishes the Federal Labor Relations Authority consisting of three members who are appointed by the President and confirmed by the Senate with responsibility for taking leadership in the establishment of Federal labor-management relations policy and administering the provisions of the law.

Establishes within the Authority the Federal Services Impasses Panel, whose members, subject to the review of the Authority, are empowered to investigate and make findings and recommendations

for the resolution of collective bargaining impasses. Authorizes the Federal Mediation and Conciliation Service to assist in negotiation impasses.

Provides the means whereby a labor organization shall be granted exclusive recognition of a bargaining unit by securing a majority vote of those employees participating in the election; dues checkoff; and payment of representation fee by nonmember employees of the bargaining unit.

Establishes a Federal Personnel Policy Board whose members are appointed by the Authority and are responsible for acting upon Federal personnel policies and regulations which affect the conditions of employment of more than one agency's employees.

States the rights and duties of both labor and management, insuring that each is free to conduct certain business without interference from the other; requires negotiation in good faith by both parties; establishes standards of conduct for labor organizations; and grants national consultation rights to unions which represent a substantial number of agency employees.

Provides for establishment of negotiated grievance procedures, including binding arbitration of grievances, subpoena powers to Authority, and conditions under which judicial review is available to either party.

Provides for resolution of unfair labor practices.

Provides that an employee against whom an adverse action is proposed is entitled to 30 days written notice, relevant evidence, pretermination hearing, transcript, and written decision.

Authorizes such sums as may be necessary for the implementation of this act.

I urge my colleagues to give this important legislation early and favorable consideration.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

* * * * *

[From 124 Cong. Rec. S 2777
(daily ed. Mar. 2, 1978):]

REFORMING THE CIVIL SERVICE SYSTEM

Mr. PERCY. Mr. President, it was with great pleasure that I was present at the National Press Club today when Presi-

dent Carter unveiled a comprehensive series of proposals to reform the Federal civil service system. This is a long-awaited reform, one which the American people have demanded, and one to which I trust the Senate will give the highest priority and closest attention.

The civil service system was created 95 years ago after President James Garfield was shot to death by a disgruntled office seeker. The purpose of the original landmark Pendleton Act was to eliminate the abuses of the then-prevalent "spoils system" and replace it with a modern Federal personnel system based primarily and essentially on merit. This philosophy of merit still holds true today in 1978.

However, in the decades since 1883, the Federal civil service system has grown overly complex and procedurally entangled and the principle of merit has become largely camouflaged. As the size of Government has increased dramatically in recent decades, so has the complexity and over-regulation of the civil service system. Today we have reached a point where in many cases, managers are unable to effectively manage their own offices as each personnel action, be it hiring, firing, transferring, promoting, or demoting employees has evolved into a traumatic and lengthy bureaucratic nightmare.

I believe that the foremost and supreme goal in any reform of the civil service system is the restoration of merit as the single overriding principle upon which we staff the Federal Government. Every American has a stake in this goal as every American suffers when the ability of the Government to carry out even the most beneficial program stagnates when confronted by personnel management problems.

There is no doubt that the President's civil service reform proposals raise many highly controversial points. Two issues attracting particular interest, the modification of veterans preference provisions and the providing of a fair and workable system of Federal labor-management relations, will require extensive listening on the part of committee members to those directly affected by these provisions. On both of those particular issues, I will withhold my judgment until we have conducted extensive hearings on these points.

However, as a whole, I applaud what President Carter has proposed. For the first time in decades, we have been presented a specific and concrete set of proposals to unravel a series of problems in

our Government which had been allowed to smolder for almost a century. As ranking minority member on the Senate Committee on Governmental Affairs, which will have legislative jurisdiction over this package, I intend to press for the most thorough and expeditious handling of this legislative package.

[From 124 Cong. Rec. S 2858
(daily ed. Mar 3, 1978):]

● Mr. PERCY. Mr. President, I am pleased to join with my colleagues in introducing the Civil Service Reform Act of 1978. This legislation, prepared and submitted to Congress yesterday by President Carter, will make sweeping changes in the way we staff the Federal Government and, by necessary implication, the quality of the government itself.

I am joining this legislative initiative, because I strongly believe that reform is needed if we are to return the concept of merit to its preeminent position in choosing and advancing individuals within the Federal civil service system. Only through a system which will duly reward those whose work has been superior, and allow removal of those whose work has been unsatisfactory, can we rebuild morale among the ranks of Federal employees, and restore the confidence of the American people in their Government. This is a reform initiative that the people have demanded. President Carter has presented us with a comprehensive set of concrete reform proposals to help accomplish these goals, and we as Senators now have the responsibility to give those proposals the most serious study and priority.

My purpose in cosponsoring this bill is specifically to express my support for these reform objectives, and contribute to the thorough and expeditious handling of this legislative package. As ranking minority member of the Senate Committee on Governmental Affairs, which will have legislative responsibility for this legislation in the Senate, I intend to urge that the highest possible priority be put on the goals set out in this legislation.

I stress that the legislation President Carter has submitted to Congress will be highly controversial, and contains some elements upon which other committee members and I may well disagree with the administration. The legislative draft is in the range of 100 pages long. It is

intricate and complex, reflecting the confusing web of personnel management rules and regulations which in itself constitutes much of the problem with the present system.

There is little in this legislation that will not directly affect the lives and careers of individuals. In dealing with these provisions, it will be important for the committee to listen closely to the views of those who will be directly affected. Though we operate in an environment where the American people have grown justifiably skeptical of Government, we must keep in mind the supreme importance of dealing fairly with all parties. In this regard, I particularly note those provisions addressing the issues of veterans preference and labor-management relations within the Federal Government.

Reforming the 95-year-old civil service system will be a complex and difficult task. However, with close cooperation from the administration and all interested parties, it is clearly an achievable goal.●

[From 124 Cong. Rec. S 7469
(daily ed. May 15, 1978):]

CIVIL SERVICE REFORM ACT OF
1978—S. 2640

AMENDMENT NO. 2084

(Ordered to be printed and referred to the Committee on Governmental Affairs.)

Mr. RIBICOFF (for himself, Mr. PERCY, Mr. SASSER, and Mr. JAVITS) submitted an amendment intended to be proposed by them, jointly, to the bill (S. 2640), to reform the civil service laws.

● Mr. RIBICOFF. Mr. President, along with the Senator from Illinois (Mr. PERCY), the Senator from New York (Mr. JAVITS), and the Senator from Tennessee (Mr. SASSER), I am introducing an amendment to S. 2640, the Civil Service Reform Act of 1978. This amendment was transmitted to the Committee on Governmental Affairs by OMB Director James T. McIntyre, Jr., and Alan Campbell, Chairman of the Civil Service Commission. It would propose to set forth in statute the principles which have guided labor-management relations in the Federal sector since 1962. I ask unanimous consent that the letter of transmittal appear in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WASHINGTON, D.C.,
May 10, 1978.

HON. ABRAHAM A. RIBICOFF,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Dirksen Senate Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: On March 2, 1978, the President submitted the bill to reform the civil service laws titled the Civil Service Reform Act of 1978. As originally submitted, the bill contained no provision on the labor-management relations program.

The President believes the time has come to give Federal labor-management relations the stature and stability of law by inclusion in the civil service reform bill. Accordingly, we are transmitting herewith our proposed amendment to incorporate "Labor-Management Relations" as Title VII in the Civil Service Reform Act of 1978. Sections 701-705 of the civil service reform bill would thereby be renumbered 801-805 as Title VIII "Miscellaneous."

The new Title VII would place the basic, well-tested provisions, policies and approaches of Executive Order 11491, as amended, into law and provide that the independent Federal Labor Relations Authority and its General Counsel set up by the Reorganization Plan, administer the program. It would also align reserved management rights with current practice, authorize negotiation of an expanded coverage for grievance arbitration, provide specific remedial authority and subpoena power, and spell out in greater detail the obligation to bargain in good faith. Inclusion of the Executive order program, with these revisions, in civil service reform legislation will complement our other proposals in accomplishing the overall objectives of civil service reform.

We look forward to working with you and the Committee in moving this legislation quickly.

Sincerely,

ALAN K. CAMPBELL,
Chairman, Civil Service Commission.

JAMES T. MCINTYRE, Jr.,
Director, Office of Management and Budget.●

● Mr. PERCY. Mr. President, 2 months ago, I joined with my colleagues, Senators RIBICOFF, SASSER, and JAVITS in co-sponsoring the administration's Civil Service Reform Act in the Senate. I took this step to express my support for the objectives of civil service reform, and to aid in the most expeditious consideration of the vital issues contained in that proposal.

At that time, however, those civil service proposals remained in an incomplete form, lacking suggestions to provide reform of the labor relations aspects of Federal personnel management.

We have now received from the administration its proposals in the Federal labor-relations field. Public sector labor

relations at the Federal level remain a particularly novel area of law, and these proposals will receive the same objective scrutiny that other committee members and I have accorded the balance of the civil service reform package. However, in the same spirit of cooperation and expedition with which we first sponsored S. 2640 2 months ago, I am also cosponsoring this amendment to facilitate committee consideration of the entire reform package.●

[From 124 Cong. Rec. S 9107
(daily ed. June 13, 1978):]

THE TIME HAS COME FOR CIVIL SERVICE REFORM

● Mr. BIDEN. Mr. President, Government will not work. Many of us, perhaps most of us feel that way. Despite the billions of dollars spent each year by the Federal Government, no one seems to have the answers to the big problems: Inflation, the energy crisis, and unemployment.

But most Americans feel the shortcomings of Government on a far different level than the development of new and comprehensive policies. They encounter Government when their lives are touched directly in some way: The social security check which did not come, high taxes or a confusing new business regulation. They have to deal with bureaucrats, and the experience is frustrating. Too often they find incompetence, callousness, and insensitivity.

The consequences of this failure of Government to respond can be severe. Citizen anger over Government inefficiency and abuse has manifested itself in California's popular proposition 13, tax evasion, and widespread loss of confidence in our institutions of Government.

But as Anthony Lewis so aptly points out (New York Times, April 10, 1978), even though—

... Americans complain a lot about government, few actually want it to do less. The average citizen is no Milton Friedman, fired by a zealot's vision of life in a free market. He wants the government to help the old and the sick—and business and middle-class college students and numberless other interests.

In March, President Carter asked Congress to approve a set of reforms intended to improve the Federal bureaucracy. However, the response of Congress and the press has been lukewarm at best.

In fact, much of the resistance to civil service reform has been from liberals who, in the long run, stand to lose the most from Government inefficiency and ineptitude. Public support for many liberal social welfare programs is very low. If Government is incompetent then fewer people will want it to do things.

Lewis writes:

If anything does set off a wave of right-wing, anti-Government fervor, it will be the failure of liberals to see to it that the government Americans want need not be gargantuan or staggeringly complex, and must be delivered efficiently and courteously.

That being so, liberals in Congress will naturally support President Carter's reforms, won't they? Well, after hearing the employee union spokesmen last week, Representative Herbert E. Harris, Democrat of Northern Virginia said, I'm skeptical the administration is going to get what they want, or get it very fast!

Although almost every bill contains provisions which one can find fault with, I believe that it would be a grave mistake for Congress to pass up this opportunity to make long-needed reforms in the Civil Service System. At stake are the programs and services which so many of us have labored so long for. I welcome the opportunity to reexamine ways in which we can make our Government more responsive and sensitive to the needs of our citizens. I look forward to working with President Carter and with my colleagues in the Senate on this very important issue.●

[From 124 Cong. Rec. S 13184
(daily ed. Aug. 11, 1978):]

CIVIL SERVICE REORGANIZATION PLAN

● Mr. SASSER. Mr. President, the civil service reform proposed in the President's Reorganization Plan No. 2 for this year is the cornerstone of this Government's reorganization efforts. Reorganization has been, and will continue to be, a joint effort by President Carter and Congress. As chairman of the Senate Civil Service and General Services Subcommittee, I am deeply concerned about the way the executive branch formulates its personnel policies, in general, and about the oftentimes conflicting roles which the Civil Service Commission must play under its current structure, in particular.

This reorganization plan creates the framework necessary for the reform which is further developed in the legis-

lation thoroughly considered by the Governmental Affairs Committee. Under the terms of the President's proposal, the Civil Service Commission would be divided into two new entities—the Office of Personnel Management, to be the personnel management arm of the Administration, and the Merit Systems Protection Board, to adjudicate Federal employee complaints—and the Federal labor management relations program established by Executive order would be placed under the supervision of a new Federal labor relations authority.

As one of his administration's priorities, President Carter began his effort to reorganize the civil service system in early 1977 by commissioning the Federal personnel management project. The project involved 110 staff members, the great majority of whom were career employees from the Civil Service Commission, the Office of Management and Budget, and other executive branch agencies. Alan H. Campbell, Chairman of the Civil Service Commission and formerly dean of the Lyndon B. Johnson School of Public Affairs at the University of Texas, served as chairman of the project, and Wayne G. Granquist, Associate Director of OMB, as vice chairman.

After numerous public hearings all over the country and consultation with literally thousands of individuals and interested organizations, option papers were developed for comment, and the task forces made recommendations. The President considered these suggestions and formally submitted this plan in late May. Since then, one change has been made by the administration, in response to a question in the House, whereby the OPM Director shall provide to the public, where appropriate, a reasonable opportunity to comment on the implementation of OPM rules.

* * * * *

Under the terms of the plan, the Office of Personnel Management will be the central personnel agency of the Federal Government. It will aid the President in preparing rules for the administration of Federal employment and administer civil service laws, rules, and regulations. The Office will be headed by a single Director, appointed by the President and confirmed by the Senate. It has been the view of public administrators for decades

that there should be a single-headed entity for personnel management at the Federal level. This concept has been extensively adopted, with great success at the State and local government levels.

The Merit Board will be headed by a bipartisan panel of three members appointed by the President and confirmed by the Senate. They will serve 6-year staggered terms. The Board will exercise all of the adjudicatory functions now vested in the Civil Service Commission, and it will serve as the major protector of the merit system and employee rights.

The plan creates, as an adjunct to the Board, an independent Office of Special Counsel to investigate and prosecute political abuses and merit system violations.

Finally, the plan establishes a Federal labor relations authority as a new agency responsible for administering the Federal labor relations program. The authority will assume functions now held by the Federal Labor Relations Council and certain duties performed by the Assistant Secretary of Labor for Labor-Management relations. The Federal Service Impasses Panel will continue to operate as a distinct entity within the authority.

* * * * *

Mr. President, I believe that this plan goes a long way to achieving that important goal. With this new structure, the inherent role conflicts at the Civil Service Commission that gave rise to the Malek manual and the accompanying Watergate abuses will be corrected and the merit principles upon which our way of Government has depended will be strengthened and protected.●

[From 124 Cong. Rec. S 14266 (daily ed. Aug. 24, 1978):]

CIVIL SERVICE REFORM ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Chair lay before the Senate calendar order No. 900.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2640) to reform the civil service laws.

* * * * *

[From 124 Cong. Rec. S 14267 (daily ed. Aug. 24, 1978):]

Mr. RIBICOFF. Let me briefly list some of the most significant provisions of the bill. The bill—

Codifies, for the first time, merit system principles and prohibited personnel practices. Employees who commit prohibited personnel practices would be subject to disciplinary action;

Provides for an independent Merit Systems Protection Board and special counsel to adjudicate employee appeals and serve as the "watchdog" of the merit system;

Provides new protections for employees who disclose illegal or improper Government conduct;

Empowers a new Office of Personnel Management to supervise personnel management in the executive branch and delegate certain personnel authority to the agencies;

Establishes new performance appraisal systems and requires that decisions to advance, pay, or discipline employees be based on performance;

Creates new standards for dismissal based on unacceptable performance and streamlines the processes for dismissing and disciplining employees;

Creates a new Senior Executive Service where tenure, development, and rewards will be based on managerial accomplishment;

Authorizes the Office of Personnel Management to conduct research in public management and carry out demonstration projects that test new approaches to Federal personnel administration; and

[From 124 Cong. Rec. S 14268 (daily ed. Aug. 24, 1978):]

Creates a statutory base for the improvement of labor-management relations, including the establishment in statute of the Federal Labor Relations Authority.

These proposals have been reviewed and debated extensively. The President's

personnel management project conducted a 5-month study of the civil service system. The great majority of the 110 staff members of that project were career employees. The project staff held 17 public hearings throughout the United States in which approximately 7,000 individuals participated as part of the consultation process. Also, 800 organizations were contacted for comments on options papers. Many of the recommendations from the study were incorporated in S. 2640.

The Governmental Affairs Committee held 12 days of hearings, during which 86 individuals, representing 55 organizations, testified. The committee held seven markup sessions before ordering the bill reported to the full Senate.

During the course of these extensive deliberations, the committee was vitally concerned with providing adequate management flexibility while at the same time assuring that the civil service system and employees are protected against partisan political abuse and arbitrary actions. The bill accomplishes these objectives.

In sum, Mr. President, S. 2640 is a bill which the Congress and the American people can be proud of. It will help to restore merit to the merit system. The Government will be made more efficient and accountable. It is a reform that is long overdue. I urge the Senate to adopt S. 2640 without delay.

* * * * *

[From 124 Cong. Rec. S 14269 (daily ed. Aug. 24, 1978):]

Mr. RIBICOFF. Mr. President, if the Senator will yield, I pay tribute to the distinguished Senator from Illinois, the ranking minority member. It is really a privilege to work with him on this important legislation.

Our efforts on the committee can truly be said to be bipartisan. I do not recall any major piece of legislation in which the committee has divided along partisan lines. We try to do a truly constructive piece of workmanship on every item of legislation we have before us.

We are truly fortunate in the members of the committee and in our committee staff, led by Mr. Wegman and Mr. Hoff on the majority side and, at the moment, Mr. Ken Ackerman on the minority side.

We have had truly magnificent co-

operation from Mr. Campbell of the Commission, and from the President of the United States. I will have some comments to make when our distinguished colleague from Maryland (Mr. MATHIAS) introduces his amendment, because without the constructive effort and cooperation of the Senator from Maryland (Mr. MATHIAS) and the Senator from Alaska (Mr. STEVENS) we could not have achieved a well-rounded bill.

Senator MATHIAS and Senator STEVENS are truly the experts in this body on the entire civil service establishment. Both of those Senators have large numbers of civil servants in their jurisdictions. They are most sensitive and knowledgeable concerning all the problems of the civil service. We found that time and time again we called upon their knowledge and experience in helping us fashion a good bill.

There were some differences between the objectives that we thought were necessary and those of the Senator from Maryland and the Senator from Alaska; and yet, through careful work between ourselves and our respective staffs, I think we did fashion some constructive alternatives which are included in the amendments to be offered by the Senator from Maryland and the Senator from Alaska.

The ranking minority member, the Senator from Illinois (Mr. PERCY) and I consider it a privilege to cosponsor those amendments, because we do feel they add to the value of the legislation.

Mr. PERCY. I thank my distinguished colleague for his comments, and join with him in paying tribute to the assistant minority leader, the distinguished Senator from Alaska (Mr. STEVENS), who has worked valiantly with us over a period of many months to protect the interests of the Federal workers, but to do so consistent with what most of those workers want—a competent, highly respected civil service that will be a credit to this country.

I commend Senator MATHIAS' deep background, his compassion, his understanding, his concern for the rights of all individuals, not strictly those employed by the Federal Government—which we term the bureaucracy, but we do it many

times in the best sense of that term. Many civil servants are criticized because of the incompetence of some, the lackadaisical attitude of others, and the indecisiveness of others—those, we would hope, are in the minority. We must recognize that we need to protect the rights of those who are employed by the Federal Government, but that we also need to recognize outstanding service as well as that which is less than competent. We have balanced out a bill which, with the amendments, which I will be proud to support, offered by Senators MATHIAS and STEVENS, will be a bill that can serve and accomplish our major overall objective.

* * * * *

The basic thrust of S. 2640 is threefold: First, to assure that an employee's career prospects are more directly tied to his or her performance; second, to provide management with greater flexibility to implement programs and policies mandated by the people; and third, to assure that merit principles and employee rights are tightly protected.

This is, of course, the obvious area in which Senators MATHIAS and STEVENS have been extraordinarily helpful.

* * * * *

Mr. President, I point out that the text of the bill before us extends from page 129 to page 322. The pending amendment before the Senate is the text of some 13 pages and inasmuch as Mr. Ken Ackerman of the Senate minority staff has prepared a brief summary of the Civil Service Reform Act of 1978, S. 2640, I ask unanimous consent that a brief summary of the bill be printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

BRIEF SUMMARY, CIVIL SERVICE REFORM ACT OF 1978—S. 2640

Title I establishes (1) Merit System Principles to govern all Federal personnel actions and (2) Prohibited Personnel Practices. Violation of Merit System Principles is a prohibited Personnel Practice.

MERIT PRINCIPLES

The Merit System Principles are:

1. Recruitment of qualified candidates for positions aimed at achieving a workforce from all segments of society, selection and

[From 124 Cong. Rec. S 14270 (daily ed. Aug. 24, 1978):]

advancement determined solely on merit after fair and open competition, equal opportunity;

2. No discrimination;
3. Equal pay for equal work, incentives for excellent performance;
4. High standard of integrity, conduct, concern for the public interest;
5. Efficiency and effectiveness in use of the Federal workforce;
6. Retention of employees based on adequacy of performance, inadequate performance should be corrected, unfit employees should be separated;
7. Training for employees;
8. Protection against arbitrary action, personal favoritism, partisan political coercion, prohibition against use of official authority to influence elections.

PROHIBITED PERSONNEL PRACTICES

The Prohibited Personnel Practices are:

1. No illegal discrimination;
2. No solicitation on consideration of recommendations unless based on personal knowledge or review of records and consisting of evaluation of competence, character, loyalty, or suitability;
3. No political coercion;
4. No willful deception or obstruction of the right of an individual to compete for a Federal job;
5. No influencing of persons to withdraw from competition for Federal positions so as to improve or injure employment prospects of any applicant;
6. No granting of any preference not authorized by law, rule, or regulation;
7. No nepotism;
8. No reprisals against whistleblowers;
9. No reprisals for use of appeal rights;
10. No violation of law, rule, regulation, or merit system principles.

An employee who commits a Prohibited Personnel Practice is subject to disciplinary action by the Merit Systems Protection Board, leading to penalties including reprimand, civil fine, removal, or disbarment from Federal employment for up to five years.

* * * * *

[From 124 Cong. Rec. S 1427] (daily ed. Aug. 24, 1978):]

Title VII concerns Federal labor-management relations, the manner in which the government deals with employee unions. Currently, some 58 per cent of all Federal Civil Service employees are represented by unions. A Federal Labor Relations Authority (FLRA) is created, consisting of 3 members, appointed by the President, subject to Senate confirmation, serving rotating 5 year terms. The FLRA would administer the Federal labor relations program, decide questions concerning appropriate units for representation,

supervise elections, decide unfair labor practices, hear exceptions to arbitration awards, and decide other matters. The FLRA would be authorized to issue cease and desist orders, issue subpoenas, and require remedial actions.

The FLRA would have a General Counsel who would investigate and prosecute complaints of "unfair labor practices" before the FLRA.

Title VII codifies into statute Executive Order 11491 in that it authorizes employees to form and bargain collectively through unions over matters regarding working conditions in the Federal government. Specifically excluded from the scope of bargaining are agency budgets; mission; organization; security; hire, promotion, transfer, and removal of employees; maintenance of agency efficiency; method, means, and personnel of agency operations; and emergency operations. All parties are required to bargain in good faith, and unfair labor practices are specified for both agency management and labor.

Negotiated grievance procedures leading to binding arbitration are authorized, including arbitration of adverse actions against employees where the employee, at his or her option, chooses arbitration as an alternative to statutory appeals rights. Arbitration of adverse actions would be subject to the same burdens of proof as applicable to the MSPB for similar cases, and subject to similar court review. Arbitration of adverse actions is the single substantive departure of Title VII from E.O. 11491.

A Federal Service Impasses Panel is established to intervene where union-agency contract negotiations have broken down.

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[From 124 Cong. Rec. S 14277 (daily ed. Aug. 24, 1978):]

Mr. RIBICOFF. Mr. President, if the Senator will yield, the distinguished Senator from Tennessee (Mr. SASSER), the chairman of the subcommittee which has the responsibility for Civil Service, has been invaluable to the entire committee. This is hard work. It is work that takes a great deal of time. The Senator from Tennessee has devoted himself to all these problems, and his contributions have been invaluable in the formulation of this legislation.

Mr. SASSER. Mr. President, let me first say that I am greatly indebted to the distinguished Senator from Alaska for the splendid spirit of cooperation he has displayed as the ranking minority member of the Civil Service Committee. He makes a tremendous contribution,

and it is always a great pleasure to work with him; and I thank him for his kind and generous remarks.

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[From 124 Cong. Rec. S 14278
(daily ed. Aug. 24, 1978):]

CHANGING WORKFORCE—COLLECTIVE BARGAINING

Further, the Commission has had to deal with the ramifications at the Federal level of the rapid rise of unionization in public sector employment. With the decline of the notion of the sovereignty of the State in labor relations with public workers, labor organizations in government increased their efforts to improve relations with their employers. From 1949 to 1961, labor organizations of Federal workers pressed for legislation in Congress to authorize statutorily the concept of union recognition and bargaining among Federal employees. The Federal employee labor groups, which had been excluded from the National Labor Relations Act, persuaded various Congressmen to introduce legislation on their behalf, and hearings were held in the 82d, 84th, and 86th Congresses.

The interest and pressures generated by these bills caused President Kennedy to appoint a task force to study employment management in the Federal service. The recommendations of the task force resulted in the eventual promulgation of Executive Order 10988, "Employee-Management Cooperation in the Federal Service," in 1962. Executive Order 10988 established the first formal labor-management relations system for Federal employees of the several agencies of the executive branch, although certain employees, such as those in the Tennessee Valley Authority, had for years operated under their own statutory collective bargaining law.

Today, combined with the rapid growth of the public employment and the changing nature of personnel administration, 58 percent of the Federal workforce is represented by exclusive bargaining agents in work-related areas, excluding pay and fringe benefits. The Civil Service Commission has had to adjust its functions accordingly, but without the benefit of any new laws or the guidance of congressional intent.

NEED FOR COMPREHENSIVE STRUCTURAL REFORM

It is not difficult, then, to see how massively the Federal personnel system has changed since the passage of the Pendleton Act in 1883. But the civil service laws have not adequately changed with the growth of the system. Modernization of public administration techniques, the greatly expanded role of the Civil Service Commission, and the increasing reality of a highly organized Federal workforce have not been reflected in the civil service laws.

* * * * *

SUBCOMMITTEE AND COMMITTEE ACTION

Mr. President, as chairman of the Senate Subcommittee on Civil Service and General Services, and as a member of the Senate Committee on Governmental Affairs, I have had an ongoing concern that the civil service laws reflect the current state of the Federal workforce; that they be fair to those who have chosen Government service as a career; and that they promote efficiency in administration.

In 1977, when the new Civil Service Commissioners, Dr. Campbell, Mr. Sugarman, and Ms. Poston, came before the committee to be confirmed, I raised many of the issues that are now addressed by this bill, S. 2640, today. I raised the subject of protection for civil servants from merit abuse. This subject particularly concerned me and concerned those who work for the Government, after repeated attempts by past administrations to use the civil service for partisan purposes.

I raised the question of the lack of opportunities in our Federal Government for women and minorities.

The Commissioners were asked at those hearings about the dual function of the Civil Service Commission, and whether those functions should be split.

I raised the question of lengthy and often-wasteful appeals procedures, which often did not help those who were in the right but allowed those who were in the wrong to tie up their superiors in mounds of paperwork and months of proceedings.

One of the most important questions in those confirmation hearings dealt with protections for whistleblowers.

I raise the issue that many Federal employees consider the current Executive order governing labor-management relations to be inadequate.

THE INK REPORT

The administration's response to these

and other issues raised was, first of all, a comprehensive study of the entire Federal personnel system. The Federal personnel management project, conducted mainly by career civil servants, was a top-to-bottom review of every personnel law and regulation and their effect on the efficiency of the public service. This project was headed by Mr. Dwight Ink, a public administration expert.

The Ink project was an outgrowth not only of congressional concern, but also of President Carter's clear commitment to reorganization and reform of the civil service.

* * * * *

[From 124 Cong. Rec. S 14279 (daily ed. Aug. 24, 1978):]

S. 2640

The bill we have before us here today, Mr. President, addresses these issues in a straightforward and comprehensive manner. When S. 2640 was submitted by the administration in March, it contained the following provisions:

Codification, for the first time, of basic merit principles governing the Federal personnel system, and specific identification of prohibited personnel practices which undermine the merit system;

* * * * *

On April 25, 1978, the President submitted as an amendment title VII, which would create an independent Federal Labor Relations Authority to administer the Federal labor relations program, and which would codify the existing Executive Order 11491, which now governs labor relations in the Federal sector.

The Civil Service Reform Act of 1978, S. 2640, was a companion to Reorganization Plan No. 2 of 1978, which seeks to abolish the Civil Service Commission and replace it with a single-headed Office of Personnel Management, a Merit Systems Protection Board, and a Federal Labor Relations Authority. The reorganization plan makes the major structural changes in the civil service system, while the legislation implements the policy changes President Carter feels are essential to reforming the Federal personnel system.

Mr. President, I would like at this time to highlight the major areas of reform addressed by this bill and to underscore why they are so essential to getting a handle on the bureaucracy, affording

greater management flexibility, and insuring fair treatment and adequate rewards for Federal employees who do their jobs.

* * * * *

[From 124 Cong. Rec. S 14280 (daily ed. Aug. 24, 1978):]

Mr. SASSER. Mr. President, the proposed reorganization and restructuring of the Civil Service Commission is absolutely essential to assuring each President that he will be able to run the bureaucracy effectively and to assuring Federal employees that their job security will not be threatened by arbitrary actions based on political motivations.

* * * * *

[From 124 Cong. Rec. S 14281 (daily ed. Aug. 24, 1978):]

X. LABOR-MANAGEMENT RELATIONS

Since Federal employees were not included in the coverage of the National Labor Relations Act, it has been the goal of many employees and some in Congress to recognize the positive results of collective bargaining and extend such benefits to the Federal sector. Although some employees in certain agencies have statutory collective bargaining rights, no such right exists for the vast majority of Federal employees.

Currently, Federal labor relations are governed by Executive Order 11491, as amended. The Executive order establishes the right of Federal employees to belong to unions and establishes procedures for the recognition of bargaining units. But the Federal labor relations program continues to differ in substantive ways from that of the private sector.

For one, Federal employees are not allowed to strike. Also, exclusive representatives of Federal employees may not bargain over pay or fringe benefits. Further, there is no agency shop in the Federal Government; no employee must join or pay dues to a union in order to be a member of a bargaining unit.

This legislation does not in any way alter the unique role of public employees as it is applied to labor-management relations. The legislation continues to recognize that there must be certain dif-

ferences between unions in the private sector and unions in the Federal sector.

However, S. 2640 does take the important step of establishing congressional control over the Federal labor relations program by essentially codifying the current Executive Order 11491. The bill addresses the fundamental reality that today's Federal work force is a highly unionized work force, and that there should be adequate mechanisms in the law to allow the Government to work cooperatively with employee representatives toward better productivity and improved employee morale.

To that end, the legislation, combined with Reorganization Plan No. 2 of 1978, establishes an independent Federal Labor Relations Authority, in which are consolidated the functions of the current Federal Labor Relations Council and the Assistant Secretary of Labor for Labor-Management Relations.

The FLRA will administer the Federal labor relations program, make policy decisions, supervise elections for exclusive representatives, hear and decide complaints of unfair labor practices, and oversee the machinery for the resolution of adverse action appeals through the arbitration process. There will be a gen-

[From 124 Cong. Rec. S 14282 (daily ed. Aug. 24, 1978);]

eral council in the FLRA to investigate and bring before the FLRA complaints of unfair labor practices.

The FLRA is far preferable to the current labor relations structure in the Government, which is comprised totally of management officials. The independent nature of the FLRA will promote effective labor-management relations in the Federal sector.

CONCLUSION

Mr. President, to conclude my opening remarks on this legislation, I wish to praise the distinguished chairman of the Committee on Governmental Affairs, Senator Ribicoff, for his outstanding work in moving this bill through committee. This legislation is representative of his fair and judicious approach to legislation in general, and, specifically, to matters affecting Federal personnel policies and procedures.

Mr. JAVITS. Mr. President, last year when President Carter spoke with members of the Governmental Affairs Committee about his proposal to reform the Federal Civil Service, I was particularly impressed with the breadth and reach of his ideas. I was equally impressed with the serious substantive and political difficulties inherent in any such proposal precisely because they represented a fundamental reappraisal of a nearly 100-year old civil service system.

The bill before the Senate today is the product of a truly extraordinary effort to reach compromise and balance important interests. Those balances and compromises have been achieved, however, without detracting from the ambitious goals of the initial legislation. It is a strong bill which will strengthen and further promote a competent, nonpartisan civil service based upon the principle of merit.

* * * * *

In my judgment, the bill presents a comprehensive approach to reform of the civil service system. There are several provisions which I believe are particularly important:

First, I support separating the Civil Service Commission into a Merit Systems Protection Board and an Office of Personnel Management. There is no question that a serious conflict has existed in the Civil Service Commission's responsibilities, that its personnel management and policing roles are fundamentally incompatible and should be performed by two different offices. The independent Merit Systems Protection Board will be a strong merit "watchdog" and an employee protector, which is long overdue.

Second, the establishment of an Office of OPM should go a long way toward increasing flexibility in all levels of Government management. Currently, all personnel operations and actions are centralized in the CSC. This centralization is often the cause of delays in hiring, creates complex administrative procedures and excessive costs. The bill would authorize the President to delegate to the Director of OPM, who in turn would be permitted to delegate to agency heads, all personnel functions presently conducted solely within the CSC.

* * * * *

Third, I am pleased that the bill would create a new Federal Labor Relations Authority. Consolidating responsibility in FLRA should eliminate what is perceived by Federal employee unions and others as a conflict of interest in the existing Council. Its members consist of the Chairman of the Civil Service Commission, the Director of the Office of Management and Budget, and the Secretary of Labor—policymakers who are responsible primarily as top managers in the incumbent administration. S. 2640 will assure impartial adjudication of labor-management cases by providing for a new Board whose members are selected independently—nominated by the President and confirmed by the Senate—rather than by virtue of their service as Federal managers.

Establishment of the FLRA also will eliminate the existing fragmentation of authority between the Assistant Secretary of Labor for Labor-Management Relations and the Federal Labor Relations Council. The FLRA will have comprehensive jurisdiction in Federal labor-management relations. Merging the responsibility into a single agency will eliminate the need for continuous coordination between two separate agencies with differing and at least potentially conflicting mandates. This change should result in more effective policy-making and administration in this area of vital importance to both Federal employees and Federal managers, as well as the public at large.

S. 2640 also provides explicit statutory responsibilities for FLRA. The part-time Federal Labor Relations Council was established by Executive order. With approval of S. 2640, the intent of Congress regarding the functions and operations of Federal labor-management relations will be clearly established.

* * * * *

[From 124 Cong. Rec. S 14291 (daily ed. Aug. 24, 1978):]

Mr. MATHIAS. Mr. President, now that the Senate has undertaken consideration of S. 2640, the civil service reform bill, I wish to take this opportunity to commend my distinguished colleagues, the Senator from Connecticut (Mr. RIBICOFF), the chairman of the Governmental Affairs Committee and the Sena-

tor from Illinois (Mr. PERCY), the committee's ranking minority member for the serious and responsible work they have done on this important and essential legislation. The members of this committee labored long and for many hours to debate the issues and hear 12 days of testimony from 86 individuals representing 55 organizations.

That is just to give the Members of the Senate some concept of the scope of this work.

Mr. President, I have expressed some very strong views about this bill and its accompanying reorganization plan. While the committee has made major and substantial improvements in the bill, I think there is general agreement that there are several modifications that can and must be made on the floor.

* * * * *

Mr. President, the original proposal failed to recognize that Federal employees are, for the most part, dedicated, loyal men and women who work hard at their jobs. They want to be successful in their careers of public service. Very often they joined the civil service because of patriotic motives and deserve respect and dignity and security in their jobs.

The President's bill called for drastic firing capabilities. But we cannot be overzealous with our attempts to get rid of the deadwood. The President has said that in 1976, only 226 employees had been fired for incompetence and inefficiency. The President's figures were slightly in error. In fact, some 17,000 employees had been fired for cause in 1976. This indicates that the situation was not quite as bad as the President perceived it to be. Therefore, I do not think that the remedy should be quite as drastic as the President proposes. And this is one example—only one—of why we have to look carefully at the administration's civil service reform bill.

I concluded that the President's legislation could be salvaged, but only through amendments. So when the committee met to consider amendments to the bill, I sought to have several changes adopted. Senator STEVENS and I proposed modifications in the structure of the Office of Personnel Management that would provide bipartisan leadership. The changes would also limit the authority of this central personnel agency to conduct demonstration projects. The ad-

ministration's bill granted authority to the OPM to conduct these projects for almost 5 years for upward of a quarter to a half million people, while setting

[From 124 Cong. Rec. S 14292 (daily ed. Aug. 24, 1978):]

aside all civil service laws and important merit principles. Alterations in the examining process were suggested. Insuring the independence of the Merit Systems Protection Board and the Special Counsel was another goal. Lastly, these amendments called for important modifications regarding the burden of proof in adverse action cases against employees, providing basic protections to members of the Senior Executive Service and drastically curtailing opportunities for politicizing the Service.

These proposals met with mixed success, and as a result Senator STEVENS and I submitted Minority Views to the committee's report on this bill. Those views reiterated each of our concerns expressed during committee deliberations.

The distinguished chairman of the committee, Senator RIBICOFF offered several weeks ago to have his staff negotiate with Senator STEVENS' staff and my own to attempt to reach agreement on many of these issues. Senator PERCY's staff also participated in these talks. These sessions proved to be quite fruitful, for today I am pleased to report that Senators RIBICOFF, PERCY, STEVENS, and I have reached agreement to offer a joint amendment coordinated with the administration, that we believe adequately addresses most of the issues raised in the minority report. I assume that we will undertake consideration of this amendment later during the debate on this measure. There are other concerns that have not been addressed, however. The Senate must endeavor to make this a true "reform" package, smoothing its rough edges, while striking the proper balance between protection of merit principles and management flexibility.

AMENDMENT NO. 3533

(Purpose: Improving the protections afforded Federal employees)

Mr. MATHIAS. Mr. President, I call up amendment No. 3533.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS), for himself, Mr. STEVENS, Mr. RIBICOFF, and

Mr. PERCY, proposes an amendment numbered 3533.

Mr. MATHIAS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 152, line 6, strike out the end period and insert in lieu thereof a semicolon and "and".

* * * * *

On page 307, beginning with line 18, strike out all through page 308, line 2, and insert the following:

"(1) Allocation of the costs of the arbitrator shall be governed by the collective-bargaining agreement. The collective-bargaining agreement may require payment by the agency which is a losing party to a proceeding before the arbitrator of reasonable at-

[From 124 Cong. Rec. S 14293 (daily ed. Aug. 24, 1978):]

torney fees incurred by an employee who is the prevailing party if the arbitrator determines that payment is warranted on the grounds that the agency's action was taken in bad faith. If an employee is the prevailing party and the arbitrator's decision is based on a finding of discrimination prohibited by any law referred to in section 7701(h) of this title, attorney fees also may be awarded and shall be governed by the standards applicable under the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-5(k))."

On page 308, line 13, after "section." insert the following: "The Authority may award attorney fees to an employee who is the prevailing party to an exception filed under this subsection, but only if it determines that payment by the agency is warranted on the grounds that the agency's action was taken in bad faith."

On page 286, between lines 3 and 4, insert the following:

"§ 7205. Personnel Policy Advisory Committee

"(a) There is established, subject to the provisions of the Federal Advisory Committee Act, the Personnel Policy Advisory Committee (hereinafter in this section referred to as the 'Committee') which shall be composed of—

"(1) the Director of the Office of Personnel Management who shall serve as Chairman of the Committee;

"(2) the Secretary of Labor or his delegate;

"(3) five members appointed by the President from among individuals serving in Executive agencies and military departments in positions not less than the positions of Assistant Secretary or their equivalents;

"(4) one member appointed by the President from the Deputy and Associate Directors of the Office of Personnel Management; and

"(5) seven members appointed by the President who shall be officers of labor organizations representing employees in the Federal Government.

Appointments made under paragraph (5) shall reflect the relative numbers of the total Federal employees which are represented by such labor organizations, or affiliates thereof, except that no more than four members shall be from one such organization or its affiliates.

"(b) It shall be the function of the Committee to provide a forum for discussion by agency management and employee representatives of Federal personnel policy and regulations which affect more than one agency, and to make recommendations with respect to such policies and regulations.

"(c)(1) The Committee shall meet at the call of the Chairman but at least once quarterly. The Chairman shall notify each member of a proposed meeting at least fourteen days before it is to be held.

"(2) The Chairman shall prepare an agenda of topics for consideration by the Committee in any meeting and shall include such agenda in the notice sent under paragraph (1).

"(3) If one-third of the members present at a meeting vote to discuss an unscheduled topic, it shall be discussed.

"(d)(1) Recommendations of the Committee may be considered by the Office of Personnel Management in the formulation of Federal personnel policies and regulations.

"(2) Copies of the transcripts of the meetings of the Committee shall be sent to the Merit Systems Protection Board and the Federal Labor Relations Authority.

"(e)(1) Except as provided in paragraph (2), members of the Committee shall receive as compensation the daily equivalent of the annual rate of basic pay in effect for grade GS-18 for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Committee.

"(2) Members of the Committee who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the Committee.

"(3) While away from their homes or regular places of business in the performance of service for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of this title."

On page 271, between lines 2 and 3, after the item relating to section 7204, insert the following new item:

"7205. Personnel Policy Advisory Committee."

* * * * *

Mr. MATHIAS. Mr. President, after this legislation had been reported by the Governmental Affairs Committee, Senator STEVENS and I made our objections known by submitting minority views to the report on the bill. Thereafter, we submitted several amendments to the legislation that reflected the serious nature of our concerns with this bill. Mr. RIBICOFF, the distinguished senior Senator from the State of Connecticut, and chairman of the Governmental Affairs Committee and Senator PERCY, the ranking minority member of the committee, agreed to begin sessions with Senator STEVENS and myself in an effort to satisfy or at least meet some of our concerns. I am pleased that these discussions have produced highly satisfactory results. After each of us had reached substantial agreement on these issues, our staffs met with representatives of the administration and reviewed with them the package that is now represented by this amendment.

* * * * *

[From 124 Cong. Rec. S 14294 (daily ed. Aug. 24, 1978):]

Mr. RIBICOFF. Mr. President, I commend the Senator from Alaska and the Senator from Maryland. They were very, very watchful watchdogs, and both the ranking minority member and myself feel that they have made a substantial contribution and have improved the bill.

We are very pleased to accept the Senator's amendment.

Mr. MATHIAS. Mr. President, the Senator from Connecticut is extremely kind and generous as he always is.

I know that the Senator from Alaska and I both share a sense of appreciation to him for his sentiments here as for his cooperation throughout the whole process.

* * * * *

RULE POSTING REQUIREMENTS

Mr. STEVENS. Mr. President, this addition to the civil service reform bill will assure Federal workers an early

notice of new rules and regulations enacted by the Office of Personnel Management. The provision requires a posting of these regulations in Federal offices maintaining copies of the Federal personnel regulations. The requirement will have the effect of advising concerned government employees at their general office location regardless of its remoteness to Washington, D.C.

This amendment is an improvement of the Administrative Procedure Act. The Procedure Act depends heavily on notification through the Federal Register. Such notification becomes less effective for the lower grades of government employees who are not accustomed to reviewing the Register regularly. This point is also valid in the smaller government installations found in many States.

This posting requirement is a straightforward attempt to notify all employees of new rules and regulations that will affect their jobs. The requirement includes notification of employee representatives. The process should promote a clear understanding of Federal regulations early in the implementation stage. Combined with new authorities of the Merit System Protection Board, adequate notification will promote merit principles and minimize questionable regulations which might result in prohibited personnel practices if implemented by the agency.

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[From 124 Cong. Rec. S 14295
(daily ed. Aug. 24, 1978):]

ADVISORY COMMITTEE FOR THE DIRECTOR OF THE
OFFICE OF PERSONNEL MANAGEMENT

This amendment establishing an advisory committee will fulfill one of the recommendations of the Personnel Management Project of the President's reorganization plan. Senate bill 2640 confines the scope of collective bargaining to those matters which properly belong within the purview of labor-management consultation. Specifically, it excludes matters governed by the policies and regulations of the Office of Personnel Management and the Merit Systems Protection Board. And it bars consideration of issues reserved as management rights: the determination of the agency's mission, budget, organization, and work force size

and structure. These restraints are fully consistent with the objectives of providing administrative efficiency and protecting the public interest.

However, it is important that neither labor nor management be excluded from the process of developing rules and policies. Unions must work under central personnel management requirements. Agencies must administer them. Most importantly, both unions and agencies possess extensive knowledge of the general and the particular aspects of the substance of central management decisions. It is important that unions and agencies be provided a formal consultative role in the policymaking process.

While the central personnel agencies have frequently consulted with unions and agencies in the past, these were ad hoc processes initiated by the personnel agencies. There is no process which insures that consultation is systematic.

This amendment will establish a regular and structured conference procedure. It provides for Presidential appointment of a fifteen-member Personnel Policy Committee. The Director of the Office of Personnel Management will chair the committee, which will also include seven members from among the heads of executive agencies and military departments and seven members selected from unions, primarily on the basis of their relative size in representing Federal employees.

The Personnel Policy Committee will meet at least once a quarter. It will be able to consider all Federal personnel policies and regulations which affect more than one agency.

Ideally, the Personnel Policy Committee will provide a forum at which management and organized labor will offer, defend, and consider recommendations on Federal personnel policies and regulations. The amendment is designed to establish harmony between, first, the desire of unions and agencies to have a meaningful and systematic role in determining central personnel agency rules; and, second, the need of the central personnel agencies to achieve the effective execution of laws and Presidential directives.

In drawing on the insight and expertise of labor and management, the proposal will improve the efficiency and preserve the authority of Federal personnel management.

PAYMENT OF ATTORNEY FEES IN ARBITRATION

Mr. President, this revision provides

for attorney fees incurred by an employee who is the prevailing party in an arbitration case. This amendment will be superseded by negotiated agreements where the agency and the representative of employees have agreed to alternative terms in a contract. The intent of this amendment is to provide a standard rule on such awards that is consistent with the provisions available to the Merit Systems Protection Board.

The arbitrator shall decide the award of such payments if the Agency's action is considered to have been taken in bad faith. The award should cover reasonable attorney fees and accepted court expense items such as filing fees and the cost of transcripts. It is our intention that these awards should reflect the actual costs incurred, realizing that costs in some States would be higher than others for the same case.

The provisions of this amendment are consistent with the accepted awards authorized in the statutory process of appeals. Title VII of the civil service reform bill provides the employees working within negotiated agreements to have a choice between the statutory appeals process or the terms of the contract. This amendment corrects an inequity that exists if the employee chooses arbitration.

The amendment authorizes the Federal Labor Relations Authority to grant attorney fees in the same manner described for the arbitrator. Obviously, some arbitration decisions will be appealed to this new Authority. The intention of this revision is to provide relief equivalent to the statutory process when the employee decided on arbitration. Such fees will include those appropriate costs which had been incurred in the arbitration process.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that both the committee amendment in the nature of a substitute as amended and the amendments proposed by the Senator from Maryland, and others, be agreed to and as agreed to be considered original text for purposes of further amendment.

The PRESIDING OFFICER. Without objection, the committee amendment as amended, is agreed to.

Mr. PERCY. Mr. President, I concur that the amendment before us should be accepted as original text. This amendment which is the result of long and arduous negotiations of staffs representing Senator RIBICOFF, myself, Senators

MATHIAS and STEVENS, was accepted by the administration in a meeting of four Senators with President Carter and Chairman Campbell, Chairman of the Civil Service Commission.

The purpose of the amendment is to address concerns that S. 2640 as reported from committee contain the potential for political abuse in the Federal bureaucracy.

The amendment addresses these fears while retaining the essential structure and thrust of the overall legislation. For instance, the Merit System Protection Board review procedure is drafted so as not to allow MSPB a role in policymaking, this area being reserved for OPM. It is simply a way to assure that OPM in implementing policy through regulations does not step over the line and commit prohibitive personnel actions which is the sole standard of review for striking regulations down.

The amendment is structured to allow MSPB to act any time after the effective date of the regulation, either before harm has been done, or in response to harm that has been done.

The purpose of the amendment is to assure against political manipulation of the senior executive service as well as to establish a presumption in favor of career reserve positions.

I find that the amendment which has been worked out is extraordinarily helpful and certainly incorporated as original text is acceptable to the Senator from Illinois.

* * * * *

[From 124 Cong. Rec. S 14310 (daily ed. Aug. 24, 1978):]

UP AMENDMENT NO 1774

Mr. HATCH. Mr. President, I send to the desk an unprinted amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes an unprinted amendment numbered 1774.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 8, strike lines 17-25.

On page 9, strike lines 1-25.

On page 10, strike lines 1-25.
On page 11, strike lines 1-4.

[Hatch Amendment No. 1774 strikes the Personnel Policy Advisory Committee provisions from Amendment No. 3533. Page references are to the printed version of the latter amendment, included at pages 1077-1080 below.]

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield briefly?

Mr. HATCH. I yield.

Mr. ROBERT C. BYRD. Mr. President, it is my understanding that the managers of the bill may be prepared to accept this amendment.

Mr. HATCH. The managers have indicated that they would accept it. Senator MATHIAS and Senator STEVENS have indicated that they would accept it. It is not controversial, so far as I know, and there is no reason to debate it.

Mr. RIBICOFF. There are a few amendments being offered by the Senator from Utah which we have discussed, and I am ready to accept the series of amendments being offered by the Senator from Utah. I am uncertain about any other amendments.

Mr. STEVENS. I shall offer the one we have discussed with the Senator's staff, and I shall not offer the other.

Mr. RIBICOFF. During the discussion, we will go into the other amendment. I am not sure which one that is.

Mr. ROBERT C. BYRD. Mr. STEVENS has one amendment. Are there other amendments? Only the amendment by Mr. STEVENS after the amendments by Mr. HATCH.

Mr. STEVENS. Senator DOLE has an amendment.

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senate will be in order.

Mr. HATCH. Mr. President, are the floor managers willing to accept the amendment I have just sent to the desk? As I understand it, they have accepted the amendment.

Mr. RIBICOFF. It is accepted by the manager of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RIBICOFF. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

[From 124 Cong. Rec. S 14311
(daily ed. Aug. 24, 1978):]

UP AMENDMENT NO. 1775

(Purposes: (1) To insure secret ballot elections under all circumstances prior to imposing a bargaining obligation on any agency. (2) To decertify any exclusive representative who fails to take action to prevent or stop a strike, work stoppage, slowdown, or picketing of any agency. (3) To protect the employee's right to hear both sides of union representation arguments so long as no threats, force or promise of benefit are involved)

Mr. HATCH. Mr. President, I send three unprinted amendments to the desk.

The PRESIDING OFFICER. Does the Senator request that they be considered en bloc?

Mr. HATCH. Yes. I ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments will be stated.

The legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes three unprinted amendments numbered 1775.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

On page 296, line 8, after the word "chapter" delete the period and substitute a semicolon and then add the following new proviso.

"Provided, That nothing in this chapter shall be construed as requiring an agency to negotiate in good faith with any labor organization certified after the enactment of this Act until a representative of its employees has been determined by means of a secret ballot election conducted in accordance with the provisions of this chapter. This proviso shall not be construed to bar a consolidation of units without an election.

On page 301, line 3, add the following new subparagraph,

"(e) Any labor organization which has violated section 7216(b) (4) (B) shall, upon an appropriate finding by the authority of such violation, have its exclusive recognition status revoked and it shall cease immediately to be legally entitled and obligated to represent employees in the unit."

On page 298, line 16, add the following new subparagraph,

"(f) The expression of any personal views, argument, opinion or the making of any statement shall not (i) constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, or (ii) constitute grounds for, or evidence justifying, setting aside the results of any election conducted under any provisions of this chapter, if such expression contains no threat of reprisal or force or promise of benefit."

Mr. HATCH. Mr. President, these amendments also are acceptable to the managers of the bill, and I move their adoption.

Mr. BELLMON. Mr. President, may we have a brief explanation of what these amendments do?

Mr. HATCH. Mr. President, the first amendment deals with title VII and provides that no new labor organization which comes into being after the enactment of this act can achieve collective bargaining rights unless a majority of the employees in an appropriate unit vote for the union via a secret ballot election. This amendment preserves the sanctity of the employee making a free choice through a secret ballot election and only through that process which is the proven method of guaranteeing a fair and unfettered employee choice. That is amendment No. 1.

That is amendment No. 1.

No. 2; The second amendment also deals with title VII and provides for the decertification of any labor organization which is found by the authority to have condoned, by failing to take appropriate action to prevent any strike, work stoppage, or slowdown by employees; I believe the public interest demands that we take the legal authority away from any union which abrogates its responsibility to remedy unlawful employee actions. This act creates rights and duties on the part of both collective bargaining participants, and I feel this is a minimum obligation the union should assume or risk losing its legal bargaining status.

The third amendment: The last amendment protects the employee's right to hear both sides of union representation arguments so long as no threat,

force, or promise of benefit are involved. Employees should be able to hear, and digest, any personal views, arguments, opinions, or other statements about the union situation whether by the union agents or the agency's managers and supervisors without an unfair labor practice being found or an election set aside based upon the expression of views. We have the added protection here that the views must be fair and not contain threats, force, or any promises of benefit for the employee involved.

I commend the three amendments offered en bloc to the attention of the floor managers and I believe they are willing to agree to them, and they have been run by the administration, they agree to them, and I believe that they are very good amendments which will enhance this bill, especially title VII.

Mr. JAVITS. Mr. President, I ask the managers of the bill, because they have been handling the bill, and I am a member of the same committee—these are labor amendments—what is their rationale for accepting each amendment, and have they consulted with the administration and is the administration willing?

Mr. RIBICOFF. May I say that there was consultation between the Senator from Utah and Mr. Campbell, as I understand it, and the staffs.

Mr. HATCH. That is correct.

Mr. RIBICOFF. Mr. Campbell, the chairman of the Civil Service Commission, worked out the language with the Senator from Utah.

Mr. HATCH. Mr. President, will the Senator yield for a slight additional explanation.

Mr. RIBICOFF. I yield.

Mr. HATCH. We have revamped a number of amendments which I brought to the attention of Mr. Campbell and the civil service people and their aides and staffs, and we revamped them in accordance with their recommendations and desires, and I believe the amendments are in good order.

Mr. JAVITS. So the managers are not prepared to explain the rationale; they are simply relying upon the fact that these amendments have been accepted by the Civil Service Commission; is that correct? The Civil Service Commission is the employer, for practical purposes, is it not? Has any effort been made to get labor's view on these amendments?

Mr. RIBICOFF. Personally, I did not discuss this with labor. I do not feel it is incumbent upon me personally, as a U.S.

Senator, to discuss something with labor or with management. It was worked out with the Civil Service Commission after a series of conferences. I was busy in the Chamber with the entire bill, and I was willing to accept this. I will be candid with my distinguished colleague from New York.

Mr. JAVITS. All right. I just wanted to get the ground rules. I am not trying to find any fault with the managers at all. I will get to the merits in just a minute. But I did first want to find out how the managers felt and their reasons.

Mr. PERCY. Mr. President, will the Senator yield for a question on this?

Mr. JAVITS. I yield to the Senator.

Mr. PERCY. Obviously you cannot touch base with everyone, I am sure this could have been run by some additional people. But in looking at the amendments and considering that the distinguished Senator from Utah brought in a rather bulky package of amendments today, I think that what has been sifted out gets right down to the heart of some of his concerns.

The first, as I understand it, would be to decertify any union found to be involved in a strike—that is an illegal action against the Government and that appeared on the surface at least to be reasonable; to insure a secret ballot in all union elections, and that should be, I would think, something the unions would want to preserve; and to see that there is a full opportunity to insure the expression of personal or dissenting views in union campaigns.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. PERCY. I am happy to yield.

Mr. HATCH. This also protects both the unions and the civil service people because it allows the consolidation to take place. As I understand it, there are some 3,500 different unions, and it protects their right to consolidate and protects them prospectively and retrospectively in this matter.

Mr. PERCY. As the Senator from Illinois mentioned many times during the debate on the labor reform bill, it is our duty in Congress to protect the rights of the individual.

As I interpret these amendments, they do go to the heart of protecting individuals. I should think that responsible labor leadership would support them. But the Senator from Illinois will admit that time pressure has been so great this afternoon with the intention of the

leadership to finish this bill and have final passage voted by 5 o'clock—we are now 1 hour and 5 minutes behind that—but if there are serious reservations about them, we will certainly do the best we can to check it out to be certain we looked at every aspect of it.

Mr. JAVITS. Mr. President, the purpose of my taking the floor is because I am the ranking minority member of the

[From 124 Cong. Rec. S 14312 (daily ed. Aug. 24, 1978):]

Labor Committee, a committee of which Senator HATCH is a member, and his views on union organization are as well known as mine.

Mr. HATCH. That is correct.

Mr. JAVITS. Therefore, it is my duty to examine them carefully and find out what is the rationale, to decide whether I wish to agree or to oppose. But before I do that, because the Senators are my friends, and I have great faith in them, and they are handling this bill, I wanted to find out the basis on which they were taking them, and now they have told me.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. STEVENSON). Without objection—

Mr. METZENBAUM. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. I just want to make an announcement.

Mr. METZENBAUM. I withdraw my objection.

ORDER OF PROCEDURE TONIGHT

Mr. ROBERT C. BYRD. Mr. President, it is hoped that the Senate can complete action on this bill this evening without having to stay late and, if that is possible and achievable, then the Senate will go out until 9 o'clock tomorrow morning. On tomorrow the Senate will take up the CETA bill and the remaining tax bills. So I hope that all Senators will cooperate and work together to complete action on this bill this evening and, if possible, hopefully it will not be too late and, as I say, the Senate will go out.

Mr. METZENBAUM. Mr. President,

the three amendments that have been offered are matters of major concern, as I see it, and I am just taking the time in order to see if I can find out exactly what they do provide. It is for that reason that I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BELLMON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, reserving the right to object, and I will not object, as I understand it, the Senator wishes to raise a point having nothing to do with the Hatch amendments?

Mr. BELLMON. That is correct.

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[From 124 Cong. Rec. S 14313 (daily ed. Aug. 24, 1978):]

Mr. JAVITS. Mr. President, do I understand that the amendments of Senator HATCH are now pending?

The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. Has there been a consolidation of them?

Mr. HATCH. I have moved that they be considered en bloc.

Mr. JAVITS. Mr. President, are they divisible?

The PRESIDING OFFICER. The amendments are not divisible because they are to be considered en bloc, by unanimous consent.

Mr. JAVITS. I thank the Chair.

Mr. President, my first question would be addressed to the Senator from Utah as follows: The amendment which relates to the choice for the representative of the employees by means of a secret ballot election, that, as I understand it, would make it necessary to have a secret ballot election before there could be certification. That is a change in existing law or practice. Otherwise, there could be a certification on some other evidence of representation or on the volition of the United States. In short, is the effect of the amendment to require a secret ballot election where it otherwise might not be necessary as a matter of law to have one?

Mr. HATCH. As I understand it, the bill provides—

Mr. JAVITS. I cannot hear the Senator. Will he use his microphone?

Mr. HATCH. As I understand it, the bill itself provides for certification by a secret ballot election. What this amendment does is reinforce that, plus it does so prospectively, so that no organization which presently represents any of the civil service employees would be decertified by this amendment.

Mr. JAVITS. Decertified? In other words, this would only apply to future certification?

Mr. HATCH. That is what I understand.

Mr. JAVITS. How does it change existing law?

Mr. HATCH. As I understand it, the same way that the bill does. That is by requiring a secret ballot election. Under existing law the two sides can get together and alleviate the secret ballot election. This mandates the secret ballot election in all civil service certification.

Mr. JAVITS. That is right. The two sides could get together and dispense with the election, but this would require such an election.

Mr. HATCH. That is right, and this is for the protection of the employees who work in civil service.

Mr. JAVITS. And is prospective in its operation?

Mr. HATCH. That is correct.

Mr. JAVITS. Mr. President, speaking for myself alone, I personally see no objection. It is a change in the law and it does make a difference, but I do not think it makes so much of a difference that I would care to disturb the existing understanding between the managers of the bill and my colleague.

Mr. MATSUNAGA. Will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. MATSUNAGA. Mr. President, as I read the amendment being discussed by the Senator from New York and the Senator from Utah, it requires an additional election, after a union has been certified, to choose a representative of the employees, such as a business agent, by a secret ballot election before the agency may deal with that representative of the employees. Is my interpretation correct?

Mr. HATCH. On a prospective basis, that is true. In other words, in the future the employees will be protected by the mandated secret ballot election with regard to Federal civil service employees. This is an employee's right that we want to protect. That really does not hurt the

union, so far as I am concerned.

Mr. MATSUNAGA. So that in the event a union has been certified by secret ballot, if that union is to send a business agent to deal with the agency, that union must hold a second election to elect the business agent who is sent to deal with the agency?

Mr. HATCH. No, upon the effective date of this act, all duly certified unions representing civil service employees which have been certified up to that time, whether or not by secret ballot, will be preserved. But after the duly effective date of this act, from that time forward, all elections certifying the union will have to be secret-ballot elections. So the Senator is incorrect.

Mr. MATSUNAGA. That is already in the law, is it not?

Mr. HATCH. No.

Mr. MATSUNAGA. My question, I suppose, is directed to the meaning of the term "representative of its employees" as shown in the Senator's amendment.

Mr. HATCH. That is right.

Mr. MATSUNAGA. What does that refer to? Does that refer to the union or to the business agent of the union?

Mr. HATCH. That refers to the union.

Mr. MATSUNAGA. It refers to the union?

Mr. HATCH. Right.

Mr. MATSUNAGA. That clarifies it.

[From 124 Cong. Rec. S 14314 (daily ed. Aug. 24, 1978):]

Mr. HATCH. It preserves the union's representative status.

Mr. MATSUNAGA. So as I understand it, there is no requirement for election by a secret ballot of a business agent sent by the union?

Mr. HATCH. That is right. In other words, it is not a requirement for a secret ballot to choose the union agent, only the union, as the representative of the employees.

Mr. MATSUNAGA. I thank the Senator.

Mr. WILLIAMS. Will the Senator yield?

Mr. JAVITS. May I ask one other thing? Then I shall yield to the Senator.

I think quite inadvertently, the Senator's amendment said "Nothing in this chapter shall be construed as requiring an agency to negotiate in good faith." I am sure the Senator did not mean that entitles him to negotiate in bad faith?

Mr. HATCH. No, certainly.

Mr. JAVITS. I wonder if he would strike the words "in good faith". I do not think the Senator had any such intention, but it could be so read.

Mr. HATCH. I ask unanimous consent that the amendment be modified in that manner.

The PRESIDING OFFICER. The Senator has that right.

The amendment was modified.

Mr. WILLIAMS. Mr. President, I should like to make an observation. The Senator from New York said he was speaking only for himself in agreeing that this amendment was acceptable to him. I speak for the Labor Committee, and for myself, quite frankly, I did not know of this amendment until almost literally minutes ago. Recognizing the substantial distinctions between private sector collective bargaining, it seems to me that in the context of public sector unionism, the proposal that before a union must be bargained with it must be certified in a secret ballot election is not an unreasonable one and I am prepared to vote for it.

Mr. HATCH. I thank my distinguished friend.

I assumed when I brought these amendments up that they were acceptable and I was asked to expedite it to the extent that I could, so I tried. I am happy to have had this colloquy at this time. I shall be happy to answer any other questions.

Mr. JAVITS. Moving now to the next amendment, the so-called free speech amendment, that troubles me for this reason, and I shall communicate my concern to the Senator and he will give me his views and his explanation. It is a fact that we consider the Federal Government in this bill as an employer, but it is also the Federal Government.

Mr. HATCH. That is true.

Mr. JAVITS. And you cannot strike against the Federal Government, so, if you work for the Federal Government, you give up something. You may strike illegally, as the postal workers are threatening to do, but that is true of any law. It can be broken and punishment and reaction must follow.

The United States has laws favoring union organization or, at least making it possible under the propriety of law.

Is it not a fact that, under this free speech amendment, an individual manager, speaking personally, could say that he does not like unions and he does not

think they are a very good idea and he does not think that they will do anybody who joins them any good. That would still be within the purview of this amendment, would it not?

Mr. HATCH. That is correct.

Mr. JAVITS. Because it does not include a threat of reprisal or force or promise of benefit.

Mr. HATCH. That is right. In other words, he may express his personal good-faith opinion, but he cannot express a threat of reprisal or force or promise of benefit, which is the present law. But he may tell what he personally feels without fear of an unfair labor practice charge.

Mr. JAVITS. Would that privilege, as the Senator describes it, also apply to an employee of the Federal Government, who could say to the other employees, "I think he is all wet?"

Mr. HATCH. No question about it.

Mr. JAVITS. "Notwithstanding that he is the manager, he is a hired hand just like the rest of us and does not know what he is talking about," et cetera. He can be just as vehement and just as strong.

Mr. HATCH. Just like the rest of them.

Mr. JAVITS. Just so long as it contains no fear of reprisal or threat.

Mr. HATCH. Under the present law, as the Senator knows, the employee can do that, even if it threatens reprisal, but the employer cannot. I think in the enlightened Federal Government of today, this is not an undue exercise of free speech by the manager or the employee.

Mr. JAVITS. Of course, the manager is also a Government employee; he is not the owner of his own business. I think it is quite different.

I am not saying that I find this so offensive and I do not think at this stage that it interferes with what I know.

May I explain that, and say I am really sorry that I felt duty bound to pick this up. Everything seemed to be going so well and smoothly between the managers. But I am sure the Senator, like myself, when he has a duty and he sees it, simply cannot suppress it.

Mr. HATCH. Will the Senator yield on that?

Mr. JAVITS. Of course.

Mr. HATCH. I appreciate the Senator's bringing up his concerns on these amendments. I assumed, when talking to both floor managers, who are, as the Senator knows, both very distinguished Senators on this floor and have reviewed this matter, but more particularly, in

talking to the representatives of the civil service, including the top man of the civil service, and, I felt, a labor representative as well, that this matter had been covered. I am glad that we are able to have this colloquy. Certainly, I was not trying to put these forth without the Senator's having the opportunity of seeing them, and would not try that, as the distinguished Senator from New York knows.

I do appreciate this colloquy at this point because, if there are any misunderstandings or difficulties, I want to clear them up.

Mr. JAVITS. I just managed a very complicated bill on the floor and I know that there are at least a dozen Senators who would have a right to complain because I did not consult them about this or that or the other. I realize the problems and I understand them fully.

Mr. RIBICOFF. Mr. President, I deeply regret that the distinguished Senator had other duties, because we had our hands full on the floor. We did rely on the Civil Service Commission and the staff to work it out.

I think it should be pointed out that it is my understanding, on the freedom of speech and expression amendment, the employees and union officials clearly can comment as well as somebody representing the agency.

Mr. HATCH. No question about it.

Mr. RIBICOFF. Employees and union officials have the same freedom of speech.

Mr. HATCH. Will the Senator yield to me to make one more comment about that?

Mr. RIBICOFF. Yes.

Mr. HATCH. The difference between this and present law is that this provision for free speech allows anybody to speak freely about the collective bargaining process as long as it does not involve threats of reprisal or force or promise of benefit. Under present law, the only ones who basically can do that with impunity happen to be the union organizer, not even the employees. So what this does is correct, and I think allow, anybody in good faith, as long as they are not threatening a reprisal or force or promising a benefit, to speak freely what is in their minds.

Mr. JAVITS. There is one thing that is different, I say to the Senator. It probably can be worked out in conference, but I should like to call it to his attention.

He has used at the end of this amendment a different catechism than has

been used elsewhere in the bill. Just so long as we are clear on his intention, I do not think it will cause us any headaches, but I should like to point this out.

If we look back at 7216(a) (1) and (2), we see that it is an unfair labor practice for an agency—and here is where the catechism comes in—to interfere with, restrain, or coerce an employee in connection with the exercise of rights assured by this chapter or to encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment.

Therefore, it might have been better if the end of the amendment said, "if such expression is not in violation of section 7216(a) (1) and (2)."

The Senator might just study that.

Mr. HATCH. I certainly will.

Mr. JAVITS. Then he would have a consistency of expression as to exactly what he had in mind.

Mr. HATCH. I do not have any problem because we are talking about the right of individual expression and not of the right of the agency.

Now, if the agency comes down and threatens or, in this case, encourages or

[From 124 Cong. Rec. S 14315
(daily ed. Aug. 24, 1978):]

discourages any labor organization, I think it would apply, I would agree.

Mr. JAVITS. It just said, "encourage or discourage," and says "by discrimination."

The Senator does not expect—

Mr. HATCH. I do not expect that.

Mr. JAVITS. That is why I say what I do. Look it over, study it, not this minute.

Mr. HATCH. As long as the rights of individual managers—I think I do not mean by this the individual manager who expresses his own belief or opinion, then since he works for the agency his actions are imputed under agency law to the agency.

I do not intend my amendment to forbid his personal right of expression.

Mr. JAVITS. It may be giving him in that regard, because the language is different, although its purpose and meaning are the same—

Mr. HATCH. Yes, but I would not want to have this construed, anyway, because it would make it meaningless, the free speech amendment, when he speaks from

his own standpoint, he binds the agency, so it violates this rule.

Mr. JAVITS. Does the Senator feel the words "no threat or reprisal, or force or promise of benefit" are any different than—

Mr. HATCH. No. Those words apply even to the individual. Even my amendment. But I do not want, as it says in 7216(a) (2), that it should be an unfair labor practice for an agency to encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure, promotion—

Mr. JAVITS. The Senator does not want the individual manager to do that, either, does he?

Mr. HATCH. Not representing the agency, but I want him to have the right of free speech, otherwise.

Mr. JAVITS. Well, a fellow is a manager, he is the boss in the particular agency. If he is going to discriminate in regard to hiring, tenure, or promotion, or others, I think the Senator goes a lot further than there is any reason for going in order to give him freedom of expression.

Mr. HATCH. I do not believe my amendment permits him to discriminate in any way.

On the other hand, I also do not intend this amendment to mean because he expresses his own viewpoint with regard to whether or not a union is good or bad that it is imputed under agency rules to involve the agency itself.

Mr. JAVITS. Let us break it down—

Mr. HATCH. The agency may have a standard that their managers have to comply with, and that standard may very well say they cannot speak ill of the unions, regardless.

Mr. JAVITS. What concerns me is the Senator may have a conflict between his amendment and section 7216, depending on who is the manager.

The normal rules of agency may apply to him.

Mr. HATCH. I say I do not want them to apply to him with regard to the expressions made in good faith.

Mr. JAVITS. But they may apply and, if so, it would be the agency guilty of the unfair labor practice if the rules of agency designated him as the agent.

That is why I suggested that language, because I do not think the Senator's language means anything different than what is already contained.

But for the purpose of this discussion, if the Senator feels he cannot do that,

what I would like to ask the Senator is the following.

Mr. HATCH. Yes.

Mr. JAVITS. Does he intend that in this amendment, that is, the personal views, argument, opinion, or the making of any statement by the individual, that those views, argument, opinion, or the making of any statement shall be equivalent to interfering with restraining or coercing an employee in connection with the exercise of rights assured by this chapter, or encouraging or discouraging membership in any labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment?

Mr. HATCH. The language in my amendment does not permit that.

Mr. JAVITS. All right. We agree on that.

Mr. HATCH. We agree on that.

Mr. JAVITS. We will worry about the language.

Mr. HATCH. Right. I believe the conferees could change that.

Mr. JAVITS. So much for the free speech amendment.

Mr. HATCH. But let me add this, that I want the free speech provisions to enable any member of the civil service management to speak his own mind freely, without it being imputed to the agency, thus involving these technical rules and causing the agency to be guilty of an unfair labor practice.

Mr. JAVITS. Would the Senator consider that? In view of his intent, adding to the end of the amendment the following:

Such expression contains no threat of reprisal or force or promise of benefit and is not made under coercive conditions.

Mr. HATCH. Yes, that is fine.

Mr. JAVITS. All right.

Mr. HATCH. I would accept that language.

Mr. President, I move that my amendment be modified to accept that particular language.

Mr. JAVITS. I will send the modification to the desk.

Mr. HATCH. I do move the modification.

The PRESIDING OFFICER. The Senator has the right.

The amendment is so modified.

Mr. JAVITS. Mr. President, the last amendment—I apologize to the Senate for the time, but I think we are making very good progress in this matter.

I would like to point out to the Sen-

ator that in respect to decertification of a labor organization, which is a very lethal remedy—

Mr. HATCH. It certainly is.

Mr. JAVITS. The Senator knows that.

At the same time, the Senator is absolutely right that the matter which he is seeking to redress is a very strong and important Federal right, and I think it is important enough so that I ought to read to the Senate what section 7216 (b) (4) (B) says.

Mr. HATCH. Right.

Mr. JAVITS. It says:

Condone any activity described in subparagraph (A) by failing to take action to prevent or stop it.

Let me read (A) because that is what is referred to:

(A) Call or participate in, a strike, work stoppage, slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes or reasonably threatens to interfere with an agency's operations.

May I ask as a first question, why did the Senator not include (A), why just (B), just as a question of curiosity?

Mr. HATCH. Because (B) does by implication include (A).

Mr. JAVITS. In other words, the Senator intends to include (A)?

Mr. HATCH. Yes; there is no question about it.

Mr. JAVITS. And the condoning of course, is the more inclusive.

Mr. HATCH. Yes; to make it even more clear, the authority is the labor authority provided for pursuant to this act. If that authority says they have condoned this type activity, then when the union itself has an affirmative duty in the public interest not to have such activity, then this remedy does and should come into play.

Mr. JAVITS. As a practical matter, Mr. President, the Senator goes on in his amendment to say, "upon an appropriate finding by the authorities"—

Mr. HATCH. By the authority.

Mr. JAVITS. Authority.

Mr. HATCH. Meaning the authority in this bill.

Mr. JAVITS. The authority in this bill of such a violation.

The Senator will agree, will he not?

Mr. HATCH. That is the Federal labor relations authority provided in this bill.

Mr. JAVITS. The Senator will agree that this being a drastic remedy, there could be a lot of argument about the facts and the merits.

Mr. HATCH. I certainly do agree.

Mr. JAVITS. Is there any procedure—and I have not examined this closely, and I am sure the Senator has, and that is why I ask this—is there any procedure with relation to a finding? Is there a notice, a hearing, an opportunity to contest the facts?

The Senator says in his amendment that upon an appropriate finding by the authority, its exclusive recognition status is revoked and it shall cease immediately to be legally entitled and obligated to represent employees. That is a pretty drastic remedy. Has the Senator any procedure of notice or hearing or appeal or some procedure which is involved in such a drastic remedy?

Mr. HATCH. Yes; pursuant to this particular bill, there would be notice of an unfair labor practice that would be litigated. If it is found to be unfair and the condoning has taken place, the offending union would be decertified.

Mr. JAVITS. Can the Senator key us to these procedure sections, notice and hearing, which relate to the issue, the

[From 124 Cong. Rec. S 14316
(daily ed. Aug. 24, 1978):]

words "appropriate finding"? I beg the Senator to help me in that, because, as I say, he undoubtedly has checked this out closely.

Mr. HATCH. Does the manager of the bill know exactly where that provision is? He may be able to assist us in that regard. I think it begins on page 271. I think it is paragraph 7216.

Mr. JAVITS. What page is that?

Mr. HATCH. 7216 starts on page 295.

So it would be pursuant to the unfair labor practices section, as I understand it, in the committee bill which we are considering at the present time.

Mr. JAVITS. So when the Senator speaks—

Mr. HATCH. Probably also 7233, although I am not positive of that.

Mr. JAVITS. When the Senator speaks of "appropriate finding," the Senator incorporates by reference the procedure of 7216?

Mr. HATCH. The whole chapter 72 on the Federal service management relations chapter, which starts on 7201, up through 7205.

Mr. JAVITS. In other words, the whole procedure chapter.

Mr. HATCH. That is right—as defined in the bill.

Mr. JAVITS. Is it not the fact, also, that whether or not the word "immediately" belongs will depend upon the outcome of that proceeding?

Mr. HATCH. That is correct.

Mr. JAVITS. So that we really need it or do not need it.

Mr. HATCH. There would have to be a justicable decision, with all the rights accorded to both sides.

Mr. JAVITS. And that decision would determine the time of its effectiveness and the procedure?

Mr. HATCH. That is right. If that procedure is appealed, there has to be an ultimate decision that determines the immediate effect.

Mr. JAVITS. By using the word "immediately"—which I hope the Senator ultimately will decide against—the Senator is not trying either to abbreviate or increase that time?

Mr. HATCH. No. We do not want to be unfair to any labor organization with this amendment, so "immediately" refers to the finding of an unfair labor practice, meaning condoning the illegal activities provided for under this bill.

I think it is going to be up to the labor authority to determine whether that immediate effect takes effect upon the finding, even though there may be an appeal.

Mr. JAVITS. Yes.

Mr. HATCH. Or whether it will not take effect until there be a final resolution of the matter, which may be in the Supreme Court of the United States.

Mr. JAVITS. Would not the Senator agree with me that under the expression he gives the words "appropriate finding" and the word "immediately," it really is not necessary, because it may be immediate and it may not? It depends upon the determination, the rules, the procedures, of the authority? All I am trying to avoid is to add or subtract anything that the Senator has incorporated by reference.

Mr. HATCH. Why do we not change the language this way, to satisfy the Senator:

and it shall cease, upon such finding, to be legally entitled and obligated to represent employees in the union.

Mr. JAVITS. That is all right. Do not do it yet, though.

Mr. President, for the moment, I should like to yield the floor, because I see that Senator METZENBAUM is anxious to be heard on this matter.

The PRESIDING OFFICER (Mr.

STONE). The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, will the Senator from Utah yield for a question?

Mr. JAVITS. I have yielded the floor.

Mr. HATCH. I will be happy to answer any questions.

Mr. METZENBAUM. Will the Senator from Utah tell me whether in private practice, with respect to employers, there is any situation which is comparable to that just provided for under his section (b), which provides that where a labor union condones any activity described in paragraph (a), that labor union may be decertified?

All the Senator provides here is that under paragraph (b), if the labor union fails to take action to prevent or stop certain procedures as provided for under paragraph (a), then, whether immediate or otherwise, you have decertification. Is it not a fact that a private labor organization—when I say private, I mean a private employer—

Mr. HATCH. The Senator is talking about the private sector?

Mr. METZENBAUM. Yes.

All that would occur under those circumstances is that the union would be found guilty of an unfair labor practice; but there is no procedure and the courts have not ruled, even in some cases which were very flagrant with respect even to discriminatory practices, where the union has been decertified. Is that not a fact?

Mr. HATCH. Let me answer the question this way:

Even in the private sector, which is distinguishable here, there is no law which says a union cannot strike. They have the right to strike in the private sector. In the public sector, they do not have the right to strike. Yet, we are finding all kinds of threats to strike all over the country, which could cause chaos.

My amendment may resolve that. But there are some situations. I can think of one cursorily in which a union, even under the private sector, can be decertified for certain activity, and that is where it practices racial discrimination. It can be decertified even in the private sector, under that circumstance, and there may be others.

Mr. METZENBAUM. The courts have not held in accordance with the statement just made by the Senator from Utah, as I understand it. I think the case is Handy Andy, or something like that.

The fact is that merely for condoning

a strike, even if the union has agreed by contract not to strike, or condoning picketing, or a slowdown, or a work stoppage, unions do not become decertified in the private sector.

My question is, Why does the Senator go to the extreme that he goes in this case in order to decertify the union and cause it to lose its parking rights?

Mr. HATCH. Because the union, by becoming a decertified union in the public sector, has as its basic tenet the obligation and affirmative duty to act in the public interest, too. Since the law says that a union cannot strike—which is the present law, irrespective of what is being done here in civil service reform—the union has an obligation not to promote or encourage a strike.

The reason why I believe this provision is not extreme but a provision which is needed is that presently we are being faced with all kinds of threats of strikes on the part of public-sector employees, and even some of their union leaders, in violation of the law, in violation of their affirmative duty not to do so.

As Senator JAVITS pointed out, I am trying to prevent that, thus putting some teeth in the law, so that they will have to think twice before they advocate in any way abridgement of their affirmative duty not to strike in the public sector.

To be honest with Senators, they will have all of their rights protected, as Senator JAVITS in his characteristic fashion has so amply pointed out, by formal litigation proceedings which may under certain circumstances go to the Supreme Court of the United States, but this puts some teeth into that particular provision. And that is the purpose of it.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I wonder whether the Senator from Utah would mind if momentarily his amendments were set aside so that Senator HEINZ may offer an amendment which I gather will be accepted and then immediately resume on the amendments of the Senator.

I make that unanimous-consent request.

The PRESIDING OFFICER. Without

objection, it is so ordered.

The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, of course, I say to the managers of the bill, Senator RUDOLPH and Senator PERCY, how much I admire the excellent job they have done on this legislation, not only here in the Chamber but in our Governmental Affairs Committee.

Mr. President, before discussing this amendment, I reiterate my support for S. 2640 and commend my colleagues on the Governmental Affairs Committee for their long and careful consideration of the civil service reform legislation and the civil service reorganization proposal. More than a year has been spent by the administration and Congress in closely analyzing the many problems of the civil service system and weighing various solutions to them. After this amount of effort, we have a responsibility to insure that the bill we pass will truly address

[From 124 Cong. Rec. S 14317
(daily ed. Aug. 24, 1978):]

these problems. It is clear that our civil service system is in dire need of reform; the Federal bureaucracy has become a labyrinth of redtape duplicated and unnecessary work, and lack of responsiveness to the needs of the American people. The public today is frustrated at the size and cost of Government; it is frustrated at its inefficiency, and frustrated at its inability to provide the services they are paying for with their taxes. Not only is the public dissatisfied, but civil servants are frustrated with the amount of redtape and bureaucratic barriers which prevent them from effectively performing their jobs as public servants.

Reforming this system on the basis of sound management principles, enabling "managers to manage", and streamlining the existing maze of rules and regulations which control Federal personnel management is certainly a meritorious goal. I am, however, deeply concerned that S. 2640, as reported from the Governmental Affairs Committee, falls short of ensuring that these goals will be met. The problem of size and cost of this bureaucracy is not adequately addressed. "Streamlining" the existing bureaucracy should make it smaller and more cost effective; it should not increase its size and cost. The amendment I am proposing will partially address this inconsistency and ensure that this legislation will more truly be a reform measure.

Inherent in S. 2640 and in the reorganization plan, which will soon go into effect, is an increase in the number of top level appointed positions in the civil service system and an increase in the cost of these top level positions. Currently, the civil service is controlled by the Civil Service Commission. This presidentially appointed, three-member commission is head by a chairman, and includes the vice chairman and third Commission member.

CIVIL SERVICE COMMISSION

Chairman—Executive Level III, \$52,500.

Vice Chairman—Executive Level IV, \$50,000.

Member—Executive Level IV, \$50,000.

The reorganization and reform proposals will abolish the Civil Service Commission and replace it with an Office of Personnel Management and a Merit System Protections Board to assume the personnel management and judicial responsibilities currently held by the Civil Service Commission, respectively. The creation of these two new agencies will not only increase the number of top level management positions from 3 to 11, it will also increase the executive levels of those positions. This increases bureaucracy; it will also increase its cost by the additional positions and the upgrading of these positions.

OFFICE OF PERSONNEL MANAGEMENT

Director—executive level II, \$57,500.

Deputy Director—executive level III, \$52,500.

Associate directors (five)—executive level IV, \$50,000.

MERIT SYSTEMS PROTECTION BOARD

Chairman—executive level III, \$52,500.

Vice Chairman—executive level VI, \$50,000.

Member—executive level IV, \$50,000.

Special Counsel to the MSPB—executive level IV, \$50,000.

These positions alone will add an additional \$417,500 in salaries for top level appointees. This figure does not include the cost of assistants and secretaries which will almost certainly accompany them.

In addition, Mr. President, the creation of the Federal Labor Relations Authority will also create new top level slots in the bureaucracy. The responsibilities of the Chairman, two Members and General Counsel have until now been held by personnel in the Civil Service Commission, the Department of Labor and

the Office of Management and Budget. These were not previously full-time responsibilities for any single members of those agencies. The new Federal Labor Relations Authority positions will be:

FEDERAL LABOR RELATIONS AUTHORITY

Chairman—executive level II, \$52,500.
Members (two)—executive level IV, \$50,000.

To more effectively implement Federal personnel policy it may in fact be necessary to separate responsibilities currently held by the Civil Service Commission, creating two new agencies, and to create permanent full-time positions to direct Federal labor relations; however, I feel it is an unnecessary expenditure of taxpayers dollars to elevate these positions to the proposed levels. The remainder of my amendment would, therefore, reduce each of the proposed new positions by one executive level. This would result in an annual savings of an estimated \$132,500, or 18.5 percent, of the current salary levels in the bill.

In sum, Mr. President, we are seeing a so-called reform proposal transpose what are 3 full-time positions and 3 very much part-time jobs into a total of 13 top level full-time positions, all at a higher pay level than currently. While it is tempting to try to restructure and prune back this proliferation of top level political appointees, my amendment only seeks to cut the pay of these positions by one level, thus preventing the pay inflation in the bill.

UP AMENDMENT NO. 1776

(Purpose: Reducing the level of compensation of officers and members of OPM, MSPB and FLRA)

Mr. HEINZ. Mr. President, I send to the desk my unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes an unprinted amendment numbered 1776.

Mr. HEINZ. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 147, strike out lines 10 through 22, and insert in lieu thereof the following:

(b) (1) Section 5314 of title 5, United

States Code, is amended by inserting at the end thereof the following new paragraph:

“(67) Director of the Office of Personnel Management.”.

(2) Section 5315 of such title is amended by inserting at the end thereof the following new paragraph:

“(122) Deputy Director of the Office of Personnel Management.”.

(3) Section 5316 of such title is amended by inserting at the end thereof the following new paragraph:

“(144) Associate Directors of the Office of Personnel Management (5).”.

On page 166, strike out lines 10 through 23 and insert in lieu thereof the following:

(b) (1) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

“(123) Chairman of the Merit Systems Protection Board.”.

(2) Section 5316 of such title is amended by adding at the end thereof the following new paragraphs:

“(145) Members, Merit Systems Protection Board.

“(146) Special Counsel of the Merit Systems Protection Board.”.

(3) (A) Paragraph (17) of section 5314 of such title is hereby repealed.

(B) Paragraph (66) of section 5315 of such title is hereby repealed.

(C) Paragraph (99) of section 5316 of such title is hereby repealed.

On page 316, strike out lines 4 through 15, and insert in lieu thereof the following:

(f) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

“(124) Chairperson, Federal Labor Relations Authority.”.

(g) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

“(147) Members, Federal Labor Relations Authority (2).”.

On page 281, line 6, strike out “Senate.” and insert in lieu thereof the following: “Senate, and shall be paid at an annual rate of basic pay equal to the maximum annual rate of basic pay currently paid, from time to time, under the General Schedule.”.

Mr. HEINZ. I would be pleased to respond to questions.

Mr. RIBICOFF. Mr. President, we have had an explanation of the amendment by the distinguished Senator from Pennsylvania. He makes his point and he makes it well. His amendment is acceptable to the manager of the bill.

Mr. PERCY. Mr. President, I find the amendment acceptable and I know of no opposition on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Pennsylvania.

The amendment was agreed to.

Mr. HEINZ. I would just like to thank the managers of the bill.

I very much appreciate their acceptance of the amendment.

Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RIBICOFF. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RIBICOFF. Mr. President, if I may have the attention of the distinguished Senator from Ohio (Mr. METZENBAUM), the Senator from New York (Senator JAVITS), and the Senator from Utah (Senator GARN). I do appreciate the concern of the distinguished Senator from New York and the Senator from Ohio. Unfortunately, they were

[From 124 Cong. Rec. S 14318
(daily ed. Aug. 24, 1978):]

not on the floor in the early part of the afternoon. During the day the distinguished Senator from Utah presented this amendment to us in advance of a series of amendments.

The distinguished Senator from Illinois (Senator PERCY) and I were busily engaged in explaining this bill and handling amendments. It was my suggestion that the Senator from Utah and our staffs meet with Mr. Campbell, the Chairman of the Civil Service Commission, and the staff of the executive branch to try to work out a series of amendments that would be consistent with the thrust of S. 2640.

The amendments of the Senator from Utah were voluminous. Although the philosophy of the Senator from Utah certainly differs basically from that of the Senator from New York and the Senator from Ohio and myself—and I will let the Senator from Illinois speak for himself—the Senator from Utah was completely cooperative in trying to work out a series of accommodations, and the Senator from Utah came back after meeting with the administration and our staffs with these amendments.

I can understand the concern of the Senator from New York and the Senator from Ohio. At no time was the Senator from Utah trying to pull a fast one on anyone. This was carefully crafted and worked out with Mr. Campbell and his staff in the Vice President's office. We

felt that in the sense of accommodation they worked it out.

I do feel, with the colloquy that took place between the Senator from New York and the Senator from Utah, that some of the fuzziness or misunderstanding was clarified, and I do believe both the Senator from New York and the Senator from Ohio have rendered a public service to all of us on this legislation.

I want to make it perfectly clear that the Senator from Utah was most cooperative in trying to work out a very knotty problem.

Mr. HATCH. I thank the distinguished Senator.

Mr. PERCY. Mr. President, I will just be a moment. I should like to reiterate also what my distinguished colleague, Senator RIBICOFF, has indicated. From the outset of the day until now we have worked with the Senator from Utah. I did participate in some of the meetings with Chairman Campbell and members of the White House staff in the Vice President's office, and considering what we started with and what we now have there has been a remarkable change and a spirit of cooperation.

Once again we are deeply indebted to the distinguished Senator from New York for raising the question, for taking every word in these amendments to clarify what they mean, what the impact might be and what the implications might be for changing and modifying some of that wording accepted by the Senator from Utah, and also by establishing legislative history we can certainly get the intent and purpose of these amendments.

Under no condition or under no circumstances are we trying, basically trying, to change the thrust and direction here, but certainly in looking after the interests of workers throughout the country, as the distinguished Senator from New York always has, we must take into account that there are mixed feelings on all these issues with Government workers as well.

But the managers of the bill have tried the best they could to work out the most practical solution. The Senator from Illinois wants to express appreciation again to the Senator from Utah for his cooperation and to the distinguished Senator from New York for the extraordinary service he has rendered now in helping to clarify these matters that have been of concern to him and to our distinguished colleague from Ohio (Mr.

METZENBAUM).

Mr. MATSUNAGA. Mr. President, pursuant to the response of the Senator from Utah to questions put to him earlier, in order to clarify the first amendment of the three, which he has offered, I propose an amendment to change in the second line of the proviso, the words "a representative of its employees" to "such labor organization." I have discussed this matter with the Senator from Utah, and he has indicated a willingness to accept my amendment as a modification to his first amendment.

I now yield to the Senator from Utah for that purpose.

Mr. HATCH. Mr. President, if the Senator will yield to me, I will yield to the distinguished Senator from New York so that he can have the floor and then he will yield and I will make the modifications.

Mr. JAVITS. Mr. President, I stirred this up and I hope to be able to be here when it is finished. I wish immediately to thank my colleague, Senator MATSUNAGA, and my colleague, Senator METZENBAUM, for giving this matter their close attention, and it has been very helpful, but my purpose was only to clarify, not to, if possible, interfere with the actions taken by my completely trusted colleagues, to wit, the managers of the bill, and Senator HATCH. He had not the remotest idea but that this matter was thoroughly cleared in every way that it should be, and I repeat I mentioned before and I say again, simply being on the floor and having some experience in labor matters and feeling it my duty to read things and to ask questions if I am in doubt, I carried out my responsibility.

I am pleased that things have ended up in concord, and I beg the Senator from Utah to believe that there is not the remotest question I think in anybody's mind on the floor that his conduct as a Senator was absolutely impeccable.

Mr. HATCH. I thank the distinguished Senator from New York. I always appreciate his good cooperation and his conduct, and I can truthfully say I thought everything had been cleared. I would certainly not present any amendment without having it cleared, and especially when we had had it cleared with the administration and the leaders of the bill, as is the usual case. I tried to be accommodating in having this language meet the needs of the Senators here, and I believe the distinguished Senator from New York, the distinguished Senator

from Hawaii, the distinguished Senator from Ohio and, of course, my very revered chairman of the Governmental Affairs Committee have all added to the colloquy which, I think, has made this quite clear.

So let me make some modifications which I think will resolve the conflicts but still not denigrate the purpose of my amendments, which are acceptable to me.

Let us start with the first amendment, which was with regard to the secret ballot election. To accommodate the distinguished Senator from New York, we have already moved that the words "in good faith" be stricken, and that has been accepted, to the best of my knowledge. If not, then I so move.

The PRESIDING OFFICER (Mr. HART). The amendment has been so modified.

Mr. HATCH. To accommodate the distinguished Senator from Hawaii, although "a representative of its employees" is a series of legal terms of art in labor law, and since "labor organization" is utilized throughout this particular bill, we will strike "a representative of its employees," and substitute in lieu thereof "such labor organization," and I so move.

The PRESIDING OFFICER. The Senator has that right, and the amendment is so modified.

Mr. HATCH. I offer this amendment.

Mr. MATSUNAGA. If the Senator from Utah will yield, I thank him for his willingness to make the modifications I have suggested. Since he has accepted my proposed amendments and the modifications suggested by the Senator from New York, I can now lend him my support.

Mr. RIBICOFF. The modifications are acceptable to the manager of the bill.

Mr. HATCH. Since the modifications are acceptable to the manager of the bill, I move the amendment be adopted.

The PRESIDING OFFICER. The question is on agreeing to the amendment as modified.

Mr. METZENBAUM. Has the amendment not been accepted?

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Is it not a fact that only one vote is required on all three amendments, but that they may be separately modified? That is the privilege of the Senator, is it not?

The PRESIDING OFFICER. The Sen-

ator is correct.

Mr. HATCH. Then I will present all the amendments and move they be adopted en bloc, the second amendment with the changes we have agreed to. It has to do with explicit recognition standards. He have stricken the word "immediate" and inserted in lieu thereof "upon such findings." Is there anything else we added?

Mr. JAVITS. We added something we sent to the desk on a yellow sheet, did we not? No; that is on free speech.

Mr. HATCH. I move that particular change. It may have been moved, but I move it again.

The PRESIDING OFFICER. The Senator [From 124 Cong. Rec. S 14319 (daily ed. Aug. 24, 1978):]

ator has the right to modify his amendment.

Mr. HATCH. As to the third amendments, with regard to free speech and the rights of free speech, at the conclusion of the amendment we have stricken the period and have added "or unduly coercive conditions," and I move that modification.

The PRESIDING OFFICER. The modification has been made.

Mr. HATCH. As I understand it, the managers of the bill have accepted all three of these amendments en bloc.

Mr. METZENBAUM. Mr. President, will the Senator yield?

Mr. HATCH. Excuse me; Senator METZENBAUM also had another modification. I am sorry, Senator, I forgot yours.

With regard to the exclusive recognition amendment, we should add the words "after any labor organization which" and then add the words "willfully and intentionally by omission or commission has violated" and I move those additional changes.

Mr. METZENBAUM. Mr. President—

The PRESIDING OFFICER. The Senator has the right to modify his amendments.

Mr. METZENBAUM. Will the Senator from Utah yield for a minute?

Mr. HATCH. I am happy to yield for 1 minute.

Mr. METZENBAUM. I appreciate very much the cooperation of the Senator from Utah. It makes the amendment less objectionable than it was. I do not wish to indicate support for the amendment, but rather than delay the debate this evening, I am pleased with his spirit of cooperation and am willing to accept this

amendment as the basis from which to go forward at this point.

Mr. HATCH. I thank the Senator from Ohio for his cooperation, and I now move the adoption of the amendments, en bloc.

The PRESIDING OFFICER. Will the Senator from Utah send his amendments to the desk, so that there is no question about them?

Mr. HATCH. Could I ask that my aide and Senator METZENBAUM work these out? I do not have them written out. We will work them out at the desk. Is that acceptable to everyone?

Mr. MATSUNAGA. I have them written out.

Mr. METZENBAUM. I think it is pretty much agreed that we are really only inserting the language "willfully or intentionally, by omission or commission."

The PRESIDING OFFICER. The question is on the adoption of the amendments, as modified, en bloc.

The amendments, as modified, were agreed to en bloc.

Mr. HATCH. I move to reconsider the vote by which the amendments were agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

* * * * *

Mr. HATCH. I compliment the distinguished managers of this bill for their cooperative efforts and the aid and counsel they have given me throughout what I did not expect to be a lengthy time with these amendments but which has been, I believe, an effective time. I hope we have been able to assist them in the preparation of their bill.

[From 124 Cong. Rec. S 14321 (daily ed. Aug. 24, 1978):]

Mr. GARN. Mr. President, my objection to the House civil service reform bill is simply because they have the Hatch Act provisions attached to it. On numerous occasions I have talked to both the distinguished majority manager of the bill and the minority manager of the bill and they have agreed with my concern. So the Senate bill does not have any Hatch Act provisions in it. The House bill does. That bill has not passed the House.

My concern is what the actions of the managers of this bill would be in conference if there were attached in conference the Hatch Act provisions.

Mr. RIBICOFF. Mr. President, may I respond as manager of this bill and chairman of the Governmental Affairs Committee?

Personally, I am opposed to changing the Hatch Act as it now exists. I have been consistent in opposition to any changes.

Also, there is no room for amending S. 2640 for the Hatch Act.

It is my personal view that to do so would negate all we are trying to achieve in S. 2640.

The Senator from Utah has my personal assurance that, the Senate not having put into S. 2640 an amendment in which the Hatch Act is changed, under no circumstances would I sign a conference report and bring back a conference report to this body which contained a change in the present Hatch Act.

Mr. GARN. I thank the distinguished Senator from Connecticut.

Mr. PERCY. I would like to advise that I have now put on the record a number of times the position of the Senator from Illinois on this matter. I took the position with the majority manager that if there was an attempt to put the Hatch Act amendment on his bill, it would kill the civil service reform bill. I have clearly indicated that I oppose such measure.

As minority floor manager of the civil service reform bill, I would refuse to sign a conference report which incorporated such a provision.

There will not be any such amendment, obviously, in this bill in the Senate. We have tried to send as unmistakable and as clear a message as possible to our colleagues in the House that it would be an exercise in futility to attempt to add it in the House.

This bill should be a civil service reform bill, period. Everything that we have attempted to do to depoliticize the civil service might be undone by Hatch Act changes, and certainly there would be absolutely no possibility of getting any such bill through the Congress this year.

I give my colleague as strong an assurance as any Senator can that this Senator would resist every attempt to have the Hatch Act reform provision added to this bill. It simply will not be done.

Mr. GARN. I thank my distinguished colleagues for their very definite and precise reassurances. On the basis of those

reassurances, I intend to vote for the bill.

Mr. PERCY. I would like to say that my distinguished Illinois colleague, Congressman DERWINSKI, feels just as strong about this matter and has been working to reason with his colleagues in the House not to in any way impede or incumber, holdup or make impossible, the passage of civil service reform, which is a matter of high priority on both sides of the aisle, with both the Congress and the President of the United States.

Mr. SCOTT. Mr. President, I wonder when we are going to have a final vote. I told my wife I would leave here at 7:30. If we are going to have a vote right now, I want to vote. But if not, I am going to have to leave.

Mr. RIBICOFF. The Senator from Alaska has a final amendment and then we will go to third reading and vote on passage, if we can have the cooperation of the other Members of the Senate.

AMENDMENT NO. 3416

(Purpose: To provide for judicial review of Federal Labor Relations Authority unfair labor practice decisions)

Mr. STEVENS. Mr. President, I call up my amendment No. 3416 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS) proposes an amendment numbered 3416.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I send a modification of the amendment to the desk.

The PRESIDING OFFICER. The modification will be stated.

Mr. STEVENS. Mr. President, I ask unanimous consent that the reading of the modification be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment as modified, is as follows:

On page 285, line 20, after "title," insert "and except as provided in section 7216(f) of this title,".

On page 298, between lines 16 and 17, insert the following:

"(f) (1) Any employee or agency adversely affected or aggrieved by a final order or de-

cision of the Authority with respect to a matter raised as an unfair labor practice under this section, or with respect to an exception filed to any arbitrator's award under section 7221(j) of this title which involves an unfair labor practice complaint, may obtain judicial review of such an order or decision.

"(2) In review of a final decision or order under paragraph (1), the agency or the labor organization involved in the unfair labor practice complaint shall be the named respondent, except that the Authority shall have the right to appear in the court proceeding if it determines, in its sole discretion, that the appeal may raise questions of substantial interest to it. 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."

"(3) A petition to review a final order or decision of the Authority shall be filed in the Court of Claims or a United States Court of Appeals as provided in chapters 91 and 158, respectively, of title 28 and shall be filed within 30 days after the date the petitioner received notice of the final decision or order of the Board.

"(4) The court shall review the administrative record for the purpose of determining whether the findings were arbitrary or capricious, and not in accordance with law, and whether the procedures required by statutes and regulations were followed. The findings of the Authority are conclusive if supported by substantial evidence in the administrative record. If the court determines that further evidence is necessary, it shall remand the case to the Authority which, after such further proceedings as may be required, may modify its findings, and shall file with the court the record of such proceedings. The findings of the Authority are conclusive if supported by substantial evidence in the administrative record as supplemented."

On page 308, line 13, after "section" insert "and under section 7216(f) of this title".

On page 316 between lines 15 and 16, insert the following:

"(1) Section 2342 of title 28, United States Code, as amended by section 206 of this Act, is amended—

"(1) by striking out 'and' at the end of paragraph (5),

"(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof: 'and'; and

"(3) by adding at the end thereof the following new paragraph:

"(7) all final orders of the Federal Labor Relations Authority made reviewable by section 7216(f) of title 5."

Mr. STEVENS. Mr. President, an employee aggrieved by a decision of the

Merit System Protection Board is entitled to judicial review. Also, one who receives an adverse decision from the National Labor Relations Board has access to judicial review. However, presently S. 2640 fails to provide comparable review for decisions by the Federal Labor Relations Authority. This gives a body under the control of the President untenable authority.

Adverse actions, unacceptable performance appraisals, and discrimination complaints, among others, are appealable to the Merit Systems Protection Board,

[From 124 Cong. Rec. S 14322 (daily ed. Aug. 24, 1978):]

whether they proceed through negotiated grievance procedures under the labor section of the bill or through the normal appellate route. Such decisions by the Merit System Protection Board are appealable. Unfair labor practice decisions by the Federal Labor Relations Authority are not appealable, however, because the Federal Labor Relations Authority decisions are not subject to judicial review. Unfair labor practice complaints can be serious as complaints labeled adverse actions. So why should one board be subjected to judicial scrutiny while the other is not?

What is even more compelling is that decisions by the National Labor Relations Board are subject to judicial review. An unfair labor practice is basically the same, whether it is brought before the Federal Labor Relations Authority or the National Labor Relations Board. The only difference is in one case the employer is the Government, in the other it is private industry.

Mr. President, my amendment will provide for judicial review of Federal Labor Relations Authority decisions as they concern unfair labor practices. The review will be similar to that of the Merit System Protection Board's and the National Labor Relations Board's. The Federal Labor Relations Authority decisions will be subjected to the same substantial evidence standard of review.

Mr. President, judicial review is at the core of our Nation's beginnings and future.

Mr. RIBICOFF. Mr. President, the amendment of the Senator from Alaska is acceptable to the managers of the bill. I commend and thank the Senator from Alaska for his cooperation throughout the entire consideration of this legisla-

tion in the committee, in markup, and on the floor.

Mr. PERCY. I would like to add my voice of appreciation to that, Mr. President. I know of no objection to the amendment. The amendment is acceptable on this side.

Mr. STEVENS. Mr. President, I move adoption of the amendment, as modified.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

* * * * *

Mr. THURMOND. Mr. President, I rise in support of S. 2640, the Civil Service Reform Act of 1978.

* * * * *

There are major features of the bill that I believe will lead to definite improvements in the civil service. First, the bill separates the relationship of Federal employees. There is created an office of personnel management to supervise personnel management in the executive branch.

Second, it creates an independent merit systems protection board and special counsel to adjudicate employee appeals and protect the merit system.

Third, a Federal labor relations authority is established that would seek to improve labor-management relations by providing procedures for resolving grievances and defining unfair labor practices, exclusive recognition and employee rights.

* * * * *

[From 124 Cong. Rec. S 14324 (daily ed. Aug. 24, 1978):]

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. RIBICOFF. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. The yeas and nays have already been ordered.

The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

Mr. ROBERT C. BYRD. Mr. President, there will be no further rollcall votes tonight.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Delaware (Mr. BIDEN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from Nevada (Mr. LAXALT), and the Senator from New Mexico (Mr. SCHMITT) are necessarily absent.

The result was announced—yeas 87, nays 1, as follows:

[Rollcall Vote No. 365 Leg.]

YEAS—87

Allen	Hart	Moynihan
Bartlett	Haskell	Muskie
Bayh	Hatch	Nelson
Bellmon	Hatfield,	Nunn
Bentsen	Mark O.	Packwood
Brooke	Hatfield,	Pearson
Bumpers	Paul G.	Pell
Burdick	Hathaway	Percy
Byrd,	Hayakawa	Proxmire
Harry F., Jr.	Heinz	Randolph
Byrd, Robert C.	Helms	Ribicoff
Cannon	Hodges	Riegle
Case	Hollings	Roth
Chafee	Huddleston	Sarbanes
Chiles	Humphrey	Sasser
Church	Inouye	Schweiker
Clark	Jackson	Sparkman
Cranston	Javits	Stafford
Culver	Kennedy	Stennis
Curtis	Leahy	Stevens
Danforth	Long	Stevenson
DeConcini	Lugar	Stone
Dole	Magnuson	Talmadge
Durkin	Mathias	Thurmond
Eagleton	Matsunaga	Tower
Ford	McClure	Wallop
Garn	McIntyre,	Weicker
Glenn	Melcher	Williams
Griffin	Metzenbaum	Young
Hansen	Morgan	Zorinsky

NAYS—1

NOT VOTING—12

Abourezk	Domenici	Johnston
Anderson	Eastland	Laxalt
Baker	Goldwater	McGovern
Biden	Gravel	Schmitt

So the bill (S. 2640), as amended, was passed.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. PERCY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 2640.

The PRESIDING OFFICER (Mr. CLARK). Without objection, it is so ordered.

[From 124 Cong. Rec. S 15121
(daily ed. Sept. 14, 1978):]

CIVIL SERVICE REFORM ACT OF 1978

Mr. RIBICOFF. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2640.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing that the House has passed the bill (S. 2640) to reform the civil service laws, with amendments in which it requests the concurrence of the Senate; that the House insists upon its amendments to the bill and requests a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. RIBICOFF. I move that the Senate agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. RIBICOFF, Mr. EAGLETON, Mr. CHILES, Mr. SASSER, Mrs. HUMPHREY, Mr. PERCY, Mr. JAVITS, Mr. STEVENS, and Mr. MATHIAS conferees on the part of the Senate.

[From 124 Cong. Rec. S 17082
(daily ed. Oct. 4, 1978):]

CIVIL SERVICE REFORM ACT OF 1978—CONFERENCE REPORT

Mr. RIBICOFF. Mr. President, I sub-

mit a report of the committee of conference on S. 2640 and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. SARBANES). The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2640) to reform the civil service laws, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the proceedings of the House of Representatives.)

Mr. RIBICOFF. Mr. President, for the past 2 weeks, the Senate and House conferees and their staffs have worked long and hard to integrate and perfect the civil service reform bills passed by their respective Houses. The result is a bill and conference substitute of which the Senate, the Congress, and the President can be most proud.

In brief, the Civil Service Reform Act of 1978 accomplishes the following:

* * * * *

[From 124 Cong. Rec. S 17083
(daily ed. Oct. 4, 1978):]

Creates a statutory base for labor-management relations, including the establishment of a Federal Labor-Management Relations Authority.

Mr. President, this bill constitutes the most comprehensive reform of the Federal civil service system since passage of the Pendleton Act of 1883. A competent, well-managed, and highly motivated civil service is a foundation stone of effective and just Government. The public has a right to an efficient Government, which is responsive to its needs as perceived by elected officials. At the same time, the public has a right to a Government which is impartially administered. This balanced bill will, I think, help accomplish these objectives. It is a tremendously important step toward making the Federal Government more effective and more accountable to the American people.

Both the Senate and the House conferees worked with a spirit of dedication

and a bent toward sensible compromise. I should especially like to thank the Senate conferees; Senator PERCY, the ranking minority member of the Governmental Affairs Committee; Senator EAGLETON, Senator SASSER, Senator CHILES, and Senator HUMPEREY for the majority; Senator JAVITS, Senator STEVENS, and Senator MATHIAS for the minority. I much appreciated their support and the long hours they spent in perfecting the conference substitute.

Mr. SASSER. Mr. President, I rise in strong support of the conference report on S. 2640.

* * * * *

Finally, Mr. President, the conference report establishes a responsible and balanced system of labor-management relations for Federal employees. These employees will now be authorized by law to set up procedures for adjudicating their grievances. An independent Federal Labor Relations Authority will administer the labor relations program.

Mr. President, this legislation takes great strides in improving the Federal personnel system. Our goal when we began civil service reform was to reshape the civil service into a system where merit was rewarded and incompetence unprotected. The reforms in this conference report are a historic step in creating a civil service system that truly serves the American public while offering necessary protections to the millions of men and women who dedicate their careers to public service.

Mr. PERCY. Mr. President, the conference report on the Civil Service Reform Act, adopted by the Senate earlier this evening, represents a fair and carefully considered compromise between

* * * * *

At the core of the legislation, the conference agreed to provisions expediting and easing the process for disciplining and removing unfit Federal employees. Rather than the current procedure under which a supervisor must prove by a "preponderance of evidence" that an employee's performance has not been up to par, the conference decided to adopt the long recognized "substantial evidence" test, under which greater deference would be accorded the judgment of

agency supervisors in assessing the work of employees, and a standard of reasonableness would be substituted for the strict legalese which has so rigidified the current system.

This single reform alone is worth the tremendous effort that has been put into this legislation.

Finally, in the area of Federal labor-management relations, the proposal that has been worked out with the House of Representatives, I believe, represents a fair balance between the rights of employees to form and participate in bargaining units, already recognized under law through Executive Order 11491, and the need of the Government to maintain the efficiency of its operations.

I am gratified that my colleagues have adopted the report of the conference committee.

Mr. STEVENS. I rise in support of the civil service reform conference report. Although the conference bill is drastically different from the administration's proposal, most of the President's fundamental reform measures remain in the legislation. The Civil Service Commission will be replaced by the Office of Personnel Management and the Merit Systems Protection Board. A Senior Executive Service was approved for senior managers and provisions for Federal

[From 124 Cong. Rec. S 17084 (daily ed. Oct. 4, 1978):]

Labor Management Relations were accepted. Both Houses of Congress rejected the administration's proposals to reduce veterans' preference in the civil service.

All of my amendments have been accepted by the Senate-House conference. Some of the major changes will serve to diffuse the threat of political domination of the Federal service. Other significant changes will improve the rights of employees in collective bargaining units and the Senior Executive Service.

Senator MATHIAS and I developed three provisions to reduce political manipulation and unwarranted management force:

First. The independent Merit Systems Protection Board will be authorized to strike down improper rules or regulations developed by the Office of Personnel Management. The Merit Board will eliminate any rule or regulation which would violate merit principles or result in prohibited personnel practices upon agency

implementation.

Second. The Office of Personnel Management will be required to post all new rules and regulations as an early warning of impending changes to the Federal personnel system. The provision will assure adequate notification to all employees and exclusive representatives affected by the changes.

Third. The Office of Personnel Management will be required to approve all performance appraisal systems developed by agencies. The approval must consider each system's effectiveness, objectivity, and compliance with merit principles. All performance appraisal systems will be required to identify the specific skill levels, responsibilities, and individual actions that will be considered in performance evaluation.

I recommended other changes which were accepted by the conference to enforce employee rights and insulate senior managers from unwarranted political influence.

Some of these changes include:

Judicial review will be provided for the Federal Labor Relations Authority's decisions on unfair labor practices.

Attorney fees will be authorized to prevailing parties in decisions by an arbitrator or the Federal Labor Relations Authority.

* * * * *

Considering the substantial revisions made in the area of employee rights and protection from unwarranted political influence. I have decided to support the conference report and urge its adoption.

Mr. President, I move that the Senate adopt the conference report.

The PRESIDING OFFICER (Mr. NUNN). The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the conference report on S. 2640 was agreed to.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

[From 124 Cong. Rec. S 18079 (daily ed. Oct. 10, 1978):]

CORRECTIONS IN THE ENROLLMENT OF S. 2640

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a concurrent resolution directing the Secretary of the Senate to make corrections in the enrollment of S. 2640 and I ask that it be stated by the clerk.

The PRESIDING OFFICER. The clerk will state the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 110) directing the Secretary of the Senate to make corrections in the enrollment of S. 2640.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate proceeded to consider the concurrent resolution.

Mr. ROBERT C. BYRD. Mr. President, the concurrent resolution makes only technical and conforming corrections to the conference report on the bill. The nature of the resolution is entirely technical.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 110) was agreed to as follows:

* * * * *

[For S. Con. Res. 110, see pages 611-619 above.]

[From 124 Cong. Rec. S 18080 (daily ed. Oct. 10, 1978):]

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

[From 124 Cong. Rec. S 19426
(daily ed. Oct. 14, 1978):]

**CIVIL SERVICE REFORM ACT OF
1978**

● Mr. SASSER. Mr. President, I rise to congratulate President Carter for the signing today of the historic Civil Service Reform Act of 1978.

President Carter has called civil service reform "the centerpiece" of his efforts to reorganize the Government, and I agree.

The legislation truly represents an historic step in making the bureaucracy more accountable to the people.

Mr. President, as chairman of the Senate Civil Service Subcommittee, I am pleased that I was able to play a part in advancing the civil service reform bill to its signing today.

But I wish to call special attention to President Carter, to the Chairman of the Civil Service Commission, Dr. Alan Campbell, and to the chairman and ranking member of the Governmental Affairs Committee, Senator RIBICOFF and PERCY, for the outstanding work that led to today's signing.

Many hours were spent in hearings, markups, on the Senate floor, and in conference, to address the pressing problems which have plagued the civil service sys-

[From 124 Cong. Rec. S 19427
(daily ed. Oct. 14, 1978):]

tem and to write legislation which overcomes these problems.

This legislation gives us the tools to get the most efficient government for the taxpayers of this country—a goal well worth our months of effort.

Again, I congratulate President Carter for this important legislative achievement, and I look forward, as subcommittee chairman, to working with him to implement the new reforms.●

**HOUSE AMENDMENTS TO TITLE VII PRINTED BUT
NOT INTRODUCED AND DEBATED**

[From 124 Cong. Rec. H 8446
(daily ed. Aug. 10, 1978):]

H.R. 11280

By Mr. LEACH:

* * * * *

Page 337, after line 2, insert the following:
"§ 7124. Air traffic controllers; complaints
against

"(a) (1) An air traffic controller shall not—
"(A) willfully hinder or impede his own

work performance, productivity, or discharge
of duties or that of any other employee; or
"(B) engage in a strike, work stoppage, or
slowdown.

"(2) An air traffic controller who violates
paragraph (1) of this subsection shall be re-
moved or suspended without pay in accord-
ance with the provisions of this section.

"(b) If the most immediate supervisor of
any air traffic controller believes that such
air traffic controller has violated subsection
(a) (1) of this section, such supervisor shall
immediately—

"(1) suspend such controller with pay un-
til termination of such suspension under
subsection (c) of this section or removal or
suspension without pay of such controller
under subsection (f) of this section;

"(2) file a written charge describing such
violation with the Secretary of Transporta-
tion or any employee of the Department of
Transportation designated by the Secretary
for such purpose; and

"(3) furnish a copy of such written charge
to such controller.

"(c) The Secretary of Transportation, or
any employee designated by the Secretary
pursuant to subsection (b) (2) of this sec-
tion, shall, on the filing of a written charge
with respect to any air traffic controller
under such subsection (b) (2), conduct an
investigation as to whether such controller
has violated subsection (a) (1) of this sec-
tion. If the Secretary, or such employee, de-
termines based on the investigation that
there are reasonable grounds to believe that
such air traffic controller has violated such
subsection (a) (1), he shall issue, within 21
days after such filing, a complaint to such
controller and to the Authority alleging each
such violation. In any case in which the
Secretary, or such employee, does not issue
a complaint after an investigation under this
paragraph, he shall, within 21 days after such
filing, furnish to such controller and to the
supervisor who filed such charges a written
statement of the reasons for not issuing the
complaint, at which time the suspension of
such controller shall terminate.

"(d) An air traffic controller to whom a
complaint is issued under this section shall
be entitled to—

"(1) an advance written notice from the
Authority of possible removal or suspension
without pay under this section;

"(2) a copy of the complaint from the
Authority containing specific allegations;

"(3) a reasonable time, not to exceed 14
days, for filing with the Authority a writ-
ten answer to the allegations in the com-
plaint, together with affidavits and other docu-
mentary evidence in support of the answer;

"(4) be represented by an attorney or
other representative; and

"(5) a written decision by the Authority
and specific reasons therefor within 30 days
after the issuance of such complaint.

"(e) The Authority may provide, by regu-
lation, for a hearing which may be in lieu
of or in addition to the opportunity to an-
swer provided under subsection (d) (3) of
this section.

"(f) If the Authority determines after an
opportunity to answer under subsection (d)
(3) of this section or after a hearing under
subsection (e) of this section that such air
traffic controller has violated subsection (a)
(1) of this section, the Authority shall im-
mediately transmit such determination to
the Secretary of Transportation, who shall
then immediately remove such air traffic con-
troller or suspend him without pay for a
period not to exceed 60 days.

"(g) Copies of the advance written notice,
the answer of such air traffic controller if
written, a summary thereof if made orally,
the notice of decision and reasons therefor,
and any order effecting the removal or sus-
pension, together with any supporting mat-
terial, shall be maintained by the Authority
and the Secretary of Transportation, or any
employee designated by the Secretary pur-
suant to subsection (b) (2) of this section,
and shall be furnished by the Authority, on
request, to such controller.

"(h) An air traffic controller adversely af-
fected or aggrieved by any final decision
or order under this section may obtain ju-
dicial review of such decision or order in
the same manner and to the same extent
as employees may obtain judicial review un-
der section 7702 of this title.

"(i) This section does not apply to the
suspension or removal of an employee under
section 1207, section 4303, subchapter III of
chapter 73, or chapter 75 of this title or a
reduction in force action under section 3502
of this title.

Page 331, line 1, strike out "GRIEVANCES"
and insert in lieu thereof "GRIEVANCES, AP-
PEALS, REVIEW, AND PENALTIES".

Page 337, after line 2, insert the following:
"7124. Unlawful activities by employees and
by officers of and individuals em-
ployed by labor organizations

"(a) (1) Effective 180 days after the effec-
tive date of the Civil Service Reform Act of
1978, and subject to any guidelines or other
regulations which shall be issued under sub-
section (b) of this section, no employee, of-
ficer of a labor organization of which such
employee is a member, or any individual em-
ployed by such labor organization may solicit
or accept for such employee or any relative,
of such employee any—

"(A) gift;
 "(B) favor;
 "(C) entertainment;
 "(D) loan; or
 "(E) any other thing of monetary value, including lodging, transportation, or travel expenses, for which reasonable consideration has not been paid by such employee; from any person or group of persons which may be substantially affected by the performance or non-performance of the official duties of such employee or the functions of the agency in which such employee is employed.

"(2) Any such employee, officer, or individual who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and shall be fined not more than \$5,000 or imprisoned not more than 1 year, or both.

"(b) The Office of Personnel Management shall prescribe within 180 days after the date of the enactment of the Civil Service Reform Act of 1978 such guidelines and other regulations as are necessary and appropriate to carry out the purpose of this section.

Page 297, line 22, strike out "and".

Page 298, line 2, strike out "States." and insert in lieu thereof "States; and".

Page 298, after line 2, insert the following:

"(19) 'relative' means a parent, child, brother, sister, uncle, aunt, first cousin, nephew, niece, spouse, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, half sister, or an individual who is the grandparent of a spouse.

Page 289, in the item relating to subchapter III in the matter preceding line 1, strike out "AND REVIEW" and insert in lieu thereof ", REVIEW, AND PENALTIES".

Page 289, after the item relating to section 7123 in the matter preceding line 1, insert the following:

"7124. Unlawful activities by employees and by officers of and individuals employed by labor organizations.

[From 124 Cong. Rec. H 8510
 (daily ed. Aug. 11, 1978):]

H.R. 1128C

By Mr. FRENZEL:

—On page 292, line 15, strike the word "or".

On page 292, line 16, after the word "Panel;" insert the following: "or (H) the Federal Election Commission;"

[From 124 Cong. Rec. H 9169
 (daily ed. Sept. 6, 1978):]

H.R. 1128D

By Mr. ERLBORN:

—Page 288, strike line 12 and all that follows thereafter through line 12 on page 348.

—Page 292, line 18, strike the words "in whole or in part" and line 19, strike the words "and pay dues".

—Page 293, strike the "or" on line 6, insert an "or" after "agency;" on line 7, and after line 7 insert the following new subparagraph (D):

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

—Page 293, line 8, strike the words "dues, fees, and assessments" and substitute therefore "periodic dues and initiation fees uniformly required."

—On page 298, after line 20, amend section 7103 by adding a new subsection (c) as follows:

"(c) Employees of the Federal Election Commission engaged in the administration, interpretation and enforcement of the Federal Election Campaign Act of 1971, as amended, shall not be represented by any labor organization which maintains a political action committee or which is affiliated, associated or connected with an organization which maintains a political action committee; nor shall such employees be represented by a labor organization which expressly advocates the election or defeat of any candidate for Federal office."

—Page 298, after line 20, amend section 7103 by adding a new subsection (c) as follows:

"(c) Employees engaged in administering a labor-management relations law who are otherwise authorized by this chapter to be represented by a labor organization shall not be represented by a labor organization which also represents other employees covered by such law or which is affiliated directly or indirectly with an organization which represents such employees."

—Page 300, line 7, insert before the period the following: "only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office."

—Page 301, line 25, strike "(1)"; page 302, insert "(1)" for "(A)" on line 1, "(2)" for "(B)" on line 3, "(3)" for "(C)" on line 5, and "(4)" for "(D)" on line 7; strike all of line 9 through line 13; and strike "or administrative law judge" on line 15.

On page 324, line 24, insert before the second period "and filed with the Authority"; on page 325, strike the parenthesis and all within on lines 3 to 5; on page 325 lines 9 to 11, strike "individual or individual conducting the hearing shall state in writing their" and substitute therefore: "Authority shall state in writing its"; and on page 326, strike lines 8 through 14, and substitute therefore: "(7) If the Authority determines 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 any such unfair labor practice, the Authority shall state in writing its findings of fact and shall issue an order discussing the complaint."

—Page 304, strike "(1)" on line 20; Page 305 strike "Except as provided under subsection (e) of this section," on lines 14 and 15, and change "if" to "If" on line 15, and strike "subject to paragraph (2) of this subsection," on lines 17 and 18, and strike all on line 24, page 305, through line 22 on page 306.

—Page 305, line 14, strike all after the period through the comma on line 15; change "if" to "If" on line 15; and page 308, strike all of subsection "(e)" from line 3 through line 23 and redesignate the subsequent subsections accordingly.

—Page 312, strike line 19 and all thereafter through line 3 on page 314.

—Page 317, strike all of line 1 through line 18.

—On page 317, strike subsection "(C)", line 1 through line 18.

—Page 320, line 2, insert after "slowdown," the following:

"or to picket an agency in a labor-management dispute,"

—On page 320, after line 5, insert the following new subsection (c) and redesignate the subsequent subsections accordingly:

"(c) The expression of any personal views, argument, opinion or the making of any statement shall not (1) constitute or be evidence of an unfair labor practice under any of the provisions of this chapter or (2) constitute grounds for, or evidence justifying, setting aside the results of any election conducted under any provisions of this chapter, if such expression contains no threats of reprisal or force or promise of benefit."

[From 124 Cong. Rec. H 9173
(daily ed. Sept. 6, 1978):]

H.R. 11280

By Mr. MITCHELL of Maryland:

—Page 292, line 22, insert after "organization" the following: "(other than an exclusive representative as defined in paragraph (16) (B) of this section)".

—Page 315, line 7, strike out "any appeal action" and all that follows down through "chapter." on line 8 and insert in lieu thereof the following: "any grievance procedure or appeal action."

—Page 332, strike out line 14 and all that follows down through line 7 on page 333 and insert in lieu thereof the following:

"(d) The processing of any grievance of any employee under the procedure negotiated under this chapter shall not preclude the employee from pursuing any right provided to him by or under any other provision of law.

H.R. 11280

By Mr. RUDD:

—Page 291, line 21, strike the word "or" immediately after the semicolon; page 292, line 2, insert the word "or" immediately after the semicolon, and after line 2 insert the following new paragraph:

"(v) any person who participates in a strike in violation of 5 U.S.C. 7311;"

Page 293, line 6, strike the word "or" immediately after the semicolon; page 293, line 7, insert the word "or" immediately after the semicolon, and after line 7 insert the following new paragraph:

"(D) an organization which assists or participates in a strike against the Government of the United States or any Agency thereof, or which imposes a duty or obligation on any person or other organization to conduct, assist, or participate in such a strike;"

Page 320, strike lines 1 through 3 inclusive, and insert in lieu thereof the following:

"(7) to condone any strike, work stoppage, slowdown by failing to take action to prevent or stop such activity;"

[From 124 Cong. Rec. H 9296
(daily ed. Sept. 7, 1978):]

H.R. 11280

By Mr. CORCORAN of Illinois:

—Page 305, beginning on line 14, strike out "Except as provided under subsection (e) of this section, if" and insert in lieu thereof "If".

Page 308, strike out line 3 and all that follows down through line 23.

Page 308, line 24, strike out "(f)" and insert in lieu thereof "(e)".

Page 309, line 3, strike out "(g)" and insert in lieu thereof "(f)".

Page 309, line 7, strike out "(h)" and insert in lieu thereof "(g)".

Page 310, line 12, strike out "(i)" and insert in lieu thereof "(h)".

[From 124 Cong. Rec. H 9474
(daily ed. Sept. 11, 1978):]

H.R. 11280

By Mr. EDWARDS of Alabama:

(Amendment to the Udall Substitute.)

—In section 7106(a)(1), strike the semicolon and the word "and" after the word "agency" and insert a comma and the following: "the numbers, types, and grades of positions or employees assigned to an organizational unit, work project, or tour of duty."

In section 7106(b), delete all of item "(1)", which reads as follows: "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;"

H.R. 11280

By Mr. ERLLENBORN:

(Amendments to the amendment in the nature of a substitute offered by Mr. UDALL to title VII.)

—Newly designated section 7103(a)(4) of subpart F of part III of title V, United States Code is amended by striking the words "in whole or in part", and by striking the words "and pay dues".

—Amend newly designated section 7103 of subpart F of part III of title V, United States Code by striking the "or" after subparagraph 7103(a)(4)(B); by inserting an "or" after subparagraph 7103(a)(4)(C); and by inserting the following new subparagraph 7103(a)(4)(D):

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

—Newly designated section 7103(a)(5) of subpart F of part III of title V, United States Code, is amended by striking the words "dues, fees and assessment" and substituting therefor "periodic dues and initiation fees uniformly required".

—Newly designated section 7104(f)(1) of subpart F of part III of title V, United States Code is amended by inserting before the final period the words "only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office".

—Newly designated section 7105(e) of subpart F of part III of title V, United States Code, is amended by striking the number "(1)", redesignating the letters "(A)", "(B)", "(C)", and "(D)" as numbers "(1)", "(2)", "(3)", and "(4)"; and striking all of subsection 7105(e)(2); and striking the words "or administrative law judge" in subsection 7105(f).

Section 7118(a)(5), as presently designated, is amended by inserting before the period in the fourth sentence thereof the words "and filed with the Authority".

Section 7118(a)(6), as presently designated is amended by striking "(or any member thereof or any individual employed by the Authority and designated for such purpose)"; and by striking the words "individual or individuals conducting the hearing shall state in writing their" and substitute therefor "Authority shall state in writing its". Section 7118(a)(7), as presently designated, is amended by striking all of section 7118(a)(7) and substituting therefor: "(7) If the Authority determines 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 any such unfair labor practice, the Authority shall state in writing its findings of fact and shall issue an order dismissing the complaint."

—Newly designated section 7111(b) of subchapter II of subpart F of part III of title V, United States Code is amended by striking "(b)(1)" and substituting therefor "(b)"; and is further amended by striking from presently designated 7111(b)(1)(B) the words "Except as provided under subsection (e) of this section, if" and substituting

therefore "If," and by striking the words "subject to paragraph (2) of this subsection"; and by striking all of paragraph (2), including (2)(A) and (2)(B).

—Newly designated section 7111(b)(1)(B) of subchapter II of subpart F of part III of title V, United States Code is amended by striking the words "Except as provided under subsection (e) of this Section, if", and substituting therefor "If"; and section 711 is further amended by striking all of subsection (e) and redesignating the subsequent subsections accordingly.

—Newly designated section 7112 of subpart F of part III of title V, United States Code, is amended by inserting after subsection (c), a new subsection (d) (and redesignating the subsequent subsections accordingly) which reads as follows:

"(d) Any employee who is engaged in the administration, interpretation and enforcement of the Federal Election Campaign Act of 1971, as amended, shall not be represented by any labor organization which maintains a political action committee or which is affiliated, associated, or connected with an organization which maintains a political action committee; nor shall such employees be represented by a labor organization which expressly advocates the election or defeat of any candidate for Federal Office."

—Strike newly designated section 7113 of subpart F of part III of title V, United States Code, and redesignate the subsequent sections accordingly; and amend newly designated section 7117 by striking all of subsection (d).

—Newly designated section 7115 of subpart F of part III of title V, United States Code is amended by striking all of subsection (c) thereof.

—Newly designated section 7116(a)(5) of subpart F of part III of title V, United States Code is amended by inserting immediately before the semicolon the following: "Provided, That nothing in this chapter shall be construed as requiring an agency to negotiate in good faith with any labor organization certified after the enactment of this Act until such labor organization has been determined by means of a secret ballot election conducted in accordance with the provisions of this chapter. This provision shall not be construed to bar a consolidation of units without an election."

—Amend newly designated section 7116 of subpart F of part III of title V, United States Code, by inserting after subsection (b) a new subsection (c), redesignating the present subsection (c) and subsequent subsection accordingly, which reads as follows:

"(c) The expression of any personal views, argument, opinion or the making of any statement shall not (1) constitute or be evidence of an unfair labor practice under any of the provisions of this chapter or (2) constitute grounds for, or evidence justifying, setting aside the results of any election conducted under any provisions of this chapter, if such expression contains no threats of reprisal or force or promise of benefit."

[From 124 Cong. Rec. H 9475
(daily ed. Sept. 11, 1978):]

H.R. 11280

By Mr. FRENZEL:

(Amendment to the Udall substitute for title VII.)

—In new section 7103(a)(3)(F) strike the word "or".

In new section 7103(a)(3)(G) after the word "Panel;" insert the following: "or (H) the Federal Election Commission;".

[From 124 Cong. Rec. H 9613
(daily ed. Sept. 12, 1978):]

H.R. 11280

By Mr. SNYDER:

(Amendment in the nature of a substitute to the Leach amendment.)

—Page 337, after line 2, insert the following:

"7124. Air traffic controllers

"An air traffic controller shall not—

"(1) willfully hinder or impede his own work performance, productivity, or discharge of duties or that of any other employee; or

"(2) engage in a strike, work stoppage, or slowdown."

**PRINTED SENATE AMENDMENTS RELEVANT TO TITLE
VII THAT DID NOT RECEIVE FLOOR ACTION**

Purpose:**Calendar No. 900**

To provide for the payment of attorney fees
when in the interest of justice.

Amdt. No. 3297

95TH CONGRESS
2^D SESSION

S. 2640

IN THE SENATE OF THE UNITED STATES

JULY 25 (legislative day, MAY 17), 1978

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. MATHIAS to S. 2640, a bill to
reform the civil service laws, viz:

- 1 On page 189, lines 20 and 21, strike out "warranted on
- 2 the grounds that the agency's action was taken in bad
- 3 faith" and insert in lieu thereof "in the interests of justice".

Purpose:

To provide that the standard of review in performance appraisal cases be the substantial evidence test.

Calendar No. 900**Amdt. No. 3323**

95TH CONGRESS
2^D SESSION

S. 2640**IN THE SENATE OF THE UNITED STATES**

JULY 27 (legislative day, MAY 17), 1978

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. STEVENS to S. 2640, a bill to reform the civil service laws, viz:

- 1 On page 172, line 14, strike out "a reasonable basis"
- 2 and insert in lieu thereof "substantial evidence".
- 3 On page 173, strike out lines 1 and 2, and insert in lieu
- 4 thereof the following:
- 5 “(C) the agency’s decision is unsupported by sub-
- 6 stantial evidence on the record taken as a whole; or”.

Purpose:**Calendar No. 900**

To require the agency to establish by a preponderance of the evidence that its action promotes the efficiency of the service.

Amdt. No. 3325

95TH CONGRESS
2^D SESSION

S. 2640**IN THE SENATE OF THE UNITED STATES**

JULY 27 (legislative day, MAY 17), 1978

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. STEVENS to S. 2640, a bill to reform the civil service laws, viz:

- 1 On page 183, lines 11 and 12, strike out "that there
- 2 is substantial evidence on the record taken as a whole" and
- 3 insert in lieu thereof "by a preponderance of the evidence".
- 4 On page 183, line 14, strike out "An" and insert in
- 5 lieu thereof the following: "If an agency proves by a pre-
- 6 ponderance of the evidence that the agency action promotes
- 7 the efficiency of the service, the".
- 8 On page 183, line 19, insert "or" after the end semi-
- 9 colon.
- 10 On page 183, strike out lines 20 and 21.

2

- 1 On page 183, line 22, strike out "(D)" and insert in
- 2 lieu thereof "(C)".

Purpose:

Creating a personnel policy committee to advise
the Office of Personnel Management.

Calendar No. 900**Amdt. No. 3411**

95TH CONGRESS
2^D SESSION

S. 2640**IN THE SENATE OF THE UNITED STATES**

AUGUST 2 (legislative day, MAY 17), 1978

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. STEVENS to S. 2640, a bill to
reform the civil service laws, viz:

1 On page 147, line 9, strike out the end quotation marks.

2 On page 147, between lines 9 and 10, insert the
3 following:

4 "§ 1105. Personnel Policy Advisory Committee

5 "(a) There is established the Personnel Policy Advisory
6 Committee (hereinafter in this section referred to as the Com-
7 mittee) which shall be composed of—

8 "(1) the Director of the Office of Personnel Man-
9 agement who shall serve as Chairman of the Committee;

10 "(2) the Secretary of Labor or his delegate;

11 "(3) 5 members appointed by the President from

1 among individuals serving in Executive agencies and
2 military departments in positions not less than the posi-
3 tions of Assistant Secretary or their equivalents;

4 “(4) 1 member appointed by the President from
5 the Deputy and Associate Directors of the Office of Per-
6 sonnel Management; and

7 “(5) 7 members appointed by the President from
8 officers of labor organizations representing employees in
9 the Federal government.

10 Appointments made under paragraph (5) shall reflect the
11 relative numbers of Federal employees represented by such
12 organizations, or affiliates thereof, except that no more than
13 4 members shall be from one such organization or its
14 affiliates.

15 “(b) It shall be the function of the Committee to pro-
16 vide a forum for discussion by agency management and em-
17 ployee representatives of Federal personnel policy and regu-
18 lations which affect more than one agency, and to make
19 recommendations with respect to such policies and
20 regulations.

21 “(c) (1) The Committee shall meet at the call of the
22 Chairman but at least once quarterly. The Chairman shall
23 notify each member of a proposed meeting at least 14 days
24 before it is to be held.

25 “(2) The Chairman shall prepare an agenda of topics

1 for consideration by the Committee in any meeting and shall
2 include such agenda in the notice sent under paragraph (1).

3 “(3) Any member of the Committee may suggest mat-
4 ters for consideration by the Committee by notifying the
5 Chairman at least 7 days prior to the meeting. The Chairman
6 may include suggested topics in the agenda, but if he does
7 not the matter shall be discussed if a majority of the mem-
8 bers who are designated under—

9 “(A) paragraphs (2), (3), and (4), or

10 “(B) paragraph (5)

11 of subsection (a) of this section as members of the Com-
12 mittee and who are present at the meeting vote to discuss
13 such matter.

14 “(d) (1) Recommendations of the Committee may be
15 considered by the Office of Personnel Management in the
16 formulation of Federal personnel policies and regulations.

17 “(2) Copies of the transcripts of the meetings of the
18 Committee shall be sent to the Merit Systems Protection
19 Board and the Federal Labor Relations Authority.

20 “(e) (1) Except as provided in paragraph (2), mem-
21 bers of the Committee shall receive as compensation the daily
22 equivalent of the annual rate of basic pay in effect for
23 grade GS-18 for each day (including traveltime) during
24 which they are engaged in the actual performance of duties
25 vested in the Committee.

4

1 “(2) Members of the Committee who are full-time of-
2 ficers or employees of the United States shall receive no
3 additional pay on account of their service on the Committee.

4 “(3) While away from their homes or regular places
5 of business in the performance of service for the Committee,
6 members of the Committee shall be allowed travel expenses,
7 including per diem in lieu of subsistence, in the same manner
8 as persons employed intermittently in the Government serv-
9 ice are allowed expenses under section 5703 of this title.”.

10 On page 172, in the matter between lines 19 and 20,
11 after the item relating to section 1104, insert the following:
 “1105. Personnel Policy Advisory Committee.”.

Purpose:

Calendar No. 900

Regarding removal of Federal Labor Relations
Authority members.

Amdt. No. 3413

95TH CONGRESS
2^D SESSION

S. 2640

IN THE SENATE OF THE UNITED STATES

AUGUST 2 (legislative day, MAY 17), 1978

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. STEVENS to S. 2640, a bill to
reform the civil service laws, viz:

1 On page 280, line 7, strike out "Any" and insert in lieu
2 thereof "A".

3 On page 280, line 8, after "President" insert "only for
4 inefficiency, neglect of duty, or malfeasance in office".

Purpose:

Regarding removal of Federal Labor Relations
Authority Chairman.

Calendar No. 900

Amdt. No. 3414

95TH CONGRESS
2^D SESSION

S. 2640

IN THE SENATE OF THE UNITED STATES

AUGUST 2 (legislative day, MAY 17), 1978

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. STEVENS to S. 2640, a bill to reform the civil service laws, viz:

- 1 On page 280, line 8, after "President" insert ", except
- 2 that the Chairman may only be removed for inefficiency,
- 3 neglect of duty, or malfeasance in office".

Purpose:

Calendar No. 900

Regarding removal of Federal Labor Relations
Authority General Counsel.

Amdt. No. 3415

95TH CONGRESS
2D SESSION

S. 2640

IN THE SENATE OF THE UNITED STATES

Ordered to lie on the table and to be printed
AUGUST 2 (legislative day, MAY 17), 1978

AMENDMENT

Intended to be proposed by Mr. STEVENS to S. 2640, a bill to
reform the civil service laws, viz:

- 1 On page 281, line 8, after "President" insert "only for
- 2 inefficiency, neglect of duty, or malfeasance in office".

Purpose:

To provide for judicial review of Federal Labor Relations Authority unfair labor practice decisions.

Calendar No. 900**Amdt. No. 3416**

95TH CONGRESS
2^D SESSION

S. 2640**IN THE SENATE OF THE UNITED STATES**

AUGUST 2 (legislative day, MAY 17), 1978

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. STEVENS to S. 2640, a bill to reform the civil service laws, viz:

1 On page 285, line 20, after "title," insert "and except as
2 provided in section 7216 (f) of this title,".

3 On page 298, between lines 16 and 17, insert the
4 following:

5 "(f) (1) Any employee adversely affected or aggrieved
6 by a final order or decision of the Authority with respect
7 to a matter raised as an unfair labor practice under this
8 section, or with respect to an exception filed to any arbitra-
9 tor's award under section 7221 (j) of this title which in-
10 volves an unfair labor practice complaint, may obtain judicial
11 review of such an order or decision.

1 “(2) In review of a final decision or order under para-
2 graph (1), the agency involved in the unfair labor practice
3 complaint shall be the named respondent, except that the
4 Authority shall have the right to appear in the court pro-
5 ceeding if it determines, in its sole discretion, that the appeal
6 may raise questions of substantial interest to it.

7 “(3) A petition to review a final order or decision of
8 the Authority shall be filed in the Court of Claims or a
9 United States Court of Appeals as provided in chapters 91
10 and 158, respectively, of title 28 and shall be filed within
11 30 days after the date the petitioner received notice of the
12 final decision or order of the Board.

13 “(4) The court shall review the administrative record
14 for the purpose of determining whether the findings were
15 arbitrary or capricious, and not in accordance with law, and
16 whether the procedures required by statutes and regulations
17 were followed. The findings of the Authority are conclusive
18 if supported by substantial evidence in the administrative
19 record. If the court determines that further evidence is nec-
20 essary, it shall remand the case to the Authority which,
21 after such further proceedings as may be required, may
22 modify its findings, and shall file with the court the record
23 of such proceedings. The findings of the Authority are con-
24 clusive if supported by substantial evidence in the administra-
25 tive record as supplemented.”.

1 On page 308, line 13, after “section” insert “and
2 under section 7216 (f) of this title”.

3 On page 316, between lines 15 and 16, insert the
4 following:

5 “(i) Section 2342 of title 28, United States Code, as
6 amended by section 206 of this Act, is amended—

7 “(1) by striking out ‘and’ at the end of paragraph
8 (5),

9 “(2) by striking out the period at the end of
10 paragraph (6) and inserting in lieu thereof ‘; and’; and

11 “(3) by adding at the end thereof the following new
12 paragraph:

13 “‘(7) all final orders of the Federal Labor Rela-
14 tions Authority made reviewable by section 7216 (f) of
15 title 5.’”.

Purpose:**Calendar No. 900**

To allow the Federal Labor Relations Authority to petition a court of appeals for enforcement of its orders and decisions.

Amdt. No. 3417

95TH CONGRESS
2^D SESSION

S. 2640**IN THE SENATE OF THE UNITED STATES**

AUGUST 2 (legislative day, MAY 17), 1978

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. STEVENS to S. 2640, a bill to reform the civil service laws, viz:

1 On page 288, between lines 16 and 17, insert the
2 following:

3 “(f) (1) The Authority shall have power to petition
4 any court of appeals of the United States, or if all the court
5 of appeals to which application may be made are in vaca-
6 tion, any district court of the United States, within any
7 circuit or district, respectively, where the unfair labor prac-
8 tice in question occurred or where such person resides, for
9 the enforcement of any final order or decision of the Author-
10 ity or for temporary relief or a restraining order in connec-
11 tion with a matter raised as an unfair labor practice under

1 this section or with respect to an exception filed to any
2 arbitrator's award under section 7221 (j) of this title which
3 involves an unfair labor practice complaint, and shall file
4 in the court the record in the proceedings, as provided in
5 section 212 of title 28.

6 “(2) Upon the filing of such petition, the court shall
7 cause notice thereof to be served upon each party, and there-
8 upon shall have jurisdiction of the proceeding and of the
9 question determined therein, and shall have the power to
10 grant such temporary relief or restraining order as it deems
11 just and proper, and to make and enter a decree enforcing,
12 modifying, and enforcing as so modified, or setting aside
13 in whole or in part the order of the Authority. No objection
14 that has not been heard before the Authority shall be con-
15 sidered by the court, unless the failure or neglect to urge
16 such objection shall be excused because of extraordinary
17 circumstances.

18 “(3) The findings of the Authority with respect to
19 questions of fact if supported by substantial evidence on
20 the record considered as a whole shall be conclusive. If
21 either party applies to the court for leave to adduce addi-
22 tional evidence and shows to the satisfaction of the court
23 that such additional evidence is material and reasonable
24 grounds existed for failure to adduce such evidence in the
25 hearing before the Authority, the court may order such

1 additional evidence to be taken before the Authority and
2 to be made a part of the record. The Authority may modify
3 its findings as to the facts, or make new findings, by reason
4 of additional evidence so taken and filed, and it shall file
5 such modified or new findings, which findings with respect
6 to questions of fact if supported by substantial evidence on
7 the record considered as a whole shall be conclusive, and
8 shall file its recommendations, if any, for the modification
9 or setting aside of its original order.

10 “(4) Upon the filing of the record with it, the juris-
11 diction of the court shall be exclusive and its judgment and
12 decree shall be final, except that the same shall be subject
13 to review by the appropriate United States court of appeals
14 if application was made to the district court as provided in
15 paragraph (1), and by the Supreme Court of the United
16 States upon writ of certiorari or certification as provided in
17 section 1254 of title 28.”

18 On page 285, line 20, after “title,” insert “and except
19 as provided in section 7216 (f) of this title,”.

20 On page 308, line 13, after “section” insert “and
21 under section 7216 (f) of this title”.

Purpose:

Improving the protections afforded Federal employees.

Calendar No. 900**Amdt. No. 3533**

95TH CONGRESS
2^D SESSION

S. 2640**IN THE SENATE OF THE UNITED STATES**

AUGUST 23 (legislative day, AUGUST 16), 1978

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. MATHIAS (for himself, Mr. STEVENS, Mr. RIBICOFF, and Mr. PERCY) to S. 2640, a bill to reform the civil service laws, viz:

1 On page 152, line 6, strike out the end period and insert
2 in lieu thereof a semicolon and "and".

3 On page 152, between lines 6 and 7, insert the
4 following:

5 “(D) review, as provided in paragraph (6), rules
6 and regulations of the Office of Personnel Management.”.

7 On page 154, between lines 19 and 20, insert the
8 following:

9 “(6) (A) At any time after the effective date of any
10 rule or regulation issued by the Office of Personnel Manage-

1 ment pursuant to section 1103 (b) of this title, the Board
2 shall review such rule or regulation upon—

3 “ (i) its own motion;

4 “ (ii) the petition of any interested person if the
5 Board, in its sole discretion, grants such petition after
6 consideration of it; or

7 “ (iii) the filing of a written complaint by the
8 Special Counsel.

9 “ (B) In reviewing any rule or regulation pursuant to
10 this paragraph the Board shall declare such rule or regula-
11 tion invalid, in whole or in part, if it determines that—

12 “ (i) such rule or regulation would, on its face,
13 violate section 2302 of this title, including the prohibition
14 against violating the merit system principles, if imple-
15 mented by an agency, or

16 “ (ii) such rule or regulation, as it has been
17 implemented by agencies through personnel actions
18 taken, or policies adopted in conformity therewith, vio-
19 lates section 2302 of this title, including such principles.

20 “ (C) The Director of the Office of Personnel Manage-
21 ment, and any agency implementing the rule or regulation
22 under review in any proceeding conducted pursuant to this
23 paragraph, shall have the right to participate in such pro-
24 ceeding. Any proceeding conducted by the Board pursuant
25 to this paragraph shall be limited to determining the validity

1 of the rule or regulation under review, The Board shall
2 prohibit future agency compliance with any rule it deter-
3 mines to be invalid.”.

4 On page 145, line 21, strike out “(b)” and insert in
5 lieu thereof “(b) (1)”.

6 On page 145, after line 25, insert the following:

7 “(2) If notice of a rule or regulation proposed by the
8 Director is required by section 553 of this title, the Director
9 shall insure that—

10 “(A) the proposed rule or regulation is posted in
11 offices of Federal agencies maintaining copies of the
12 Federal personnel regulations; and

13 “(B) to the extent the Director determines appropri-
14 ate and practical, exclusive representatives of em-
15 ployees affected by such proposed rule or regulation
16 and interested members of the public are notified of
17 such proposed rule or regulation.”.

18 On page 206, line 12, after “positions”, insert “; num-
19 ber of career reserved positions”.

20 On page 208, between lines 20 and 21, insert the fol-
21 lowing:

22 “(h) (1) Not later than one hundred and twenty days
23 after the date of the enactment of the Civil Service Reform
24 Act of 1978, and from time to time thereafter as the Director
25 of the Office of Personnel Management finds appropriate, the

4

1 Director of the Office of Personnel Management shall estab-
2 lish, by rule issued in accordance with section 1103 (b) of
3 this title, the number of positions out of the total number of
4 positions in the Senior Executive Service, as authorized by
5 this section or section 412 of such Act, that are to be career
6 reserved positions. Except as provided in paragraph (2),
7 the number of positions required by this subsection to be
8 career reserved positions shall not be less than the number
9 of positions which, prior to such date of enactment, were au-
10 thorized to be filled only through competitive civil service
11 appointment.

12 “(2) The Director of the Office of Personnel Manage-
13 ment may, by rule, designate a number of career reserved
14 positions which is less than the number required by para-
15 graph (1) only if he determines it necessary to designate
16 as a general position a position (other than a position de-
17 scribed in the last sentence of section 3132 (b) of this title)
18 which—

19 “(A) involves policymaking responsibilities which
20 require the advocacy or management of programs of the
21 President and support of controversial aspects of such
22 programs;

23 “(B) involves significant participation in the major
24 political policies of the President; or

25 “(C) requires the executive to serve as a personal

5

1 assistant of, or adviser to, a Presidential appointee or
2 other key political figure.

3 The Director shall provide a full explanation for his deter-
4 mination in each case.

5 On page 212, between lines 1 and 2, in the item relating
6 to section 3133, after "positions", insert "; number of career
7 reserved positions".

8 On page 226, between lines 14 and 15, insert the
9 following:

10 “(1) permit the accurate evaluation of job per-
11 formance on the basis of criteria which are related to
12 the position in question and specify the critical elements
13 of the position;”.

14 On page 226, line 15, strike out “(1)” and insert in
15 lieu thereof “(2)”.

16 On page 226, line 17, strike out “(2)” and insert in
17 lieu thereof “(3)”.

18 On page 226, line 19, strike out “(3)” and insert in
19 lieu thereof “(4)”.

20 On page 227, line 18, insert before “Upon” the follow-
21 ing new sentence: “The Office of Personnel Management
22 shall review each performance appraisal system developed
23 by any agency under this section, and determine whether
24 the performance appraisal system meets the requirements of
25 this subchapter.”.

1 On page 227, between lines 22 and 23, insert the fol-
2 lowing new subsection:

3 “(d) The Comptroller General shall from time to time
4 review on a selected basis performance appraisal systems
5 established under this section to determine the extent to
6 which such system meets the requirements of this subchapter
7 and shall periodically report its findings to the Office of Per-
8 sonnel Management and to Congress.

9 On page 201, strike out line 23, and insert in lieu thereof
10 “prohibited personnel practices;”.

11 On page 202, line 3, strike out “and”.

12 On page 202, between lines 6 and 7, insert the following
13 new paragraphs:

14 “(14) utilize career executives to fill positions in
15 the Senior Executive Service to the greatest extent prac-
16 ticable consistent with the effective and efficient imple-
17 mentation of agency policies and responsibilities; and

18 “(15) provide for a professional management sys-
19 tem that is guided by the public interest and free from
20 improper political interference.”.

21 On page 205, line 7, after the end period, insert the fol-
22 lowing new sentence: “Notwithstanding the provisions of
23 any other law, any position to be designated as a Senior Ex-
24 ecutive Service position, except a position in the Executive
25 Office of the President, which—

1 “(1) is under the Executive Schedule, or for which
2 the rate of basic pay is determined by reference to the
3 Executive Schedule, and

4 “(2) on the day before the date of the enactment
5 of the Civil Service Reform Act of 1978 was specifi-
6 cally required by law, or was required under the pro-
7 visions of section 2102 of this title, to be in the compet-
8 itive service,
9 shall be designated as a career reserved position, if the posi-
10 tion entails direct responsibility to the public for the manage-
11 ment or operation of particular government programs or
12 functions.”.

13 On page 146, line 21, after “service”, insert “, except
14 that the Director may not delegate open competitive exami-
15 nation authority with respect to positions whose require-
16 ments are common to agencies in the Federal Government
17 other than in exceptional cases where the interests of econ-
18 omy and efficiency require it, and where such delegation will
19 not weaken the application of the merit system principles.”.

20 On page 307, beginning with line 18, strike out all
21 through page 308, line 2, and insert the following:

22 “(i) Allocation of the costs of the arbitrator shall be
23 governed by the collective-bargaining agreement. The col-
24 lective-bargaining agreement may require payment by the
25 agency which is a losing party to a proceeding before the

1 arbitrator of reasonable attorney fees incurred by an em-
2 ployee who is the prevailing party if the arbitrator deter-
3 mines that payment is warranted on the grounds that the
4 agency's action was taken in bad faith. If an employee is the
5 prevailing party and the arbitrator's decision is based on a
6 finding of discrimination prohibited by any law referred to
7 in section 7701 (h) of this title, attorney fees also may be
8 awarded and shall be governed by the standards appli-
9 cable under the Civil Rights Act of 1964, as amended (42
10 U.S.C. 2000e-5 (k)).”.

11 On page 308, line 13, after “section.” insert the fol-
12 lowing: “The Authority may award attorney fees to an em-
13 ployee who is the prevailing party to an exception filed
14 under this subsection, but only if it determines that payment
15 by the agency is warranted on the grounds that the agency's
16 action was taken in bad faith.”.

17 On page 286, between lines 3 and 4, insert the following:
18 **“§ 7205. Personnel Policy Advisory Committee**

19 “(a) There is established, subject to the provisions of
20 the Federal Advisory Committee Act, the Personnel Policy
21 Advisory Committee (hereinafter in this section referred to
22 as the ‘Committee’) which shall be composed of—

23 “(1) the Director of the Office of Personnel Man-
24 agement who shall serve as Chairman of the Committee;

25 “(2) the Secretary of Labor or his delegate;

9

1 “(3) five members appointed by the President
2 from among individuals serving in Executive agencies
3 and military departments in positions not less than the
4 positions of Assistant Secretary or their equivalents;

5 “(4) one member appointed by the President from
6 the Deputy and Associate Directors of the Office of Per-
7 sonnel Management; and

8 “(5) seven members appointed by the President
9 who shall be officers of labor organizations representing
10 employees in the Federal Government.

11 Appointments made under paragraph (5) shall reflect the
12 relative numbers of the total Federal employees which are
13 represented by such labor organizations, or affiliates thereof,
14 except that no more than four members shall be from one
15 such organization or its affiliates.

16 “(b) It shall be the function of the Committee to pro-
17 vide a forum for discussion by agency management and em-
18 ployee representatives of Federal personnel policy and
19 regulations which affect more than one agency, and to make
20 recommendations with respect to such policies and regula-
21 tions.

22 “(c) (1) The Committee shall meet at the call of the
23 Chairman but at least once quarterly. The Chairman shall
24 notify each member of a proposed meeting at least fourteen
25 days before it is to be held.

1 “(2) The Chairman shall prepare an agenda of topics
2 for consideration by the Committee in any meeting and shall
3 include such agenda in the notice sent under paragraph (1).

4 “(3) If one-third of the members present at a meeting
5 vote to discuss an unscheduled topic, it shall be discussed.

6 “(d) (1) Recommendations of the Committee may be
7 considered by the Office of Personnel Management in the
8 formulation of Federal personnel policies and regulations.

9 “(2) Copies of the transcripts of the meetings of the
10 Committee shall be sent to the Merit Systems Protection
11 Board and the Federal Labor Relations Authority.

12 “(e) (1) Except as provided in paragraph (2), mem-
13 bers of the Committee shall receive as compensation the
14 daily equivalent of the annual rate of basic pay in effect for
15 grade GS-18 for each day (including traveltime) during
16 which they are engaged in the actual performance of duties
17 vested in the Committee.

18 “(2) Members of the Committee who are full-time of-
19 ficers or employees of the United States shall receive no
20 additional pay on account of their service on the Committee.

21 “(3) While away from their homes or regular places of
22 business in the performance of service for the Committee,
23 members of the Committee shall be allowed travel expenses,
24 including per diem in lieu of subsistence, in the same man-
25 ner as persons employed intermittently in the Government

11

1 service are allowed expenses under section 5703 of this
2 title.”.

3 On page 271, between lines 2 and 3, after the item
4 relating to section 7204, insert the following new item:

“7205. Personnel Policy Advisory Committee.”.

Purpose:**Calendar No. 900**

Allowing arbitrators and Federal Labor Relations Authority to award attorneys fees.

Amdt. No. 3418**95TH CONGRESS
2D SESSION****S. 2640**

IN THE SENATE OF THE UNITED STATESAUGUST 2 (legislative day, MAY 17), 1978
Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. STEVENS to S. 2640, a bill to reform the civil service laws, viz:

1 On page 307, lines 20 and 21, strike out "shall have no
2 authority to award attorney or other representative fees"
3 and insert in lieu thereof: "may require payment by the
4 agency which is a losing party to a proceeding before the
5 arbitrator of reasonable attorney fees incurred by an em-
6 ployee who is the prevailing party if the arbitrator deter-
7 mines that payment is warranted on the grounds that the
8 agency's action was taken in bad faith".

9 On page 308, line 13, after the end period insert: "The
10 Authority may award attorney fees to an employee who is
11 the prevailing party to an exception filed under this subsec-

1 tion but only if it determines that payment by the agency
2 is warranted on the grounds that the agency's action was
3 taken in bad faith.”.

**AMENDMENT ON SCOPE OF BARGAINING, MANAGEMENT
RIGHTS, AND PROCEDURES CONSIDERED AND DE-
FEATED ON A ROLL CALL VOTE, 8-16, DURING HOUSE
COMMITTEE MARKUP OF TITLE VII**

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
5800 S. UNIVERSITY AVENUE
CHICAGO, ILLINOIS 60637

RECEIVED

[Scope of Bargaining]

Amendments to Committee Print, dated July 12, 1976
of Proposed New Title VII of H.R. 11252

Offered by Hefstel

① Page 6, strike out lines 13 through 21.

① Page 7, strike out line 20 and all that follows down through line 5 on page 8 and insert in lieu thereof the following:

“(12) ‘collective bargaining’, ‘bargaining’, or ‘negotiating’ means the performance of the mutual obligation of the representatives of the agency and the exclusive representative as provided in sections 7114 and 7115 of this title;

Page 15, strike out line 18 and all that follows down through line 11 on page 16.

Page 25, strike out lines 5 and 6 and insert in lieu thereof the following:

“(1) be informed of any change in substantive personnel policies proposed by an agency, and

Page 25, strike out line 19 and all that follows down through line 23 on page 27 and insert in lieu thereof the following:

"§ 7114. Representation rights and duties; good faith bargaining; basic provisions of agreements

"(a) When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and negotiate agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership. The labor organization 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. The agency and the labor organization, through appropriate representatives, shall, upon request, meet and negotiate in good faith for the purpose of arriving at an agreement.

"(b) The duty of the agency and the labor organization to negotiate in good faith includes—

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

"(2) to be represented at the negotiations by appropriate representatives prepared to discuss and negotiate on all negotiable matters;

"(3) to meet at reasonable times and places as may be necessary;

"(4) to furnish, in the case of information to be furnished by an agency to the other party upon request, data normally maintained in the regular course of business, reasonably available and necessary and relevant for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining, provided, however, nothing in this chapter shall be construed as requiring the disclosure of intra-management guidance, advice, counsel or training within an agency, between agencies or between an agency and the Office of Personnel Management; and

"(5) if an agreement is reached, to execute upon request a written document embodying the agreed terms, and to take such steps as are necessary to implement the agreement.

"(c) Each agreement between an agency and a labor organization is subject to the following requirements:

"(1) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level;

"(2) nothing in the agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.

"(d) The requirements of subsection (c) to this section and subsection (d) of section 7115 shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization.

"(e) An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or an official designated by the head of the agency. An agreement shall be approved within forty-five days from the date of its execution if it conforms to this chapter and other applicable laws, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation) and regulations of other appropriate authorities. An agreement which has not been approved or disapproved within forty-five days from the date of its execution shall go into effect without the required approval of the agency head and shall be binding on the parties subject to the provisions of this chapter and other applicable laws, and the regulations of appropriate authorities outside the agency. 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 agency regulations."

"§7115. Scope of negotiations; resolution of negotiability disputes

"(a) An agency and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall negotiate in good faith with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under this chapter and other applicable laws and regulations, including policies set forth in the Federal Personnel Manual; published agency policies and regulations for which a compelling need exists under criteria established by the Federal Labor Relations Authority and which are issued at the agency headquarters level or at the level of a primary national subdivision; and a national or other controlling agreement at a higher level in the agency. They may negotiate an agreement; determine appropriate techniques, consistent with section 7119 of this title, to assist in such negotiation; and execute a written agreement or memorandum of understanding. In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall have due regard for the obligation imposed by this section.

"(b) The obligation to negotiate under subsection (a) of this section includes, but is not limited to

- "(1) pay practices;
- "(2) overtime practices;
- "(3) safety and health;
- "(4) promotion procedures;

"(5) reduction-in-force procedures;

"(6) leave procedures;

"(7) grievance and arbitration procedures;

"(8) travel and per diem;

"(9) appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change;

"(10) appropriate arrangements for employees adversely affected by the impact of management's exercising its authority to decide or act, reserved under subsection (d) of this section; and

"(11) procedures which management will observe in exercising its authority to decide or act, reserved under subsection (d) of this section.

Provided, however, that such negotiations shall not unreasonably delay the exercise by management of its authority to decide or act: And provided further, that any agreements reached shall be consonant with law and regulation, as provided in subsection (a) of this section and shall not have the effect of negating the authority reserved under subsection (d) of this section.

"(c) Matters which are permissible but not mandatory subjects of bargaining are: the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; or the technology of performing work.

"(d) Matters which are retained management rights and are not subject to bargaining are:

"(1) management's right to determine the mission, budget, organization, the number of employees in an agency, and internal security practices of the agency, and

"(2) management's right in accordance with applicable laws and regulations—

"(A) to direct employees of the agency;

"(B) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;

"(C) to relieve employees from duties because of lack of work or for other legitimate reasons;

"(D) to maintain the efficiency of the Government operations entrusted to them;

"(E) to determine the methods, means, and personnel by which such operations are to be conducted; and

"(F) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency.

"(e) If, in connection with negotiations, an issue develops as to whether a proposal is contrary to this chapter or other applicable law, regulation, or controlling agreement and therefore not negotiable, it shall be resolved as follows:

"(1) An issue which involves interpretation of a controlling agreement at a higher agency level is resolved under the procedures of the controlling agreement, or, if none, under agency regulations;

"(2) An issue other than as described in paragraph (1) of this subsection which arises at a local level may be referred by either party to the head of the agency for determination;

"(3) An agency head's determination as to the interpretation of the agency's regulations with respect to a proposal is final;

"(4) A labor organization may appeal to the Authority for a decision when—

"(i) it disagrees with an agency head's determination that a proposal would violate this chapter or other applicable law or regulation of appropriate authority outside the agency,

"(ii) it believes that an agency's regulations, as interpreted by the agency head, violate this chapter or other applicable law or regulation of appropriate authority outside the agency, or are not otherwise applicable to bar negotiations under subsection (a) of this section.

Page 27, line 24. strike out ``7115`` and insert in lieu thereof ``7116``.

Page 31, line 17. strike out ``7116`` and insert in lieu thereof ``7117``.

Page 35, strike out line 9 and all that follows down through line 17 on page 36.

Page 8, line 22, strike out ``(15)`` and insert in lieu thereof ``(14)``.

Page 10, line 3, strike out ``(16)`` and insert in lieu thereof ``(15)``.

Page 10, line 13, strike out ``(17)`` and insert in lieu thereof ``(16)``.

Page 10, line 17. strike out ``(18)`` and insert in lieu thereof ``(17)``.

Page 12, line 22, strike out ``(19)`` and insert in lieu thereof ``(18)``.

(GAO Authority)

Amendment to Committee Print, Dated

July 10, 1978

Offered by Mr. Udall

Page 47, immediately after line 2, insert the following:

"(c) Nothing in subsection (a) or (b) of this section shall be construed to preclude an agency head or an authorized certifying or disbursing officer from requesting, under section 74 or 82d of title 31, an advance decision from the Comptroller General of the United States as to the legality of any payment.

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

MAY 2 1977

B-40342
FPC-77-02

The Honorable Robert N. C. Nix, Chairman
Committee on Post Office and Civil Service
House of Representatives

Dear Mr. Chairman:

Your letter of January 27, 1977, requested our report on H. R. 13, 95th Congress, 1st Session, a bill to provide for improved labor-management relations in the Federal service, and for other purposes.

Since 1962, labor-management relations in the executive branch of the Federal service have been governed primarily by a series of Executive orders promulgated by the President. The program has developed rapidly with 58 percent of the civilian non-postal workforce currently represented in bargaining units and 52 percent covered by negotiated agreements. Notwithstanding the merits of the Executive order program, there apparently is considerable concern from the standpoint of employee representatives who perceive the program as unsatisfactory and as management biased. Developing confidence in the program is paramount if it is to achieve the generally stated objectives of contributing to the public interest by encouraging the effective conduct of public business. A well balanced labor management relations program should increase the efficiency of the Government by providing for a meaningful participation by Federal employees in the conduct of Government business in general and those conditions of employment in which they have a vital concern.

With regard to the specific provisions of H. R. 13, we have the following comments.

Section 2

"Section 7103"

Among other things this section of definitions in part sets forth the coverage of the legislation. Subsection 7103(a)(15) gives "agency" a comprehensive definition that would appear to include every organization of the United States Government with personnel that are not excluded from the subsection 7103(a)(2) definition of "employee." Hence this legislation would apparently extend coverage to employees of all three branches of Government including employees that traditionally have been excluded from the labor relations program such as employees of congressional committee staffs, the Congressional Budget Office, the Congressional Research Service, the Office of Technology Assessment, the Central Intelligence Agency, the Federal Bureau of Investigation and the General Accounting Office.

If the organizations which have previously been excluded from the program are to be covered by the legislation then the General Accounting Office should also be covered. However, if Congress should decide to exempt any of these other organizations then the General Accounting Office should likewise be exempted since it is an agency which performs audit, investigative, and review functions for the Congress.

"Subsection 7103(a)(8)"

The definition of the word "grievance" is overly broad inasmuch as it appears to include matters which are now covered by statutory appeal procedures. Among other things, statutory appeal procedures have been established for employee complaints of agency determinations involving position classifications, adverse actions, discrimination, reductions in force and personnel security. For the reasons set forth in our comments on subsection 7120(a) below, we are of the opinion that matters subject to statutory appeal procedures should be excluded from this definition. We therefore suggest that subsection 7103(a)(8) be amended by adding the following phrase after the word "complaint" on page 6, line 6, ", except matters for which appeal procedures are prescribed by current or future provisions of law, * * *."

"Subsection 7103(a)(11)"

The definition of the term "collective bargaining" includes "the duty to bargain over matters which are or may be the subject of any regulation." We assume, however, that in light of the provisions of section 7113(d), regulations issued by the Civil Service Commission or any other agency relating to employees of more than one agency and those issued by any agency head where no labor organization holds exclusive recognition for all of the employees of that agency are not subject to negotiation but rather to a consultation process. We therefore suggest deletion of the second sentence under section 7103(a)(11) (page 7, lines 18 to 20) or, in the alternative, that the wording of this sentence be changed consistent with the provisions of 7113(d).

"Section 7104"

We agree that a Federal Labor Relations Authority with power and authority similar to that prescribed in H. R. 13 should be established. Such a central body, with authority closely paralleling that of the National Labor Relations Board (NLRB) in the private sector, should be perceived by both labor organizations and agency management as a credible and viable third party mechanism. We particularly support the creation of an Office of General Counsel, with authority similar to that of the General Counsel of the NLRB to both investigate and prosecute the Unfair Labor Practice complaints.

"Subsection 7105(g)"

This subsection, when read in conjunction with subsection 7137(c), could be construed as authorizing the Authority to expend appropriated funds without regard to restrictions contained in existing law, regulations and Comptroller General decisions. For example, under this construction, the Authority would have discretion to (1) fix the compensation of members and employees without regard to restrictions contained in title 5, United States Code; (2) pay travel and subsistence

expenses of members and employees without regard to restrictions contained in the Federal Travel Regulations; and (3) lease office space and facilities without regard to restrictions contained in title 40, United States Code, or regulations promulgated by the General Services Administration.

We question whether the Authority requires such broad discretionary authority to accomplish its mission particularly since many existing agencies with similar missions have been able to function well within the constraints of existing laws and regulations governing expenditure of appropriated funds. No reason appears as to why the Authority should not be held accountable for the expenditure of its funds in the same manner as other Federal agencies. Therefore, we suggest that subsection 7105(g) be deleted.

"Section 7111"

Provisions of this section may raise a question concerning the rights of veterans' organizations and certain religious, social and fraternal organizations not qualified as labor organizations to discuss applicable matters with agency officials. We note that some past legislative proposals have included a proviso similar to the following:

"Exclusive recognition of a labor organization shall not preclude or restrict discussions with religious, social, fraternal, professional, or other lawful associations not qualified as labor organizations, with respect to matters or policies that are of particular applicability to them or their members, but such discussions shall be so limited that they do not assume the character of formal consultation on matters appropriate for collective bargaining or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees."

Should the Committee consider it appropriate to guarantee the access of these organizations to agency management, adding such language may be appropriate.

"Section 7114"

We note a potential inconsistency in that section 7114(c) appears to mandate the payment of representational fees by non-union members in a bargaining unit while under 7115(a)(2) the matter appears to be negotiable. We have in past bill comments not taken a position on the efficacy of union security arrangements and still believe it to be primarily a matter for congressional determination. It is our view, however, that fiscally sound labor organizations are better able to protect the rights of employees and therefore are conducive to a viable labor relations program. H. R. 13 as presently drafted has several features such as liberal official time allowances (§ 7132), free dues check-off (§ 7114(a)), and remedies, including attorney's fees, under proposed revisions to 5 U. S. C. 5596(b), that contribute to the financial security of unions.

Additionally, section 7102 grants employees the right to form, join, or assist any labor organization or to refrain from such activity. The employees' right to refrain from assisting any labor organization appears inconsistent with the requirement under section 7114(c). If the Committee's intent is to permit unions to negotiate a union security arrangement requiring employees to pay a representational fee, we believe that the following language, similar to that of section 7 of the National Labor Relations Act, be inserted after line 7, page 3
 "* * * except to the extent that such right may be affected by a requirement that employees pay a representation fee as a condition of employment."

"Subsection 7115(b)"

In light of the requirement under 7114(c) that as a condition of employment an employee represented by a labor organization pay an amount equivalent to union dues, we believe that certain safeguards similar to those in section 8(b)(5) of the NLRA should also be included prohibiting the charging of excessive dues and fees. Specifically, we propose that the following language be inserted after line 18, page 32, under the unfair labor practice provisions of section 7115(b) "(9) to require of employees covered under subsection (a)(2) the payment, as a condition of continued employment, of a fee in an amount which the Authority finds excessive or discriminatory under all circumstances."

"Subsection 7116(b)(4) and Section 7121"

Subsection 7116(b)(4) authorizes the authority to grant backpay as a remedial measure for unfair labor practices. Similarly, section 7121, among other things, authorizes arbitrators to award backpay to remedy grievances. Without a reference to the existing Back Pay Statute, 5 U. S. C. § 5596, there is a possible ambiguity as to the authority for such backpay, and it could be argued that this legislation provides its own independent authority for backpay free of legislative standards and controls associated with the Back Pay Statute, 5 U. S. C. § 5596. To remove this ambiguity, we suggest that on line 1, page 36, after the word "backpay" and on line 1, page 44, after the word "backpay," the following be inserted "pursuant to 5 U. S. C. § 5596." Addition of this citation will incorporate by reference the existing Back Pay Statute.

In addition there is the possibility of an ambiguity with respect to the statutory authority of the General Accounting Office and the Comptroller General regarding orders of the Authority. The existing language of these sections could be construed as authorizing the Authority to make final and binding determinations concerning the legality of payments ordered to remedy agency unfair labor practices without reference to the Comptroller General. Since 1921, the Comptroller General has had exclusive administrative authority under 31 U. S. C. §§ 74 and 82d, to render advance administrative decisions regarding the legality of expenditures of appropriated funds that are binding on the executive branch of Government. Such authority should not be divided so that two or more agencies will have concurrent jurisdiction to render advance decisions binding on the same parties.

Differences and inconsistencies in the decisions of the two or more decision makers would confuse executive agencies in need of guidance and eventually introduce so much uncertainty in the law that the precedential value of all past decisions would be destroyed.

Hence, we suggest that this possible ambiguity be removed by adding the following new subsection on line 25, page 37 "(1) Nothing in this section shall serve to preclude an agency head or an authorized certifying or disbursing officer of an agency from exercising their statutory right under 31 U. S. C. § 74 and 31 U. S. C. § 82d to request an advance decision from the Comptroller General of the United States as to the legality of any payment." We suggest that this same sentence be added after the period on line 22, page 43.

Finally, this subsection empowers the Authority to order an agency to discipline, by demotion, suspension, removal or other remedial action a supervisor or agency official who has knowingly violated the Act. It is not clear whether this provision would conflict with 5 U. S. C. § 7501 (1970), relating to suspension or removal of employees in the competitive service, and 5 U. S. C. § 7512 (1970), relating to adverse actions against preference eligible employees. Moreover, we believe that the selection of punishment is more appropriately a management determination for decision by the employing agency. It would therefore seem preferable to amend this subsection to require that the Authority report violations to agency heads involved who then should select and effectuate appropriate disciplinary action under 5 U. S. C. §§ 7501 or 7512.

"Subsection 7120(a)"

This provision would permit an aggrieved employee in a recognized bargaining unit to elect to have his grievance processed under either the negotiated procedure or the applicable statutory appeal procedure. Unorganized employees and those excluded from membership of bargaining units such as confidential employees, supervisors or management officials do not have an option, but must utilize the statutory appeal procedure exclusively. Existing statutory appeal procedures have been provided for certain types of personnel actions such as position classification, adverse actions, employee discrimination, reductions in force and personnel security. Under current procedures, adjudications of employee complaints involving these complex personnel actions are made by a small number of adjudicatory authorities staffed with individuals thoroughly trained in the laws and regulations governing such matters to insure that all employees are treated uniformly.

On the other hand, under the provisions of this bill, a large number of arbitrators would be required to adjudicate the complaints of grievants who elect the negotiated procedure. As private sector law practitioners for the most part, arbitrators are trained and experienced in general legal matters. However, their knowledge of the specialized law and regulations governing these complex personnel actions may be limited and their adjudications would reflect this lack of expertise. Consequently, similarly situated grievants would be treated differently, which would serve to lower the morale of the entire Federal work force.

For these reasons, we suggested in our comments on subsection 7103(a)(8), supra, that matters for which appeal procedures are prescribed by current or future specific provisions of law, be excluded from the definition of "grievance" as employed in this bill. If that suggestion is accepted, the second sentence of subsection 712(a) which begins on line 1 and ends on line 8, page 42, should be deleted, and the following sentence should be substituted in place of the deleted

second sentence. "It shall be the exclusive procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage."

"Subsection 7133(e)"

This subsection is designed to provide penal sanctions for persons who willfully resist, prevent, impede, or interfere with officials, employees and agents of the Authority in the performance of their duties. Legislative acts creating crimes must be clear and certain. They must provide reasonable and adequate guidance to a person who would be law abiding so that he can comprehend what activity is to be avoided (see Lanzetta v. New Jersey, 306 U.S. 451 (1939), United States v. Cordiff, 344 U.S. 174 (1952)). In view of this criteria for penal statutes, subsection 7133(e) might be construed to be impermissibly vague.

Further we note that under subsection 7105(h) the Authority has been empowered and directed to prevent any person from engaging in conduct in violation of this chapter and has been authorized to perform certain functions to carry out this direction. We believe the Authority has sufficient power under 7105(h) to prevent persons from engaging in conduct that interferes with the performance of its mission. Accordingly, it would appear that the penal provisions of subsection 7133(e) are not required and hence we suggest subsection 7133(e) be deleted.

"Subsection 7137(b)"

Line 4, page 53 of the bill contains a reference to Executive Order 10987 which apparently should read 10988.

"Subsection 7137(c)"

This subsection would modify or repeal all laws, rules and regulations inconsistent with the provisions of H. R. 13, and take precedence over existing ordinances, rules, regulations, and other enactments. Because it is presently unknown which laws and regulations will eventually be found to be inconsistent with the provisions of this bill, it is difficult to assess the impact this proposed legislation will ultimately have on existing laws and regulations. We can, however, speculate that the impact will be great. For example, subsection 7115(b)(7) makes it an unfair labor practice "*** to call or engage in any illegal strike, work stoppage, or slowdown ***." Since this provision merely makes an illegal strike an unfair labor practice, it could be construed as having repealed the existing prohibition on strikes contained in 5 U.S.C. § 7311(3). Alternatively, the provision in subsection 7115(b)(7), could be construed as permitting legal as opposed to illegal strikes and thereby take precedence over the prohibition against any strikes set forth in 5 U.S.C. § 7311(3). Another example of the potential impact of this provision is outlined in our comments on subsection 7105(g) above.

Because there is a risk that subsection 7137(c) would result in protracted litigation and eventual repeal or invalidation of many existing laws and regulations, we suggest that the first sentence of subsection 7137(c) be deleted from the bill. Inconsistencies between the provisions of this bill and existing statutes could then be resolved through the use of traditional statutory construction principles.

Section 4"Section 7503"

The section revises existing adverse action procedures as they apply to employees against whom adverse actions are proposed. Among other things it provides:

- (1) At least 30 days advance written notice, except when there is reasonable cause to believe the individual is guilty of a crime for which the penalty is imprisonment;
- (2) To receive concurrently with notice, all statements, affidavits, investigative reports, and all other evidence relevant to the proposed action;
- (3) An evidentiary hearing before a hearing examiner who must be an attorney licensed to practice in at least one State or territory of the United States;
- (4) To receive a copy of the verbatim transcript of the hearings; and
- (5) A written decision by the hearing examiner stating the findings of fact and conclusions of law upon which the decision is based.

Subsection (b) of the amended section 7501 would empower the hearing examiner to issue subpoenas for witnesses and the production of evidence, to administer oaths and affirmations, examine witnesses and receive evidence. In case of refusal to comply with a subpoena of a hearing examiner, the party seeking production of witnesses or evidence would have a right to apply to a United States District Court for an order requiring compliance, failure to comply being subject to punishment as contempt of court.

We note that the only stated qualification for the hearing examiner is that of a licensed attorney. In our opinion this single qualification requirement is not sufficient to insure the availability of hearing examiners specifically trained for and experienced in conducting quasi-judicial proceedings. This is particularly critical since the hearing examiner's decision appears to preempt that of the head of the agency. Additionally, section 7503 does not specify how the selection of the hearing examiner is made. Presumably, an examiner could be selected from within the agency proposing the action. In such a situation, the objectivity and independence of the procedure may be questionable.

"Subsection 7503(c)"

We note that in subsection (c) there is no indicated timeframe in which a court action must be brought. Also, it is not clear what the status of the employee will be nor the decision of the hearing examiner when judicial review is sought. We note that no express provision is made concerning the finality of the hearing examiner's conclusions of law.

Under section 7119 and section 7120 of the bill, employees may appeal adverse actions to the Civil Service Commission or may process redress under a negotiated grievance system. It may need clarification as to whether an employee who seeks judicial review under subsection 7503(c) may also proceed with an appeal to the Civil Service Commission or a grievance under a negotiated grievance procedure.

"Subsection 7503(d)"

This subsection should be deleted and replaced by the redesignated "Subsection 7503(e)" if our suggestions concerning subsections 7103(a)(8) and 7120(a) are accepted. In such event, adverse actions would not be subject to the negotiated procedure.

Sincerely yours,


[Deputy Comptroller General
of the United States

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-40342

October 5, 1977

The Honorable Robert N. C. Nix, Chairman
Committee on Post Office and Civil Service
House of Representatives

Dear Mr. Chairman:

Your letter of September 23, 1977, requested our report on H.R. 9094, 95th Congress, 1st Session, a bill to provide for improved labor-management relations in the Federal service and for other purposes.

A review of H.R. 9094 reveals that it incorporates the majority of the provisions contained in H.R. 13 and H.R. 1589, 95th Congress, 1st Session. We commented on the provisions of these earlier bills by separate letters, dated May 2, 1977, and have not changed our position in the interim. Therefore, in view of the limited time available to prepare our comments on H.R. 9094, we shall restrict them to matters of primary concern to this Office. However, we urge the Committee to consider at this time our previous comments in its deliberations on H.R. 9094.

The Federal Personnel Management Project (FPMP) of the President's Reorganization Project is currently studying labor-management relations in the Federal Government with a view toward recommending changes in that program that will be compatible with the planned overall reorganization. On September 20, 1977, the FPMP issued Option Paper 4 dealing with labor-management relations in the Federal Government. Federal agencies, unions, and other interested groups have been requested to comment upon the various options presented. For this reason we strongly recommend that further consideration on a comprehensive Federal labor-management relations bill be deferred until the President's reorganization plans have been completed.

With regard to the specific provisions of H.R. 9094, we have the following comments:

Coverage of the Bill

The term "agency" as defined in section 7103(a)(3) is given a comprehensive definition for the executive branch which has the effect of extending coverage of the bill to the maximum number of executive branch employees. The entire judicial branch is excluded. The legislative branch is also excluded, except for the Library of Congress, the Government Printing Office, and the General Accounting Office which is included by virtue of 5 U.S.C. § 105. This means that the congressional committee staffs, the Congressional Budget Office, the Congressional Research Service, and the Office of Technology Assessment are exempted from the coverage of the bill. If these organizations are exempted, then the General Accounting Office should also be exempted since it is an agency which performs audit, investigative, and review functions for the Congress. We, therefore, recommend amending subsection 7103(a)(3) as follows: "(3) 'agency' means the Library of Congress, the Government Printing Office, the Postal Rate Commission, and any Executive agency, as defined in section 105 of this title except the General Accounting Office."

Jurisdiction of the Comptroller General

The language of sections 7118(b)(4) and 7123 concerning orders of the Federal Labor Relations Authority is ambiguous with respect to the statutory jurisdiction of the General Accounting Office and the Comptroller General. The proposed language could be construed as authorizing the Authority to make final and binding determinations concerning

the legality of payments ordered to remedy agency unfair labor practices or ordered by arbitration awards without reference to the Comptroller General. Since 1921, the Comptroller General has had exclusive authority under 31 U. S. C. §§ 74 and 82d, to render advance decisions regarding the legality of expenditures of appropriated funds that are binding on the executive branch of Government. Such authority should not be divided so that two or more agencies will have concurrent jurisdiction to render advance decisions binding on the same parties.

Differences and inconsistencies in the decisions of the two or more decision makers would confuse executive agencies in need of guidance and eventually introduce so much uncertainty in the law that the precedential value of all past decisions would be destroyed.

Hence, we suggest that this possible ambiguity be removed by adding the following after subsection 7118(b)(4) on line 23, page 50, and after subsection 7123 on line 14, page 57: "Provided, that nothing in this section shall serve to preclude an agency head or an authorized certifying or disbursing officer of an agency from exercising their statutory right under 31 U.S.C. §§ 74 and 82d to request an advance decision from the Comptroller General of the United States as to the legality of any payment."

Expenditures by the Federal Labor Relations Authority


Section 7105(g) could be construed as authorizing the authority to expend appropriated funds without regard to restrictions contained in existing law, regulations, and Comptroller General decisions. For example, under this construction, the Board would have discretion to (1) fix the compensation of employees without regard to restrictions contained in title 5, United States Code; (2) pay travel and subsistence expenses of employees without regard to restrictions contained in the Federal Travel Regulations; and (3) lease office space and facilities without regard to restrictions contained in title 40, United States Code, or regulations promulgated by the General Services Administration.

We question whether the authority requires such broad discretionary authority to accomplish its mission particularly since many existing agencies with similar missions have been able to function well within the constraints of existing laws and regulations governing expenditure of appropriated funds. No reason appears as to why the authority should not be held accountable for the expenditure of its funds in the same manner as other Federal agencies. Therefore, we suggest that subsection 7105(g) be deleted and subsection (h) be redesignated as (g).

Statutory Pay and Benefits

The newly added provisions of sections 7114 and 7115 regarding the establishment of pay and benefits of Federal employees contain many complicated issues with far reaching ramifications. In the limited time available, we have been unable to study these issues in detail and therefore it would be inappropriate for us to comment on them. Inasmuch as these issues are currently being studied by the President's Reorganization Project, we feel that such legislation should be deferred until the President's study has been completed.

Finally, we wish to express our appreciation for the opportunity to comment on this bill and for the committee's adoption of certain of our earlier recommendations and suggestions. If we can be of further assistance, please contact us.


Deputy Comptroller General
of the United States

COMPTROLLER GENERAL OF THE UNITED STATES
 WASHINGTON, D.C. 20548

B-40342
 FPC-78-85

May 19, 1978

The Honorable Robert N.C. Nix
 Chairman, Committee on Post Office
 and Civil Service
 House of Representatives

Dear Mr. Chairman:

We are pleased to respond to your request for our comments on H.R. 11280, the "Civil Service Reform Act of 1978."

As a preface to our comments, I believe you will agree that it is appropriate to recognize that as the role of the Federal government increases and affects more and more the lives of all citizens, it is inevitable that attention will be drawn to the level of competency of Federal employees, their compensation, incentives, and other conditions of their employment. Discussion of these issues has gone on for many years and intensified since the growth of the Federal government in the depression days of the 1930's and World War II. Civil Service reforms are necessary but that issue should not cloud the essential point that most civil service employees are able, highly motivated, and dedicated to their work.

We believe that the Civil Service system can be improved. During the past several years we have studied many of the issues with which H.R. 11280 is concerned. We have made a number of specific recommendations and have highlighted conflicting policies and objectives that needed to be addressed. These have included:

- the conflicting roles of the Civil Service Commission as policymaker, prosecutor, judge and employee protector; (June, 1977)
- the need for simplifying the appeals systems; (February, 1977)
- the adverse impact of veterans' preference on equal employment objectives; (September, 1977)
- the need to improve performance appraisals and ratings; (March, 1978)
- the need for more flexible hiring procedures; (July, 1974)
- the need for a new salary system for federal executives; (February, 1977)
- the need to relate pay to performance; (October 1975; March 1978)
- the need for an overall Federal retirement policy. (August, 1977)

H.R. 11280 attempts to deal with the above issues as well as others and we strongly support those objectives.

H.R. 11280 should be considered in conjunction with the proposed Reorganization Plan No. 2 of 1978. The Civil Service Commission (CSC) now serves simultaneously as the protector

of employee rights and the promoter of efficient personnel management policy. The reorganization plan divides those two roles between two separate agencies, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM). H.R. 11280 would provide additional legislative authority for these two agencies.

The Reorganization Plan would also create a Federal Labor Relations Authority which would consolidate the third-party function in the Federal labor-management relations program by assuming the functions of the Federal Labor Relations Council and certain responsibilities of the Assistant Secretary of Labor for Labor-Management Relations. In addition, Reorganization Plan No. 1 of 1978, would transfer CSC's current equal employment opportunity and discrimination complaint authority to the Equal Employment Opportunity Commission (EEOC).

Office of Personnel Management

The Office of Personnel Management would be the primary agent advising the President and helping him carry out his responsibilities to manage the Federal work force. It would develop personnel policies, provide personnel leadership to agencies, and administer central personnel programs. It would be headed by a director and a deputy director, both appointed by the President and confirmed by the Senate.

We are aware of the concern which has been expressed that a single director of personnel, serving at the pleasure of the President and replacing a bipartisan commission, could be accused of partisan political motivations in actions which, by their very nature, are controversial. The argument is made that the Merit System Protection Board, important as its role would be, would not be in a position to influence substantially policies, rules and regulations, including positions on legislative matters, in the same manner as a bipartisan commission. On the other hand, a commission form of organization tends to be cumbersome and divides responsibility and accountability. It is of some interest to note that President Roosevelt's Committee on Administrative Management recommended in 1937 a single-headed director of personnel for the Federal Government. While this proposal was not adopted, the idea of a strong Director of Personnel Management has continued to be discussed and proposed and, in fact, has been extensively adopted at the State and local level. On balance, we favor the President's proposal and believe that this part of the reorganization plan should be adopted.

It should be pointed out, however, that under the plan and H.R. 11280 the Director of OPM would be concerned entirely with the civil service and would not have advisory or other responsibilities with respect to other personnel systems within the Federal Government. GAO has repeatedly pointed to the need for a stronger focal point within the executive branch to concern itself with consistent and common policies and procedures which are relevant to all or several of the personnel systems within the Government. This responsibility today is clouded by the lack of certainty with respect to the roles of the Civil Service Commission and the Office of Management and Budget.

To remedy this situation and to strengthen the case for the proposed pay level for the Director of OPM, we believe that the Director should have responsibility for advising, assisting and coordinating with the President with respect to common policies and practices in the

personnel management area throughout the Executive Branch of the Federal Government. He could share the responsibility for pay systems with the Director of the OMB but it seems to us that the President and the Congress need a focal point which can address itself to the common problems and concerns. This responsibility could be dealt with in the legislation, either by developing a specific statutory charter for the Director of the OPM, or a strong statement of intent of the Congress could be developed, leaving to the President the development of a more detailed charter.

Merit Systems Protection Board (MSPB)

The MSPB would have three members appointed by the President for 7-year terms removable only for misconduct, inefficiency, neglect of duty, or malfeasance in office. Not more than two of the members could be from the same political party. One member would be designated Chairman and one member Vice-Chairman. A special Counsel would also be appointed for a 7-year term. The independence and authority of MSPB and its ability to protect the legitimate concerns of employees is the overriding factor on how much flexibility can be provided to managers.

We believe it would be desirable for MSPB to provide both the agencies and employees information on matters that have been resolved by MSPB. We also believe that the special studies to be conducted by MSPB and reported to the President and the Congress should be made available to the public.

Federal Labor Relations Authority

The reorganization plan would establish an independent Federal Labor Relations Authority to assume the third party functions currently fragmented among the Federal Labor Relations Council and Assistant Secretary of Labor for Labor Management Relations. The establishment of the Authority is intended to overcome the criticisms of the structure and administration for the existing Federal labor relations program.

The Authority and the labor relations provisions are not now incorporated in the Reform bill. We understand that on April 25, 1978, the Administration informed the cognizant committees of Congress of the decision to incorporate further improvements in the labor relations program as part of the Civil Service reform legislative package.

The concept of an independent labor relations authority or board has been included in proposed legislation, introduced in recent sessions of Congress, to provide a statutory basis for the Federal labor management relations program. In commenting on these legislative proposals on May 24, 1977, GAO supported the establishment of a central labor relations body to consolidate the third party functions in the Federal labor management relations program. We believed then, as we do now, that such a central body is needed and would be perceived by both labor organizations and agency management as a credible and viable third party mechanism.

The proposed reorganization plan provides that decisions of the Authority on any matter within its jurisdiction shall be final and not subject to judicial review. We believe a provision should be added to the legislation to make it clear that the existing right of agency heads and certifying officers to obtain a decision from the Comptroller General of the United States on the propriety of payments from appropriated funds are not modified. Also, we question

whether the right to judicial review of the Authority's decision should be prohibited.

Equal Employment Opportunity Commission

EEOC's role is not discussed in either Reorganization Plan No. 2 or H.R. 11280. However, we believe we should address the relationship between EEOC and MSPB in view of the proposed transfer of EEO enforcement and discrimination appeals authority from CSC to EEOC under Reorganization Plan No. 1 of 1978.

Under the Plan all discrimination appeals relating solely to discrimination will be filed directly with EEOC, and processed by it. Under delegation from EEOC, all appeals involving both Title V and Title VII matters will be filed with and acted upon by MSPB. The decision of MSPB will be final unless the employee requests EEOC to review the elements of the case involving Title VII. EEOC may examine the matter on the record, grant a de novo hearing or remand the case to MSPB for further hearings at its option.

A clear distinction between an equal employment and merit principle complaint is difficult, if not impossible, and employees frequently perceive their problems to be both. We believe that placing the adjudication of these complaints in different organizations will invite duplicate or two track appeals on the same issues simultaneously, or sequentially, to EEOC and MSPB. In addition to wasting time, effort and money, this situation poses a very real potential for differing definitions of issues, inconsistent interpretations of laws, regulations and irreconcilable decisions.

An additional problem in having EEOC responsible for receipt and processing appeals is that it establishes the same kind of role conflict that the Civil Service reform proposals seek to correct. EEOC would in effect be the enforcement as well as the adjudicative agency. We are inclined to favor the approach taken in H.R. 11280 which provides:

"Notwithstanding any other provision of law, an employee who has been affected by an action appealable to the Board (Merit System Protection Board) and who alleges that discrimination prohibited by Section 2302(b)(1) of this title was basis for the action should have both the issue of discrimination and the appealable action decided by the Board in the appeal decision under the Boards' appellate procedures."

Additionally, we believe EEOC should be given the authority to intervene, on Title VII matters, with all the rights of a party in all the adjudicatory proceedings of MSPB and in any subsequent appeals to the courts. This alternative would avoid many of the problems we have mentioned and save considerable time by having all issues of a complaint decided by the same adjudicative body.

H.R. 11280 proposes changes to: performance appraisals, adverse action appeals, veterans preference, retirement, selection methods, management and compensation of senior executives, merit pay, and personnel research. We have made recommendations to the Congress and to the executive branch concerning the need for improvement in most of

these areas. H.R. 11280 provides the vehicle for making necessary changes and we support that objective. We do have concerns about the specifics of some of the proposals and believe they can be improved upon.

Performance Appraisals

We believe the current system of performance appraisals should be improved. We recommended that performance appraisal systems should include four basic principles.

- First that work objectives be clearly spelled out at the beginning of the appraisal period so that employees will know what is expected of them.
- Second that employees participate in the process of establishing work objectives thereby taking advantage of their job knowledge as well as re-enforcing the understanding of what is expected, and
- Third that there be clear feed back on employee performance against the preset objectives.
- Fourth that the results of performance appraisals be linked to such personnel actions as promotion, assignment, reassignment, and to discipline.

The proposed legislation generally conforms to our recommendations.

Adverse Actions and Employee Appeals

One of the major purposes of H.R. 11280 is to make it easier to remove employees for misconduct, inefficiency, and incompetence. It provides for new procedures based on unacceptable performance. In so doing, the Bill proposes major changes in the rights now afforded Federal employees. We believe the Bill contains many provisions which would improve the present processes by which Federal employees are removed, demoted, and disciplined. However, we have concerns that certain of the proposed changes in adverse action and appellate procedures would not provide a proper balance between the interest of the Federal Government and the rights and protection of Federal employees.

For example, in an appeal, the decision of the agency must be sustained by MSPB unless the employee shows an error in procedure which substantially impairs his or her rights, discrimination, or an arbitrary or capricious decision. We suggest a fourth basis, that is, the absence of substantial evidence in the administrative record to support the decision of the agency.

Veterans' Preference

We believe that changes can be made to veterans' preference legislation so that the system for examining and selecting for Federal employment can be improved and employment assistance can be better provided to those veterans who most need it. We believe the Administration's proposals are designed to balance the Government's obligation to its veterans for their sacrifices, its obligation to provide equal employment opportunity, and its commitment to improve Federal staffing operations.

We favor amending the rule-of-three selection requirement of the Veterans' Preference Act of 1944. Examinations are not precise enough to judge the potential job success

of persons with identical or nearly the same scores. As a result, the rule-of-three unfairly denies to many applicants who have equal qualifications the opportunity to be considered for Federal employment. We have previously recommended that the Congress amend the rule-of-three requirement similar to the way in which the proposed legislation authorizes OPM to prescribe alternate referral and selection methods.

The present statutory prohibition against passing over a veteran on a list of eligibles to select a nonveteran would be retained under the proposed legislation. In our opinion, the flexibility to be gained by eliminating the rule-of-three and using alternate examining and selection methods will be seriously diminished by retaining this pass-over prohibition.

The bill authorizes agencies to make non-competitive appointments of certain compensably disabled veterans--those with service connected disabilities of 50 percent or more and those who take job-related training prescribed by the Veterans Administration. We believe employment assistance to those veterans with special employment problems--such as disabled and Vietnam-era veterans--is appropriate.

Retention Preference

The bill proposes changes to the preference given veterans in retention rights in a reduction-in-force. Only a disabled veteran (or certain relatives of a veteran) would retain permanent retention preference. Other veterans would retain absolute retention preference for a 3 year period. Once the 3 year period has been completed, non-disabled veterans will be entitled to 5 years service credit in computing length of service for retention determinations.

As a general rule, veterans have retention rights over nonveterans regardless of length of service. Since veterans are predominately male and non-minority, absolute preference works to the disadvantage of women and minorities. The proposed changes should help to remedy this situation.

Retirement

The bill would greatly expand the provisions allowing employees to retire before reaching normal retirement eligibility. Presently, the civil service retirement system generally allows employees to retire at age 55 with 30 years of service. Employees who are separated involuntarily, except for reasons of misconduct or delinquency, may receive an immediate annuity if they are 50 with 20 years of service or at any age with 25 years. Current law allows employees to volunteer for early retirement when their employing agency is undergoing a major reduction-in-force, even if they are not directly affected by the reduction. Under H.R. 11280, the early retirement option would also be made available to employees if their agency is undergoing a major reorganization or a major transfer of function.

We cannot support the liberalization of the early retirement provisions proposed by H.R. 11280. As you are undoubtedly aware, GAO has long been concerned about the civil service and other Federal retirement systems. As we disclosed in an August 3, 1977, report on retirement matters, the civil service system already costs much more than is being recognized and covered by agency and employee contributions. As of June 30, 1976, the system's unfunded liability was \$107 billion and is estimated to grow to \$169 billion by 1986. Any additional early retirements resulting from H.R. 11280 would add to this tremendous liability.

Senior Executive Service

Some excellent Government managers have been provided by the present system. However, we think that more managers of this calibre would result from a Senior Executive Service.

We agree with the objectives of H.R. 11280 to establish a Senior Executive Service which would cover about 9,000 positions above General Schedule 15 and below Executive Level III. The proposed Senior Executive Service would establish at least five executive salary levels, from the sixth step of GS-15 (\$42,200) to an Executive Level IV salary level (\$50,000). Under the proposal executives could increase their compensation through performance awards, to 95 percent of a Level II salary, or \$54,625 at the present pay levels.

There is a problem of compression at the senior levels of the General Schedule. Because the salary rate for Level V of the Executive Schedule is the ceiling for salary rates of most other Federal pay systems, all GS-18s and 17s, and some GS-16s now receive the same salary--\$47,500. This creates a situation where many levels of responsibility receive the same pay and is not consistent with basic Federal pay principles of:

- comparability with private enterprise, and
- distinctions in keeping with work and performance levels.

Such a situation creates inequities and can have adverse effects on the recruitment, retention, and incentives for advancement to senior positions throughout the Federal service.

We believe that changes are needed to give management greater flexibility in assigning pay and establishing responsibility levels. In February 1975, we reported on the need for a better system for adjusting salaries of top Federal officials. One of our main concerns at that time, and which still exists, was the compression of salary rates which result in distorted pay relationships in the Federal pay systems. Our recommendation was for the Congress to insure that executive salaries are adjusted annually--either based on the annual change in the cost-of-living index or the average percentage increase in GS salaries. The law now provides for automatic adjustment of Executive Schedule pay rates equal to the average General Schedule increase.

We believe there is a need to establish a new salary system for Federal executives. We do have some concerns, however, that the provisions of the proposed Senior Executive Service do not go far enough in this regard. We are not sure, for example, that the proposed salary range including performance awards--\$42,200 to \$54,625--provides sufficient flexibility. Most of the employees that will be covered are already at the \$47,500 ceiling, and could reach the proposed \$54,625 ceiling by receiving less than the maximum 20 percent pay increase for performance allowed by the Bill. Therefore, there may not be enough of a pay differential to provide an incentive for executives to join the new Service or for the Service to be successful.

We also question the advisability of limiting incentive awards and ranks, as well as performance pay, to an arbitrarily selected percentage of employees.

Proposals have been made by GAO and others to provide more flexibility in the pay-setting processes for top Federal

officials. We favor a salary system with a broad salary band; compensating within this broad band, on the basis of an individual's capability or contributions to the job, with congressional control over the average salary level for the Service, by agency.

In summary, we question whether there is enough pay incentive to make the Senior Executive Service a success. We believe it would be more acceptable to senior executives if the salary ranges were substantially increased or if performance awards were not subject to the proposed \$54,625 ceiling. To do this, however, would require breaking the linkage between executive and congressional salaries. In its December 1975 report, the President's Panel on Federal Compensation pointed out that the "existing linkage between level II of the Executive Schedule and Congressional salaries should not be permitted to continue to distort or improperly depress executive salaries."

Two features of the proposed Service affect the civil service retirement system. An executive who is separated for less than fully successful performance would be entitled to an immediate annuity if he or she is at least 50 years of age with 20 years of service or at any age with 25 years. In addition, each year of service in which an executive receives a performance award will include a retirement factor of 2.5 percent in lieu of the lesser percentage (1.5, 1.75, or 2 percent) that would otherwise be applied. We cannot support either of these provisions. They would add to the system's unfunded liability, and, in our opinion, would be inappropriate uses of the Retirement Program.

Merit Pay

The concept of basing pay increases on employee performance is not new. GAO and other groups have recognized that a need exists to recognize employee performance rather than longevity in awarding within-grade salary increases. In October 1975, we recommended that the Chairman, CSC, in coordination with the Director of OMB develop a method of granting within-grade salary increases which is integrated with a performance appraisal system.

In December 1975, the President's Panel on Federal Compensation, chaired by the Vice President, reviewed within-grade increases as part of its study of Federal compensation issues. The Panel concluded that for employees in occupations which provide significant opportunity for individual initiative and impact on the job, a new procedure was needed to provide a connection between performance and within-grade advancement. The Panel recommended a method of within-grade advancement for these employees that would be based on performance. The Panel noted, however, that the system should take into consideration the experience of the private sector with such plans and that the system should be thoroughly tested prior to implementation. In its December 1977 final staff report the Personnel Management Project similarly recommended using merit pay to improve and reward performance of managers below the levels included in the Senior Executive Service. That report also noted that the new approach should be carefully tested and evaluated before full scale application.

While we endorse the principle of performance pay incentives, we have some concern over the equity of the proposed system. We believe it would be more equitable if it were limited to within-grade increases, covered employees in other GS grades, and included all employees in affected grades rather than just managers and supervisors.

Personnel Research and Demonstration Projects

The cost of personnel resources in the Federal Government is enormous. In fiscal year 1978, the Government will pay an estimated \$75 billion in direct compensation and personnel benefits to its civilian employees and active-duty military personnel. In view of these expenditures, it is vital that we develop and use the most effective methods and techniques to manage personnel resources. An aggressive personnel research and demonstration program is a key link in doing this. Further, if Government is to effectively deal with the recent decline in productivity growth, it must support a research base directed towards developing and applying new techniques and ways to better manage its human resources.

With this in mind, we support the need for an aggressive personnel research and development program. We do not believe, however, that adequate controls and safeguards are provided in H.R. 11280 to protect the employees affected by the demonstration projects and to assure that the most effective and efficient use is made of research funds. As a minimum, we recommend that Congress be informed of projects which may be inconsistent with existing laws or regulations before they are begun. Congress should have an opportunity to satisfy itself as to the seriousness of such infractions. We also believe that Congress should be informed of research and development actual accomplishments for which it has provided authorization and funding.

Responsibility of the
General Accounting Office

One other matter of concern to us is the proposed language concerning GAO's role in auditing personnel practices and policies. The proposed new section 2303 of title 5, U.S.C. may be susceptible of misinterpretation in its present form which is as follows:

"If requested by either House of the Congress (or any Member or committee thereof), or if deemed necessary by the Comptroller General, the General Accounting Office shall conduct, on a continuing basis, audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the Executive Branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management."

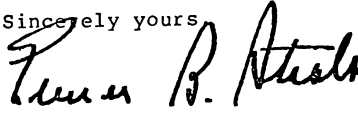
It should be made clear that the function of GAO is to assist in congressional oversight and that the Executive Branch is not in any way relieved of its responsibility for reviewing, evaluating, and improving personnel management or for investigating and correcting deficiencies therein. As elsewhere, GAO's role is more properly one of overseeing the working of the program rather than intervening on a case-by-case basis. We suggest that the language be amended to conform, in substance, to that used in the Legislative Reorganization Act of 1970, 84 Stat. 140, 1168, as follows:

"When ordered by either House of Congress or upon his own initiative, or when requested by any committee of the House of Representatives or the Senate, or any joint committee of the two Houses having jurisdiction over Federal personnel programs and activities, the Comptroller General

"shall conduct audits and reviews to determine compliance with the laws, rules, and regulations governing employment in the Executive Branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management."

I trust that this letter and enclosure recommending technical amendments will meet your needs.

Sincerely yours



Comptroller General
of the United States

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-40342
FPC-78-78

June 16, 1978

The Honorable Robert N.C. Nix
Chairman, Committee on Post Office
and Civil Service
House of Representatives

Dear Mr. Chairman:

As a supplement to our letter to you of May 19, 1978, commenting on H.R. 11280, the Civil Service Reform Bill, we offer the following comments on the Administration's recently submitted proposed new title on "Labor-Management Relations."

The proposed title VII--Labor-Management Relations-- would establish a statutory base for a labor-management relations system for Federal employees. Since 1962, labor-management relations in the executive branch of the Federal service have been governed primarily by a series of executive orders promulgated by the President. The program has developed rapidly with 58 percent of the civilian (non-postal) work force currently represented in bargaining units and 52 percent covered by negotiated agreements. Because of the rapid expansion of the program and its importance to the efficient operation of the United States Government, we believe that the time has come for Congress to enact comprehensive legislation to govern this area. A well balanced labor-management relations program should increase the efficiency of the Government. It will foster constructive participation by Federal employees in the general conduct of Government business and in determining those conditions of employment in which they have an obvious and vital concern. We have, however, several concerns about a number of provisions in the bill which we discuss below and in more detail in the attachment.

Subsection 7164(k) of the bill would make the decisions of the Federal Labor Relations Authority final and conclusive and not subject to review by any other Government official or any court. The prohibition against review by any other official could be construed as authorizing the Authority

to make final and binding decisions concerning the legality of payments of appropriated funds in connection with labor-management matters without reference to the Comptroller General. Under 31 U.S.C. §§ 74 and 82d, the Comptroller General has the duty to render decisions regarding the legality of expenditures of appropriated funds to heads of agencies and to certifying and disbursing officers.

In establishing the General Accounting Office in 1921, the Congress recognized the need for a central administrative office, independent of the executive branch, to render authoritative decisions on the interpretation of Federal laws and their application to the expenditure of funds appropriated by the Congress. The General Accounting Office fills this role and serves the needs of agencies and employees for a source of rulings on the complex body of Federal laws. At the same time, the General Accounting Office provides the Congress with a means of assurance that the taxpayers' funds appropriated for the programs of the Government are expended in accordance with the statutes passed by Congress and the regulations implementing those statutes.

In the area of personnel law the employment benefits provided by Congress and the restrictions imposed by Congress must be fairly and uniformly applied to employees of different departments and agencies. This we have done for many years and we have acquired an expertise in personnel law matters. As a result a body of precedent has been developed concerning compensation, leave, official travel expenses, and relocation allowances.

In the labor-management area, we have issued numerous decisions at the request of both agencies and unions. The Federal Labor Relations Council and the Assistant Secretary of Labor have relied upon us to determine if the expenditure of funds authorized by a decision or award is consistent with law and applicable regulations. In this way, the possibility of ordering a party to violate a law, or a decision of the Comptroller General is avoided.

This system has worked well and should be continued. If however, the Federal Labor Relations Authority is granted final authority to pass upon the legality of expenditures, the result would be a dual system for Federal employees. Employees covered by collective-bargaining agreements would be entitled to payment under one system, and employees not covered by collective-bargaining agreements would be entitled to payment under a different system. Since arbitration covers a wide range of issues, and involves the interpretation and application of many statutory and regulatory requirements, the resulting differences could be extensive. The statutes governing terms and conditions of employment for Federal employees are intended to be uniformly applied and interpreted. Entitlements to statutory benefits should not depend on coverage or lack of coverage under a collective-bargaining agreement.

We believe that our role in the program has been a positive one. We have upheld most of the arbitration awards that have been referred to us. Executive Order 11491 specifically provides that negotiated agreements are subject to existing and future laws and the regulations of appropriate authorities, including the Federal Personnel Manual. Arbitration awards must therefore be in accord with such laws and regulations. In a few cases, we have had to rule against awards which failed to meet that standard, but we are reluctant to overturn awards. Our standard of review has been to give great deference to the arbitrator and

we will overturn an arbitrator only where an agency head's decision to the same effect would also be invalid under applicable laws and regulations.

Our decisions have liberalized the interpretations of the Back Pay Act (5 U.S.C. § 5596), and have enabled employees to receive backpay for agency violations of nondiscretionary provisions in labor-management agreements and in agency regulations. Likewise, our decisions have enabled employees to receive backpay for extended details to higher grade positions. We have also recently taken action to improve our review of labor-management relation matters. On April 5, 1978, we published proposed regulations in the Federal Register, designed to give notice of pending cases to interested parties and to speed up our processing of labor cases. A number of favorable comments were received and we are now preparing the regulations in final form.

In view of the above, we recommend that the prohibition on review of the Authority's decisions by other officials in the proposed subchapter on labor management relations be deleted--see subsections 7164(k) and 7171(j)--and that the following proviso be added to that subchapter:

"Provided, that nothing in this subchapter shall serve to preclude an agency head or an authorized certifying or disbursing officer of an agency from exercising their statutory right under 31 U.S.C. §§74 and 82d to request an advance decision from the Comptroller General of United States as to the legality of any payment."

Similarly, with respect to the limitation on judicial review, such a limitation would undermine confidence in the program, and reinforce the present view that labor-management relations in the Federal sector is not sufficiently independent of the executive branch. The strong role of the Office of Personnel Management set forth in subsection 7164(h), combined with the lack of judicial review, would also tend to create the impression of management bias. We see no reason for precluding judicial review of decisions of the Authority. Decisions of other agencies on personnel matters are subject to limited judicial review, and in both the private and public sector, labor-management decisions are reviewed by the courts. There appears to be no reason to treat decisions of the Authority in a different manner. Accordingly, we recommend that this subsection be deleted and provisions for judicial review similar to those of the National Labor Relations Act be added.

One of the major changes and improvements over the Executive Order program is the creation of the Federal Labor Relations Authority which would consolidate the third-party functions in the Federal labor-management relations program now fragmented among the Federal Labor Relations Council and the Assistant Secretary of Labor.


o The concept of an independent labor relations authority or board has been included in legislation introduced in recent sessions of Congress to provide a statutory basis for the Federal labor relations program. As we stated in our letter to you of May 19, 1978, the General Accounting Office has supported the establishment of a central labor relations body to consolidate the third-party functions. We believe that such a central body is needed and would be perceived by both labor organizations and agency management as a credible and viable third-party mechanism.

However, as noted in the attached analysis, we have a number of reservations on specific provisions in the legislation relating to the independence of the members of the Authority, and the role of the Office of Personnel Management in the Authority's proceedings.

We also favor providing a statutory basis for binding arbitration in the Federal sector, and expanding the scope of arbitration to include issues now considered solely under statutory appeals procedures. From the technical standpoint, however, we have recommended several changes. In particular, we believe the statutory rights to be included in the expanded scope of arbitration require more specific identification.

We support legislative clarification of the Back Pay Act, but the language proposed in section 702 of the bill requires careful study. We would be happy to work with the committee staff on this issue.

Sincerely yours,


Acting Comptroller General
of the United States

Attachment

Subsection 7162(c)(4) and (5)

These provisions would permit the agency head, in his sole judgement and under certain circumstances, to exclude his agency or an entity within the agency from coverage under the legislation. While circumstances warranting such exclusion may exist, we believe that, consistent with the purpose of this legislation, such a determination by an agency head be reviewed and approved by the Federal Labor Relations Authority.

Subsection 7162(c)(8)

The Tennessee Valley Authority which was excluded from coverage under Executive Order 11491 in 1976, is also excluded from Title VII. While TVA's "private-sector" like program may have warranted exclusion from the Order, in a GAO report to Congress dated on March 15, 1978 (FPCD-78-12), we questioned TVA's continued exclusion from either the National Labor Relations Act or any forthcoming legislation applicable to other Federal employees. We are concerned with TVA employees' lack of accessibility to procedures available to both private and Federal sector employees that would enhance their participation in and control of the bargaining process. We therefore suggest the Committee reexamine TVA's exclusion from both Title VII and the NLRA.

Section 7163

As we have noted, we favor the creation of the Federal Labor Relations Authority. However, we have a number of reservations on specific provisions related to the FLRA's establishment and operation.

Subsection 7163(b) permits a member of the Authority to hold another office or position in the Government where provided by law or by the President. This is in contrast to the

prohibition on outside employment by members of the proposed Merit System Protection Board. We believe that a similar prohibition, without exception, should apply to members of the Authority, as well as to the General Counsel [subsection 7163(g)] because of the importance of securing their neutrality and independence.

Subsection 7163(d)(2) provides that "any member of the Authority may be removed by the President." However, no grounds for removal are specified. Because the effectiveness of the Authority depends on its operating independently of the executive branch, we believe that it is crucial that its membership be protected and insulated from political pressures. Although it may appear unlikely that the President would actually exercise this authority, the potential may affect one of the determinants of the success of the program, that is, the parties' perception of the Authority's independence. We suggest, therefore, that this section be amended to provide that members of the Authority may be removed by the President "upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause." These standards are applied to members of the National Labor Relations Board under the NLRA. We note that this is similar to the standard applied to Merit System Protection Board members, i.e., subsection 1201(d) provides that "a Board member may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office." We recommend that these standards also be applied to the removal of the General Counsel as is done in the case of the General Counsel of the NLRB.

Subsection 7163(e) provides that a vacancy in the Authority shall not impair the right of remaining members to exercise all of the powers of the Authority. This appears to be inconsistent with subsection 7163(b) which establishes a three member board with balanced political affiliation. We suggest that the President be required to promptly nominate a new member with the appropriate political affiliation in order to avoid operating at less than full complement.

Section 7164

Subsection 7164(c)(4) permits the Authority to consider exceptions to final decisions and orders of the Federal Service Impasses Panel. We question the need for and wisdom of allowing such a review. Current Executive Order procedures do not provide for such review and we do not believe that the history of the Panel's operation would indicate that such a change is warranted. Permitting appeal of FSIP decisions could unduly delay the negotiation process and deter settlement by the parties.

Subsection 7164(h) provides that the Authority "is expressly empowered and directed to prevent any person from engaging in conduct found violative of this subchapter." This language appears to be based on the National Labor Relations Act, but is somewhat unclear in the context of this bill. While the Authority is given cease and desist authority in subsection (i), this bill does not give it the type of injunctive and enforcement powers authorized under the NLRA. If no injunctive authority was intended, the language could be revised to provide that the Authority is empowered to carry out the provisions of this subchapter.

Subsection 7164(h)(1)(2) and (3) delineate the role and authority of the Office of Personnel Management in the Authority's procedures. We question firstly, the need for the specific statutory provisions, in subsection (1) and

(2), permitting the Authority to request an opinion from OPM, and giving OPM intervenor status in cases pending before the Authority. Such matters are generally more appropriately included in an agency's procedural regulations. Secondly, subsection (3), permits the OPM to request that the Authority reopen and reconsider its decision on the ground that the decision was based on an erroneous interpretation of law or of controlling regulations. In light of the purposes of the legislation, we believe this provision could undermine the concept of independence and finality of the Authority's determinations. While we recognize that the Authority's decisions must be in compliance with law and controlling regulation, we believe this can be achieved by the Authority submitting such questions to either the OPM, GAO or other appropriate authorities during its proceedings. This procedure is currently followed by the Federal Labor Relations Council.

Subsection 7164(j) establishes an independent General Counsel within the Authority. In previous comments on proposed labor legislation for Federal employees, GAO has supported such an independent General Counsel whose role is similar to that of the General Counsel of the National Labor Relations Board. We believe that empowering the General Counsel with prosecutorial authority in unfair labor practice complaints will ensure a more equitable and expeditious handling of cases.

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Subsection 7169(b) defines the duty to bargain in good faith, but makes no specific reference to cooperating with impasse procedures. In the absence of the right to strike, it may be advisable to specifically include the obligation to cooperate with the impasse procedures set forth in section 7173.

Subsection 7169(d) and 7170(b)

These subsections define the permissible and prohibited subjects of bargaining in the management rights area. Subsection 7169(e) incorporates existing procedures for resolution of negotiability disputes. The only major change from present Executive Order provisions is that mission, budget, organization, and internal security practices of the agency, which are presently considered permissible subjects of bargaining, are transferred to the listing of prohibited subjects.

Agencies have had a number of years of experience in applying the management rights provisions under the Order and the Federal Labor Relations Council has grappled with interpreting and applying these terms in many of its negotiability determinations. We feel that some of the terms themselves are ambiguous and are difficult to apply in specific bargaining situations in a rational and consistent manner. Because of this, the question of what management rights should be excluded from bargaining needs to be carefully reexamined. We do not have a position on which of the management rights delineated in Title VII (and the Executive Order) are or are not necessary. However, we think that a better approach might be to have both management rights and negotiability procedures set out in the Authority's regulations rather than in the legislation. This may give the authority more flexibility in making necessary modifications based on its own experience. We have recently undertaken a survey of this area to determine what the parties have actually done in applying the Order's management rights provisions. However, the work will not be completed until late 1978.

Section 7171

This section provides a statutory basis for binding arbitration in the Federal sector and substantially expands the permissible scope of arbitration. It authorizes use of arbitration for adverse actions and removals or demotions for unacceptable performance, and is intended to authorize arbitration for all matters now covered exclusively by statutory appeals procedures except examination, certification and appointment, suitability, classification, political activities, retirement, life and health insurance, national security, and the Fair Labor Standards Act (FLSA).

We favor use of binding arbitration in the Federal sector and support its use in adverse actions, and removals or demotions for unacceptable performance. These issues are largely evidentiary or factual, and are well suited to arbitration proceedings. In this regard, we recently recommended in a report entitled "Grievance Systems Should Provide all Federal Employees an Equal Opportunity for Redress," (FPCD-77-67/ June 13, 1978) that the CSC take necessary steps to expand the scope of negotiated grievance procedures to permit inclusion of matters now covered by statutory appeal procedures, except those for which a separate procedure can be justified.

We do believe, however, that subsection (d), which permits the use of a negotiated grievance procedure for "any matter within the authority of an agency" should be clarified. Those statutory appeal matters not specifically included or excluded from coverage under the negotiated grievance procedure under subsections (d) and (e) may or may not be "a matter within the authority of an agency". We suggest that to avoid confusion and litigation, the Committee should consider identifying the specific statutory issues intended to be included in the scope of arbitration. For example, is the intent of subsection (d) to permit arbitration of EEO issues now considered under Part 713 of CSC regulations; or reduction-in-force issues now considered under Part 351 of the CSC regulations.

Also, we note that while subsection (e) permits the employee to elect either the negotiated grievance procedure or the Merit System Protection Board procedure for appeals of adverse actions and removals or demotions for unacceptable performance, no such choice is permitted for other statutory appeal matters which may come under the negotiated grievance procedure. Accordingly the Committee in clarifying the terminology of subsection (d) should also consider whether a similar choice should be provided for other statutory appeal procedures.

We also believe the exemption of FLSA claims under subsection (d) should be deleted, and arbitration of FLSA issues authorized. Overtime claims under title 5 U.S.C. have long been arbitrated in the Federal sector and we see no reason to permit arbitration of title 5 overtime claims, but exclude FLSA claims. Overtime claims in the Federal sector often require the interpretation and application of both title 5 and the FLSA. Federal employees have been covered by the overtime provisions in title 5 and the FLSA since 1974. The implementing regulations to the FLSA provide that employees covered by both statutes should receive payment under the statute which gives them the greater benefit. The FLSA issues, are therefore, often mixed issues. Accordingly, we recommend that arbitration of overtime claims based upon the FLSA be permitted.

Under subsection (k) arbitration decisions on matters

covered under sections 4303 and 7512 (adverse actions and removals or demotions for unacceptable performance) may be appealed directly to the courts. This contrasts with arbitration awards, in other matters which, under subsection (j) may be appealed to the Authority. We recommend that an administrative level of review be provided for appeal of an arbitration award either to the Authority or the MSPB, rather than the direct review by the courts provided in subsection (k).

Since many of the arbitration awards will likely go beyond the boundaries of the collective-bargaining agreements and involve interpretation of laws and regulations, an administrative review appears warranted. Precise grounds for review of arbitration awards could be established by regulation.

Subsection 7174(e) provides that where questions arise as to whether an issue can properly be raised under unfair labor practice procedures, or must be raised under an appeals procedure, those questions should be referred to the agency which administers the related appeals procedure. A similar provision appears at subsection 7771(g) regarding coverage under the negotiated grievance procedure. We recommend that such questions be referred instead to the Authority, which in turn can seek an opinion from the agency with appropriate jurisdiction. Considering the number and complexity of overlapping appeals procedures in the Federal sector, we believe the burden of finding the right agency or office is best placed on the Authority, rather than on the individual employee. Moreover, referral of such issues to the Authority will insure uniform precedent and ready access to published decisions.

Section 7176

Section 7176 authorizes dues withholding agreements and incorporates many of the specific provisions now contained in the Subpart C, Part 550 of the regulations of the CSC. We believe a general provision authorizing dues withholding is sufficient, and the specific conditions governing dues withholding are best prescribed by regulation. Accordingly, we recommend that subsection (b) be omitted, and subsection (a) be revised to provide for dues withholding pursuant to regulations issued by the OPM.

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548B-40342
FPC-78-78

June 16, 1978

The Honorable Abraham Ribicoff, Chairman
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

As a supplement to our testimony on April 12, 1978, commenting on S.2640, the Civil Service Reform Bill, we offer the following comments on the Administration's recently submitted proposed new title on "Labor-Management Relations."

The proposed title VII--Labor-Management Relations-- would establish a statutory base for a labor-management relations system for Federal employees. Since 1962, labor-management relations in the executive branch of the Federal service have been governed primarily by a series of executive orders promulgated by the President. The program has developed rapidly with 58 percent of the civilian (non-postal) work force currently represented in bargaining units and 52 percent covered by negotiated agreements. Because of the rapid expansion of the program and its importance to the efficient operation of the United States Government, we believe that the time has come for Congress to enact comprehensive legislation to govern this area. A well balanced labor-management relations program should increase the efficiency of the Government. It will foster constructive participation by Federal employees in the general conduct of Government business and in determining those conditions of employment in which they have an obvious and vital concern. We have, however, several concerns about a number of provisions in the bill which we discuss below and in more detail in the attachment.

Subsection 7164(k) of the bill would make the decisions of the Federal Labor Relations Authority final and conclusive and not subject to review by any other Government official or any court. The prohibition against review by any other official could be construed as authorizing the Authority to make final and binding decisions concerning the legality of payments of appropriated funds in connection with labor-management matters without reference to the Comptroller General. Under 31 U.S.C. §§ 74 and 82d, the Comptroller General has the duty to render decisions regarding the legality of expenditures of appropriated funds to heads of agencies and to certifying and disbursing officers.

In establishing the General Accounting Office in 1921, the Congress recognized the need for a central administrative office, independent of the executive branch, to render authoritative decisions on the interpretation of Federal laws and their application to the expenditure of funds appropriated by the Congress. The General Accounting Office fills this role and serves the needs of agencies and employees for a source of rulings on the complex body of Federal laws. At the same time, the General Accounting Office provides the Congress with a means of assurance that the taxpayers' funds appropriated for the programs of the Government are expended in accordance with the statutes passed by Congress and the regulations implementing those statutes.

In the area of personnel law the employment benefits provided by Congress and the restrictions imposed by Congress must be fairly and uniformly applied to employees of different departments and agencies. This we have done for many years and we have acquired an expertise in personnel law matters. As a result a body of precedent has been developed concerning compensation, leave, official travel expenses, and relocation allowances.

In the labor-management area, we have issued numerous decisions at the request of both agencies and unions. The Federal Labor Relations Council and the Assistant Secretary of Labor have relied upon us to determine if the expenditure of funds authorized by a decision or award is consistent with law and applicable regulations. In this way, the possibility of ordering a party to violate a law, or a decision of the Comptroller General is avoided.

This system has worked well and should be continued. If however, the Federal Labor Relations Authority is granted final authority to pass upon the legality of expenditures, the result would be a dual system for Federal employees. Employees covered by collective-bargaining agreements would be entitled to payment under one system, and employees not covered by collective-bargaining agreements would be entitled to payment under a different system. Since arbitration covers a wide range of issues, and involves the interpretation and application of many statutory and regulatory requirements, the resulting differences could be extensive. The statutes governing terms and conditions of employment for Federal employees are intended to be uniformly applied and interpreted. Entitlements to statutory benefits should not depend on coverage or lack of coverage under a collective-bargaining agreement.

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In view of the above, we recommend that the prohibition on review of the Authority's decisions by other officials in the proposed subchapter on labor management relations be deleted--see subsections 7164(k) and 7171(j)--and that the following proviso be added to that subchapter:

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Similarly, with respect to the limitation on judicial review, such a limitation would undermine confidence in the program, and reinforce the present view that labor-management relations in the Federal sector is not sufficiently independent of the executive branch. The strong role of the Office of Personnel Management set forth in subsection 7164(h), combined with the lack of judicial review, would also tend to create the impression of management bias. We see no reason for precluding judicial review of decisions of the Authority. Decisions of other agencies on personnel matters are subject to limited judicial review, and in both the private and public sector, labor-management decisions are reviewed by the courts. There appears to be no reason to treat decisions of the Authority in a different manner. Accordingly, we recommend that this subsection be deleted and provisions for judicial review similar to those of the National Labor Relations Act be added.

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Sincerely yours, /

R. F. K. 11/11
Acting Comptroller General
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Subsection 7162(c)(4) and (5)

These provisions would permit the agency head, in his sole judgement and under certain circumstances, to exclude his agency or an entity within the agency from coverage under the legislation. While circumstances warranting such exclusion may exist, we believe that, consistent with the purpose of this legislation, such a determination by an agency head be reviewed and approved by the Federal Labor Relations Authority.

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to exercise all of the powers of the Authority. This appears to be inconsistent with subsection 7163(b) which establishes a three member board with balanced political affiliation. We suggest that the President be required to promptly nominate a new member with the appropriate political affiliation in order to avoid operating at less than full complement.

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Agencies have had a number of years of experience in applying the management rights provisions under the Order and the Federal Labor Relations Council has grappled with interpreting and applying these terms in many of its negotiability determinations. We feel that some of the terms themselves are ambiguous and are difficult to apply in specific bargaining situations in a rational and consistent manner. Because of this, the question of what management rights should be excluded from bargaining needs to be carefully reexamined. We do not have a position on which of the management rights delineated in Title VII (and the Executive Order) are or are not necessary. However, we think that a better approach might be to have both management rights and negotiability procedures set out in the Authority's regulations rather than in the legislation. This may give the authority more flexibility in making necessary modifications based on its own experience. We have recently undertaken a survey of this area to determine what the parties have actually done in applying the Order's management rights provisions. However, the work will not be completed until late 1978.

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in-force issues now considered under Part 351 of the CSC regulations.

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We also believe the exemption of FLSA claims under subsection (d) should be deleted, and arbitration of FLSA issues authorized. Overtime claims under title 5 U.S.C. have long been arbitrated in the Federal sector and we see no reason to permit arbitration of title 5 overtime claims, but exclude FLSA claims. Overtime claims in the Federal sector often require the interpretation and application of both title 5 and the FLSA. Federal employees have been covered by the overtime provisions in title 5 and the FLSA since 1974. The implementing regulations to the FLSA provide that employees covered by both statutes should receive payment under the statute which gives them the greater benefit. The FLSA issues, are therefore, often mixed issues. Accordingly, we recommend that arbitration of overtime claims based upon the FLSA be permitted.

Under subsection (k) arbitration decisions on matters covered under sections 4303 and 7512 (adverse actions and removals or demotions for unacceptable performance) may be appealed directly to the courts. This contrasts with arbitration awards, in other matters which, under subsection (j) may be appealed to the Authority. We recommend that an administrative level of review be provided for appeal of an arbitration award either to the Authority or the MSPB, rather than the direct review by the courts provided in subsection (k).

Since many of the arbitration awards will likely go beyond the boundaries of the collective bargaining agreements and involve interpretation of laws and regulations, an administrative review appears warranted. Precise grounds for review of arbitration awards could be established by regulation.

Subsection 7174(e) provides that where questions arise as to whether an issue can properly be raised under unfair labor practice procedures, or must be raised under an appeals procedure, those questions should be referred to the agency which administers the related appeals procedure. A similar provision appears at subsection 7771(g) regarding coverage under the negotiated grievance procedure. We recommend that such questions be referred instead to the Authority, which in turn can seek an opinion from the agency with appropriate jurisdiction. Considering the number and complexity of overlapping appeals procedures in the Federal sector, we believe the burden of finding the right agency or office is best placed on the Authority, rather than on the individual employee. Moreover, referral of such issues to the Authority will insure uniform precedent and ready access to published decisions.

Section 7176 authorizes dues withholding agreements and incorporates many of the specific provisions now contained in the Subpart C, Part 550 of the regulations of the CSC. We believe a general provision authorizing dues withholding is sufficient, and the specific conditions governing dues withholding are best prescribed by regulation. Accordingly, we recommend that subsection (b) be omitted, and subsection (a) be revised to provide for dues withholding pursuant to regulations issued by the OPM.

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

The Honorable Robert N.C. Nix
Chairman, Committee on Post Office
and Civil Service
House of Representatives

September 18, 1978

Dear Mr. Chairman:

We continue to be concerned with one aspect of Title VII (Labor-Management Relations) of the Civil Service Reform Bill, H.R. 11280 and S. 2640. Section 7122 as added to title 5, United States Code, by section 701 of the House bill, and section 7204(1) as added to title 5, United States Code, by section 701(a) of the Senate bill, could be construed as preventing agencies from submitting funding questions in arbitration cases to the Comptroller General. We believe that the statutes governing pay, allowances, and other employment benefits for Federal employees were intended to be uniformly interpreted and applied. Entitlement to statutory benefits should not depend upon coverage or lack of coverage under a collective bargaining agreement.

To insure uniform application and interpretation of the applicable statutes we believe it is necessary to retain the existing right of agencies to refer questions involving the expenditure of appropriated funds in arbitration cases to the Comptroller General. Eliminating that right in arbitration cases arising under the labor-management program will result in two separate systems--one for employees covered by collective bargaining agreements and one for employees not so covered. This would inevitably give rise to differing interpretations and applications of statutory rights and benefits based solely on an employee's coverage or lack of coverage under a collective bargaining agreement.

In exercising our authority over the expenditure of appropriated funds in labor-management cases, we work closely with the Federal Labor Relations Council so as to assure maximum coordination between the two agencies and to avoid conflicts and delays. We intend to do likewise with the Federal Labor Relations Authority. In this regard, we have recently issued regulations establishing procedures to improve and expedite handling of requests for decisions in labor-management cases. (43 Federal Register 32395-97, July 27, 1978, copy enclosed.) We fully anticipate that when the Authority is established by statute, procedures can be developed which will permit referral of cases to GAO prior to issuance of the Authority's final decision. This approach will insure uniform application of statutory rights and benefits.

In view of the above, I would appreciate your consideration of language which would clarify section 7122 of the new title 5 provision of the House bill when it is considered by the Conference Committee. We recommend that a new subsection (c) be added to said section 7122 to provide as follows:

"(c) Nothing in this section shall affect the existing authority of the Comptroller General under Title 31, United States Code."

Sincerely yours,



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

SEP 20 1978

Honorable William Clay September 20, 1978
2264 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Congressman Clay:

I am writing to you as a member of the Conference Committee on S. 2640, the "Civil Service Reform Act of 1978." As passed by the House of Representatives on September 13, 1978, S. 2640 would drastically revise the relationship which the Administrative Office of the United States Courts has had with the Civil Service Commission since 1939.

Our General Counsel's Office's review of the proposal has convinced us that, unless a limited number of minor amendments are adopted by your Conference Committee, serious "separation of powers" questions may arise in relation to the Administrative Office's unique status as an agency within the Judicial Branch of the Government.

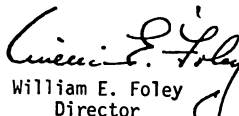
One lesson which both the Judicial Branch and the Civil Service Commission have learned over the years is that, in spite of its best efforts, the Commission has frequently been unable to efficiently and responsibly evaluate the Administrative Office's personnel needs by relying upon *Executive Branch* criteria. The Commission has, in the past decade candidly acknowledged the problem, most recently in conjunction with Congress' evaluation of an authorization for additional supergrade positions, presently embodied in the House-Senate Conference version of the Omnibus Judgeship Bill (H.R. 7843). In commenting upon that proposal last year the Commission recommended that the Judicial Branch itself be authorized to classify its own management positions. The Commission had previously expressed the same view when Congress created the Federal Judicial Center in 1967, in essence recognizing the Judicial Conference of the United States as an appropriate oversight authority. In that earlier instance, Congress also accepted the Commission's recommendation (See 28 U.S.C. § 625 (b)).

Because S. 2640, as passed by the House, would effectively vest controlling managerial authority over a "Judicial Branch Agency" in the Executive Branch, in direct conflict with both the lessons of the past thirty-nine years of experience and deliberate actions taken by Congress since 1967, I would request that you consider revisions in S. 2640 which would preserve the Administrative Office's necessarily unique position in relation to the Executive Branch.

Our General Counsel's Office has drafted a set of proposed amendments to S. 2640, as passed by the House and reported in the *Congressional Record* of September 13, which we believe will achieve that objective. Should any of our proposed amendments raise questions, please have a member of your staff telephone me at 633-6097.

I will genuinely appreciate whatever attention you are able to give this request. I regret having to trouble you with it; given the substantial differences between the Judiciary's needs and those of the Executive, however, I am compelled to seek your assistance.

Yours truly,


William E. Foley
Director

Enclosure

I. At Sec. 101(a), amend §2301(a) to read as follows:

"§2301. Merit system principles
 "(a) This section shall apply to --
 "(1) an Executive agency; and
 "(2) the Government Printing Office.

II. At Sec. 101(a), amend §2302(a)(2)(B) to read as follows:

"(B) 'agency' means an Executive agency and the Government Printing Office, but does not include --
 "(iii) the General Accounting Office; and
 "(iv) the Administrative Office of the United States Courts.

III. At Sec. 203(a), amend §4301(1) to read as follows:

"(1) 'agency' means --
 "(A) an Executive agency; and
 "(B) the Government Printing Office,
 but does not include --
 "(iii) the General Accounting Office; and
 "(iv) the Administrative Office of the United States Courts.

IV. At Sec. 310, amend §3327(a)(1) to read as follows:

"(1) 'agency' has the meaning set forth in section 5102 of this title (without regard to subparagraph (a)(1)(B) thereof); and

V. At Sec. 402(a), amend §3132(a)(1) to read as follows:

"(1) 'agency' means an Executive agency and the Government Printing Office, but does not include --
 "(C) the General Accounting Office; and
 "(D) the Administrative Office of the United States Courts;

VI. At Sec. 414(a)(1), amend paragraph (C) to read as follows:

(C) Section 5108 of title 5, United States Code, is amended to read as follows:

"(a) the Director of the Office of Personnel Management may establish, and from time to time revise, the maximum number of positions (not to exceed an aggregate of 10,920) which may at any one time be placed in --

"(i) GS-16, 17, and 18; and
 "(ii) the Senior Executive Service, in accordance with section 3133 of this title;
 "(b) the Director of the Administrative Office of the United States Courts may place a total of 15 positions in GS-16, 17, and 18. Such positions shall be in addition to the number of positions authorized by subsection (a) of this section.

"(--) a position may be placed in GS-16, 17, or 18 only as authorized by this section.

VII. At Sec. 601(a), amend §4701(1) to read as follows:

"(1) 'agency' means an Executive agency and the Government Printing Office, but does not include --

"(C) the General Accounting Office; and
 "(D) the Administrative Office of the United States Courts.

United States
 Government
 Printing Office

OFFICE OF THE PUBLIC PRINTER

May 19, 1977

Honorable Robert N. C. Nix
 Chairman, Committee on Post Office
 and Civil Service
 U.S. House of Representatives
 Washington, D.C. 20515

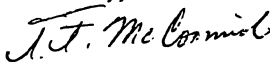
Dear Mr. Chairman:

This refers to my previous correspondence with respect to H.R. 13 and H.R. 1589.

I believe that generally the Government Printing Office, as a part of the legislative branch, should not be made subject to legislation governing activities in executive branch agencies. I feel that our present internal labor-management program has worked well and is sufficiently broad in scope to allow us to adjust to the pertinent provisions of H.R. 13 and H.R. 1589 without the need of additional legislation. Moreover, our specific inclusion in H.R. 1589 would create unnecessary conflicts for us considering our present effective system.

Thank you for allowing me the opportunity to comment on this proposed legislation.

Sincerely,



T. F. McCORMICK
 Public Printer

THE LIBRARY OF CONGRESS

WASHINGTON, D. C. 20540

September 6 1978.

Dear Mr. Chairman:

The Library of Congress strongly urges that the Library be excluded from the coverage of any new Federal labor relations program (such as that presently pending before the House in Title VII of H.R. 11280, as amended by the Committee on Post Office and Civil Service). The Library does so for the following reasons:

1. The proposed legislation substantially derogates the regulatory authority of the Librarian of Congress

For the purpose of Title 5 of the United States Code, which governs the personnel system of government agencies, the Library of Congress is not an "executive agency." Consequently, important sections of Title 5, such as the competitive system of hiring, retention preference, firing, veterans' preference, the entire merit system (which includes promotions, transfers, reassignments, suspensions, and demotions), do not apply to the Library of Congress. The Librarian of Congress has authority in 2 U.S. Code 136-140 to establish regulations in these areas. The result of placing the Library under a general Federal labor relations program would be to make all of these areas non-bargainable for executive agencies but bargainable at the Library of Congress. Government-wide regulations formally issued by the Civil Service Commission would not be subject to collective bargaining, but no such exemption would apply to regulations issued under the authority of the Librarian of Congress. The Library, for example, could be required to bargain over its merit hiring program, when, in fact, the Librarian of Congress since 1897 has had authority to appoint persons "solely with reference to their fitness for their particular duties" (2 U.S.C. 140). The end result would be a broader scope of bargaining for the Library than for other agencies.

Further, because of the Library's unique statutory position, many of the questions of the proposed Federal labor relations authority would be based on laws and regulations to which the Library is not subject. Thus the result of placing the Library under the jurisdiction of the new authority would result in confusion as to the applicability of such decisions and could result in frequent and protracted litigation. Neither the Library nor its Congressional Research Service is covered by the present labor relations program governing executive branch agencies, which derives from Executive Order 11491, as amended.

2. The separation of powers and comparable legislative agency treatment

H.R. 11280 places the Library of Congress under the coverage of this legislation for the purposes of Subpart F only. The Library of Congress and the Government Printing Office are the only legislative branch agencies which would be covered by Title VII of this legislation (unlike the Library of Congress, the Government Printing Office is part of the competitive service). Under the principle of separation of powers, it would be inappropriate to include the Library of Congress, a legislative branch agency outside of the competitive service, under this legislation which is intended to prescribe a labor management program for employees in the competitive service in the executive branch of government.

This argument is strengthened by the presence of the Congressional Research Service within the Library. The Congressional Research Service is a Congressional support agency; it serves the Congress exclusively, preparing some 300,000 responses to Congressional requests annually. Like its sister organizations, the General Accounting Office, the Office of Technology Assessment, and the Congressional Budget Office, CRS functions as an extension of Congressional staff; CRS answers a wide range of Member and Committee inquiries on a fast-turnaround, objective, confidential basis. It should be noted that GAO, CBO, and OTA are not covered by either the House or Senate labor provisions.

3. Conflicts of laws

In 1972 the Library of Congress was brought under the coverage of the Civil Rights Act of 1964. However, Congress in its wisdom, in order to protect the separation of powers between the legislative and executive branches and to avoid Civil Service Commission encroachment on the authority of the Librarian, gave certain power and authority to the Librarian of Congress in the area of Equal Employment Opportunity. For executive agencies, this authority was reserved for the Civil Service Commission. It would appear that Subchapter 3, Grievances, Section 7121(e) of H.R. 11280 would conflict with the authority of the Librarian of Congress under the Civil Rights Act of 1970.

4. Existence of Library of Congress labor relations program

The Library of Congress, including CRS, has in place a labor relations program which takes into account the unique situation of both entities. The Library recently signed its first collective bargaining agreements with unions covering approximately eighty percent of its staff (CRS staff are not covered by these contracts, but negotiations between CRS management and its union are continuing).

It should be pointed out that the views of the Library of Congress were not sought prior to its inclusion in Title VII of E.R. 11280. The Senate-passed bill does not include the Library of Congress. We would be happy to answer any questions you or your staff may have.

Sincerely yours,

Daniel J. Boorstin
The Librarian of Congress

The Honorable
Robert H. C. Nix
Chairman, Committee on Post Office
and Civil Service
U. S. House of Representatives
Washington, D. C. 20515

The Library of Congress
 Congressional Research Service
 Washington, D.C. 20540

September 13, 1978

Honorable Robert H. C. Mix
 Chairman, Committee on Post Office
 and Civil Service
 U.S. House of Representatives
 Washington, D.C. 20515

Dear Mr. Chairman:

This is in reference to the inclusion of the Congressional Research Service, as a department of the Library of Congress, within the coverage of Title VII, "Federal Service Labor Management Relations", of S. 2640, as passed by the U.S. House of Representatives. Neither the Library nor the Service is covered by Title VII of the comparable Senate-passed bill, furthermore, both are excluded from all other provisions of the House and Senate bills. I have discussed the views which follow with the Acting Librarian of Congress, and he concurs in our judgment.

As is the case with the Library of Congress proper, the management of the Congressional Research Service fully supports the principles of collective bargaining and their application to our operations. Indeed, the Service has participated in the Library's labor relations program since its inception in 1975, and has been engaged in continuing negotiations with our certified bargaining agent, the Congressional Research Employees Association. The alternative proposal discussed below reflects our positive attitude toward the contributions made by the collective bargaining process.

Any concerns as Director of CRS over the inclusion of the Service in a general Federal labor relations program arise, not from any reservations about the value of a strong labor relations program, but from the nature of CRS' mission and its special relationships with the Congress. For many years, CRS has devoted its resources exclusively to the Congress, assisting members and committees in a wide range of areas, ranging from reference support to highly sensitive and complex analyses of legislative proposals and public policy issues. The responsibilities of CRS were enacted into law in section 321 of the Legislative Reorganization Act of 1970, which vests in the Director of the Service significant authority regarding CRS' organization, budget, research independence, personnel, and priorities.

In addition to the Reorganization Act itself, CRS' activities are guided by directives received over the years from our oversight committees, particularly the Joint Committee on the Library. Recognizing the role of the Service as an extension of congressional staff, the guidelines require that all our relationships with congressional clients remain confidential; requests made by one Member or committee, as well as our responses, are not made available to another requestor without the original client's consent. Our staff are authorized to engage in close support for congressional committees and their staffs, and formal details may be made in appropriate cases. We are expected to provide objective, non-partisan reports, and a strict internal review process has been established to ensure compliance with these principles.

In short, CRS is a highly specialized organization, which seeks to respond as effectively and expeditiously as possible to the needs of the Congress. While we endeavor to maintain good relationships with executive branch agencies, professional and academic organizations, and the general public, we are and should be accountable only to the Congress.

Under these circumstances, the placement of CRS within a labor relations program designed primarily for executive agencies, and subject to the jurisdiction of a non-congressional authority, does not appear advisable. Matters affecting our communications with congressional clients, work prepared in a confidential manner, and the means by which we organize to meet ever-changing congressional demands, are not in our judgment suited for public discussion, debate and resolution outside the Congress. Both the general principle of separation of powers and the fact that Congress itself is in the best position to oversee the operations of CRS argue against any proposal which would permit important decisions regarding CRS affairs, and quite possibly changes in long-standing oversight directives, to be made by a body such as the proposed Federal Labor Relations Authority. In this connection, I should point out that the other legislative support agencies engaged in research activities, the General Accounting Office, the Office of Technology Assessment, and the Congressional Budget Office, are not covered by the labor relations provisions of either version of S. 2640.

Accordingly, I respectfully request that the Congressional Research Service be exempted from the provisions of Title VII and the jurisdiction of the Federal Labor Relations Authority. This result would be accomplished by the proposed amendment to S. 2640 as passed by the House, appended hereto (please see attachment), in the event the conferees adopt the House-passed version of Title VII. Should Title VII of S. 2640 as passed by the Senate be adopted, the Congressional Research Service as a department of the Library would be excluded, and no amendment would be necessary.

As an alternative to the inclusion of CRS in Title VII, we would respectfully suggest that Congress might wish to give consideration to the creation of a separate labor relations program, administered by the Congress itself, for appropriate legislative support organizations and activities. This approach would have the benefit of ensuring healthy labor relations within legislative branch agencies, while at the same time retaining congressional authority over the activities of its principal sources of information and policy assistance. We in CRS would be pleased to participate in the exploration of such a program, should the Congress so desire.

Respectfully submitted,

Gilbert Cude
Director

Proposed Amendment to S. 2640, as amended by the House, to exempt CRS from Labor-Management title (Title VII):

Section 701 of bill, proposed section 7103(a)(3) of Title 5, U.S. Code, insert "(except the Congressional Research Service)" after "Library of Congress."

THE LIBRARIAN OF CONGRESS

WASHINGTON, D.C. 20540

September 18, 1978

Dear Mr. Chairman:

The Library of Congress has given careful attention to Title VII, "Federal Service Labor Management Relations," of the Civil Service Reform Act as passed by the U. S. House of Representatives. The Library of Congress is included under this section of the House-passed bill. The Senate-passed version of the act does not include the Library of Congress in Title VII. The Library of Congress as an agency of the legislative branch of government is excluded from all other provisions of the act as passed by the House and the Senate.

The Library of Congress is committed to a strong labor management program. Although we are not subject to Executive Order 11491, the Library of Congress including the Congressional Research Service has in place a labor relations program and we have recently signed our first collective bargaining agreements with unions covering approximately eighty percent of our staff (CRS and Law Library staff are not covered by these contracts, but negotiations between management and the two unions are continuing). Because of our unique statutory position, it is necessary, however, to point out certain ambiguities that could result from the inclusion of the Library under certain provisions of Title VII of the Civil Service Reform Act.

Since 1897 the Librarian of Congress has had authority to appoint persons "solely with reference to their fitness for their particular duties" (2 U.S.C. 140) and to "make rules and regulations for the government of the Library" (2 U.S.C. 136). Because of this unique authority and its place in the legislative branch, the Library of Congress is not subject to certain government-wide regulations issued by the executive branch of government such as those issued by the Office of Management and Budget and those contained in the Federal Personnel Manual. Consequently, it would appear that under section 701 of the House-passed bill, "Duty to bargain in good faith; compelling need; duty to consult," the Library of Congress would have the responsibility to bargain on any rule or regulation issued by the Librarian of Congress. Thus, its scope of bargaining would be far greater than that of executive agencies because their duty to bargain in good faith does not extend to government-wide rules or regulations.

We do not believe that the House of Representatives intended to extend the scope of bargaining at the Library of Congress over that of executive agencies.

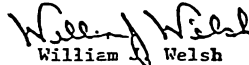
It must also be pointed out that the Federal Labor Relations Authority, an agency of the executive branch, would be exercising authority over a legislative agency. Gilbert Gude, Director of the Congressional Research Service, has written a separate letter (enclosed) requesting that the Congressional Research Service be exempted from Title VII or that a separate labor relations program administered by the Congress be designed for legislative branch agencies. Many of the arguments submitted by Mr. Gude apply to the Library of Congress proper because the entire Library serves the Congress in carrying out its legislative function.

Should however, the Conference Committee concur that the Library of Congress proper be subject to the Federal Labor Relations Authority, we would respectfully request that language be included in the Conference report to express the intent of the Committee with respect to section 701 of the House-passed bill. I am enclosing draft language for the Committee's consideration.

In conclusion, I want to assure the Committee that Library of Congress management believes firmly in a fair and equitable labor management program but because the Library is an agency of the legislative branch, it is necessary to point out problems that could result if there is no clarification of the intent of Congress in including the Library of Congress under Title VII of the Civil Service Reform Act.

We would be happy to answer any questions you or your staff may have.

Sincerely yours,



William J. Welsh
The Acting Librarian of Congress

The Honorable
Robert N. C. Nix
Chairman, Committee on Post Office
and Civil Service
U. S. House of Representatives
Washington, D. C. 20515

The Librarian of Congress, as director of an agency of the legislative branch not in the competitive civil service, has the authority to make rules and regulations for the government of the Library of Congress and to appoint persons solely with reference to their fitness for their particular duties. Consequently, it is not subject to certain government-wide regulations. It is the intent of the Committee with respect to section 701 that Library of Congress management would be expected to bargain in good faith those matters not inconsistent with Federal law or appropriate government-wide rules or regulations.

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-189782

DATE: February 3, 1978

MATTER OF: Department of Interior - Overtime Pay for Prevailing Rate Employees Who Negotiate Their Wages

- DIGEST: .1. Section 9(b) of Pub. L. 92-392, August 19, 1972, 5 U.S.C. § 5343 note, governing prevailing rate employees, exempts certain wage setting provisions of certain bargaining agreements from the operation of that law. However, section 9(b) does not exempt agreement provisions from the operation of other laws or provide independent authorization for agreement provisions requiring expenditure of appropriated funds not authorized by any law.
2. Department of Interior questions whether it may pay overtime compensation to prevailing rate employees, who negotiate their wages, for work-free meal periods during overtime or alternatively for meal periods preempted by overtime work when employees are credited with an additional 30 minutes of overtime after they are released from duty. Under 5 U.S.C. § 5544, employees must perform substantial work during meal periods to be entitled to overtime compensation and no entitlement accrues after employees are released from work.
3. Department of Interior questions whether it may pay prevailing rate employees who negotiate their wages at higher rate of pay than their basic rate (penalty pay) during overtime where a scheduled meal period is delayed or preempted. In effect this added increment of pay during overtime would constitute a special type of overtime or "overtime on top of overtime" which is not authorized by 5 U.S.C. § 5544. An act which is contrary to the plain implication of a statute is unlawful although neither expressly forbidden nor authorized. Luria v. United States, 231 U.S. 9, 24 (1913). Hence, it may not be paid.
4. Department of Interior questions whether it may pay prevailing rate employees who negotiate their wages overtime compensation at rates more than one and one-half of the basic hourly rate. Although computation provision (1) of 5 U.S.C. § 5544(a) states that overtime pay is to be computed at "not less than" one and one-half the basic hourly rate, computation provisions (2) and (3) of 5 U.S.C. § 5544(a) state that overtime pay is to be computed at one and one-half the basic hourly rate. Since provisions (2) and (3) were enacted by statute amending original statute enacting provision (1), 5 U.S.C. § 5544 is construed as establishing the overtime pay rate at one and one-half the basic rate and a greater figure may not be used.

This action involves a request from the Honorable Richard R. Hite, Assistant Secretary, United States Department of the Interior, for an advance decision on the legality of certain pay provisions that have been negotiated or proposed for hourly paid employees whose wages have been established through collective bargaining pursuant to section 9(b) of Pub. L. 92-392, August 19, 1972, 5 U.S.C. § 5343 note. Employee organizations including the American Federation of Government Employees (AFGE), the International Brotherhood of Electrical Workers (IBEW), and the National Federation of Federal Employees (NFFE) have submitted legal briefs in this case setting forth their respective views on the issues raised by Interior.

The Department of the Interior has requested this Office to rule on the legality of collective bargaining provisions that require:

- 1) overtime compensation to apply to time spent on meals during or attributable to such overtime and during which meal period no substantial official duties are performed or, alternatively, where the overtime work precluded consumption of a meal until the completion of the work when the employee was released from duty but paid for the 30-minute meal time that should have been taken;
- 2) a higher rate of pay than the basic rate or in addition to overtime pay where a scheduled meal period during or attributable to overtime hours is either delayed or missed when management determines the exigencies of work require an uninterrupted continuation of operations; or
- 3) the payment for overtime work to be at rates more than time and one-half of the basic rate of pay.

We shall discuss each of these issues seriatim. However, at the outset, it is essential that we put the exclusionary provisions of section 9(b) of Pub. L. 92-392 in proper perspective. That section reads in pertinent part as follows:

"(b) The amendments made by this Act shall not be construed to--

"(1) abrogate, modify, or otherwise affect in any way the provisions of any contract in effect on the date of enactment of this Act pertaining to the wages, the terms and conditions of employment, and other employment benefits, or any of the foregoing matters, for Government prevailing rate employees and resulting from negotiations between Government agencies and organizations of Government employees;

"(2) nullify, curtail, or otherwise impair in any way the right of any party to such contract to enter into negotiations after the date of enactment of this Act for the renewal, extension, modification, or improvement of the provisions of such contract or for the replacement of such contract with a new contract; or

"(3) nullify, change, or otherwise affect in any way after such date of enactment any agreement, arrangement, or understanding in effect on such date with respect to the various items of subject matter of the negotiations on which any such contract in effect on such date is based or prevent the inclusion of such items of subject matter in connection with the renegotiation of any such contract, or the replacement of such contract with a new contract, after such date."

The legislative history of section 9(b) contained in H. R. Rep. No. 339, 92d Cong., 1st Sess. 22 (1971) is set forth below:

"Savings clause for existing agreements

"Section 9(b)(1) of the bill, with the committee amendment, provides that the amendments made by the Act shall not be construed to abrogate, modify, or otherwise affect the provisions of any existing contract pertaining to the wages, conditions of employment, and other employment benefits of Government employees, which contract resulted from negotiations between agencies and employee organizations. Paragraph (2) of section 9(b) states that the provisions of any contract in effect on the date of enactment of the Act may be renewed, extended, modified or improved through negotiation after the enactment date of the Act. Paragraph (3) of section 9(b) provides that the Act shall not affect any existing agreement between agencies and employee organizations regarding the various items which are negotiable, nor shall the Act preclude the inclusion of new items in connection with the renegotiation of any contract.

"The provisions of section 9(b) are directed at those groups of Federal employees whose wages and other terms or benefits of employment are fixed in accordance with contracts resulting from negotiations between their agencies and employee organizations. * * * It is not this committee's intent to affect, in any way, the status of such contracts or to impair the authority of the parties concerned to renegotiate existing contracts or enter into new agreements. However, the prevailing rate employees who are now covered by such contracts will be subject to the provisions of this Act when such contracts expire and are not renewed or replaced by new contracts."

Certain of the employee organizations have contended that section 9(b) must be construed as meaning that the amendments made by Pub. L. 92-392 shall not affect any collective bargaining agreement provisions negotiated by Federal prevailing rate employees with their agencies that were in effect on the date of enactment of the Public Law. The employee organizations point out that agreement provisions covering such issues as overtime pay for meal periods were in effect at the time Pub. L. 92-392 was enacted into law and hence may be legally continued so long as the parties continue to include such provisions in their bargaining agreement. We do not disagree with the position advanced by the employee organizations, assuming a priori that the provisions of such agreements were and continue to be legally proper. However, the legislative history indicates that section 9(b) was designed to preserve only those provisions that were properly negotiable in the first instance. Thus, section 9(b) would not operate to cure a provision that was contrary to law and regulations when negotiated.

It is clear that agreement provisions, excluded from operation of the provisions of Pub. L. 92-392 by section 9(b) of that law, need not conform to the requirements of the provisions of Pub. L. 92-392. On the other hand, it is equally clear that agreement provisions concerning matters governed by other laws must be consistent with these other laws, notwithstanding the fact that other provisions of the agreement are covered by section 9(b). Similarly, we do not construe section 9(b) as providing independent authority for agreement provisions that involve the expenditure of appropriated funds not authorized by any other law. Amell v. United States, 182 Ct. Cl. 604 (1968).

We turn now to the issue of whether an agency has authority to pay overtime compensation to prevailing rate employees, who negotiate their wages pursuant to section 9(b) of Pub. L. 92-392, for meal periods during or attributable to overtime duty when no substantial duties are performed during the meal periods, or alternatively where a meal period was preempted by overtime work and the employees are paid for an additional 30 minutes after they are released from duty.

Overtime pay for prevailing rate employees, whether or not they are covered by a section 9(b) agreement, is governed by 5 U.S.C. § 5544, which provides in part as follows:

"§ 5544. Wage-board overtime and Sunday rates; computation

"(a) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, is entitled to overtime pay for overtime work in excess of 8 hours a day or 40 hours a week. However, an employee subject to this subsection who regularly is required to remain at or within the confines of his post of duty in excess of 8 hours a day in a standby or on-call status is entitled to overtime pay only for hours of duty, exclusive of eating and sleeping time, in excess of 40 a week. The overtime hourly rate of pay is computed as follows:

"(1) If the basic rate of pay of the employee is fixed on a basis other than an annual or monthly basis, multiply the basic hourly rate of pay by not less than one and one-half.

"(2) If the basic rate of pay of the employee is fixed on an annual basis, divide the basic annual rate of pay by 2,080, and multiply the quotient by one and one-half.

"(3) If the basic rate of pay of the employee is fixed on a monthly basis, multiply the basic monthly rate of pay by 12 to derive a basic annual rate of pay, divide the basic annual rate of pay by 2,080, and multiply the quotient by one and one-half.

An employee subject to this subsection whose regular work schedule includes an 8-hour period of service a part of which is on Sunday is entitled to additional pay at the rate of 25 percent of his hourly rate of basic pay for each hour of work performed during that 8-hour period of service. Time spent in a travel status away from the official duty station of an employee subject to this subsection is not hours of work unless the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively."

A careful reading of the provisions of the above-quoted statute indicates that, with the exception of certain specified situations, overtime compensation is authorized only for periods of work as opposed to periods of duty. Moreover, the above-quoted statute has been construed on several occasions by the Court of Claims as precluding overtime pay for meal periods unless substantial duties are performed during such meal periods. For example, in *Ayres v. United States*, 186 Ct. Cl. 350, 355 (1968), the Court held that:

"Wage board employees are not entitled to be paid for periods set aside for eating purposes, provided that this noncompensated time meets the standard succinctly stated in Bantom v. United States, 165 Ct. Cl. 312, 320 (1964), cert. denied, 379 U.S. 890, as follows:

"* * * [A]n employee is not entitled under the Federal Employees Pay Act to compensation for time set aside for eating, even where the employee is on a duty status and such time is, therefore, subject to possible interruption. Compensation is available only if it is shown that substantial official duties were performed during that period. * * *"

See also Bennett v. United States, 194 Ct. Cl. 889 (1971); Armstrong v. United States, 144 Ct. Cl. 659 (1959); and B-166304, April 7, 1969.

We therefore hold that agencies have no authority to pay overtime compensation for employee meal periods unless such employees perform substantial duties during the meal periods. Similarly, agencies have no authority to pay overtime compensation to employees after they have been released from duty, notwithstanding the fact that a scheduled meal period was preempted by work for which the employees received compensation.

Next, we shall address the issue of whether agencies have authority to pay employees, who negotiate their wages under section 9(b) of Pub. L. 92-392, a higher rate of pay than the normal basic rate during overtime hours where a scheduled meal period during or attributable to overtime hours is either delayed or preempted, when management determines the exigencies of work require an uninterrupted continuation of operations.

In a sample agreement provision provided by Interior, this added increment of overtime compensation is referred to as penalty pay presumably to penalize the employer for delaying employee meals. In this connection, one of the purposes of overtime compensation is to discourage the employer from unnecessarily requiring overtime work while providing the employee with an incentive to tolerate the added inconvenience. Kelly v. United States, 119 Ct. Cl. 197, 211 (1951), affirmed 342 U.S. 193 (1952). Hence, the penalty pay is in effect a special type of overtime or "overtime on top of overtime." As stated above, the authority for prevailing rate employee overtime compensation, regardless of whether they are covered by a section 9(b) agreement, is contained in 5 U.S.C. § 5544, supra. That statute does not authorize added increments of overtime compensation for any purpose. In this connection, it has been held that an act which is contrary to the plain implication of a statute is unlawful, although neither expressly forbidden nor authorized. Luria v. United States, 231 U.S. 9, 24 (1913). Therefore, authorization of an added increment of overtime compensation for delayed or preempted meal periods may not be implied from the provisions of the statute. Hence, agencies have no authority to make such payments.

We deal next with the issue of whether an agency may pay prevailing rate employees who negotiate their wages pursuant to section 9(b) of Pub. L. 92-392 overtime compensation at rates more than time and one-half of their basic rates of pay.

The statutory provision governing the rate of overtime compensation for prevailing rate employees is contained in 5 U.S.C. § 5544(a) and states that the overtime hourly rate of pay is to be computed as follows:

"(1) If the basic rate of pay of the employee is fixed on a basis other than an annual or monthly basis, multiply the basic hourly rate of pay by not less than one and one-half.

"(2) If the basic rate of pay of the employee is fixed on an annual basis, divide the basic annual rate of pay by 2,080, and multiply the quotient by one and one-half.

"(3) If the basic rate of pay of the employee is fixed on a monthly basis, multiply the basic monthly rate of pay by 12 to derive a basic annual rate of pay, divide the basic annual rate of pay by 2,080, and multiply the quotient by one and one-half."

The labor organizations and Interior argue that the term "not less than" contained in (1) provides discretionary authority for agency heads to establish overtime pay rates at more than one and one-half the basic hourly rate for prevailing rate employees whose pay is fixed on a basis other than an annual or monthly basis.

We do not agree with this contention. The above-quoted statutory provisions must be read as a whole. When read in this manner it is clear that the purpose of these provisions is to establish formulae for computing overtime pay for prevailing rate employees paid at different intervals. The obvious intention of Congress was to fix a single overtime pay rate of time and one-half for all prevailing rate employees notwithstanding the intervals in which they were paid.

Computation provision (1) of 5 U. S. C. § 5544(a) was originally enacted into law as section 23 of the Independent Offices Appropriation Act, 1935 (Act of March 28, 1934, chapter 102, 48 Stat. 509, 522). The United States Supreme Court analyzed the legislative history of section 23 in United States v. Townsley, 323 U. S. 557 (1945). There the Court construed the provisions of section 23 as requiring overtime pay "* * * at one and one-half straight time pay for the extra hours worked," and not at a rate of "not less than" one and one-half straight time pay. United States v. Townsley, 323 U. S. 557, 565-6, supra.

Moreover, if there remained any doubt as to the meaning of the overtime rate established by section 23, those doubts were resolved when Congress amended section 23 by enacting section 203 of the Federal Employees Pay Act of 1945 (chapter 212, 59 Stat. 295, 297) which was subsequently codified as computation provisions (2) and (3) of 5 U. S. C. § 5544(a) as follows:

"Sec. 203. Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 23 of the Act of March 28, 1934 (U. S. C., 1940 edition, title 5, sec. 673c). The rate of compensation for each hour of overtime employment of any such employee shall be computed as follows:

"(a) If the basic rate of compensation of the employee is fixed on an annual basis, divide such basic rate of compensation by two thousand and eighty and multiply the quotient by one and one-half; and

"(b) If the basic rate of compensation of the employee is fixed on a monthly basis, multiply such basic rate of compensation by twelve to derive a basic annual rate of compensation, divide such basic annual rate of compensation by two

thousand and eighty, and multiply the quotient by one and one-half."

In the above provisions Congress construed section 23 as establishing the overtime pay rate for prevailing rate employees at one and one-half the basic hourly rate and did not provide agency heads with discretion to establish a higher rate.

Accordingly, we hold that there is no authority under 5 U. S. C. § 5544 to establish overtime pay rates at a figure greater than one and one-half the basic hourly pay rate for prevailing rate employees.

As a result of our holding in this decision, it appears that Interior has made erroneous overpayments of overtime pay to certain employees for: (1) meal periods during which no substantial duties were performed; (2) short periods of time after employees were released from work to compensate such employees for preempted meal periods; (3) short periods of time when meal periods were delayed or preempted during overtime work where employees were already receiving overtime pay; and (4) overtime pay for prevailing rate employees at rates greater than one and one-half their basic hourly rates of pay. Under the provisions of the Federal Claims Collection Act of 1966, 31 U. S. C. §§ 951-953, 4 C. F. R. Part 101, and 4 GAO Manual § 55.3 regarding the termination of collection action, we hold that Interior may forego collection action on the aforementioned overpayments that have been made or that are made during the additional period permitted below. We base our holding on the belief that administrative costs of identifying and collecting overpayments would be excessive, the possibility of collections from former employees is doubtful, and all of the overpayments would be eligible for and likely receive favorable waiver consideration under 5 U. S. C. § 5584. See B-181467, July 29, 1976.

Although the contract provisions here involved have been negotiated over a long period, this decision is the first one stating such provisions are illegal. In view thereof and in order to cushion the impact of this decision, the Department of the Interior is hereby authorized to delay its implementation until the earliest expiration date of each agreement which contains any provision inconsistent with this decision or a period of 3 years, whichever occurs first.

It may well be that the Bureau of Reclamation is in need of and should consider requesting special legislative authority to pay overtime compensation to prevailing rate employees in excess of that permitted under 5 U. S. C. § 5544 in order to remain competitive in the labor market. We note that Bonneville Power Administration (BPA) found itself in such a situation shortly after it was organized in 1937. It experienced problems in recruiting and retaining skilled employees because it lacked authority to make many premium pay payments that had become standard practice among private sector utilities. In 1945, BPA petitioned Congress to grant it extraordinary authority to enable it to successfully compete within the utility industry in the Pacific Northwest. Congress responded by enacting H. R. 2690, Pub. L. 201, 79th Cong., 1st Sess. (1945), 59 Stat. 546, which among other things empowered the Administrator, BPA, to fix the compensation of laborers, mechanics and workmen employed by the BPA " * * * without regard to the Classification Act of 1923, as amended, and any other laws, rules or regulations relating to the payment of employees of the United States * * *." Hence, since 1945, BPA has been vested with authority necessary to provide its hourly rate employees with compensation consistent with that paid by private sector utilities in its area of operation even when such compensation would not have been authorized under the general Federal statutes governing employee compensation. Abell v. United States, 207 Ct. Cl. 207 (1975).

R. F. K. 114
Deputy Comptroller General
of the United States

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-191520

DATE: June 6, 1978

MATTER OF: Department of the Interior - Overtime Pay for
Prevailing Rate Employees Who Negotiate Wages

- DIGEST:
1. Interior Department questions whether it may pay prevailing rate employees who negotiate their wages, overtime compensation for time worked outside the employees' regular shift, even though the employees do not work more than 8 hours in a day or 40 hours in a week. Such a payment would be a form of penalty pay or a special type of overtime which is not authorized by 5 U.S.C. 5544. Since that statute would be violated, such overtime may not be paid.
 2. Employee performed certain preshift and postshift duty. Arbitrator's advisory opinion considered such duty separate periods of overtime for rounding-off purposes. Since arbitrator's opinion was primarily based on invalid contractual provisions, arbitrator's opinion is not to be followed, and periods of overtime worked in 1 workday are to be aggregated to determine total overtime compensation payable.

By a letter dated March 22, 1978, the Honorable Richard R. Hite, Deputy Assistant Secretary of the Department of the Interior, requested our decision whether the Interior Department may lawfully comply with an advisory arbitration award dealing with the computation of overtime hours. In addition, our decision has been requested as to the legality of two provisions of a labor-management agreement between the Department's Bureau of Reclamation and Local 1245, International Brotherhood of Electrical Workers (IBEW), AFL-CIO. Since the opinion of the arbitrator in this matter was primarily based upon the contractual provisions in question, we will first consider the legality of those provisions.

Supplemental Labor Agreement No. 2 between the agency and the IBEW provides, in pertinent part, as follows:

**"ARTICLE III
OVERTIME**

"Section 1. Overtime is defined as (a) time worked in excess of forty hours in an administrative workweek, (b) time worked in excess of eight hours on a workday, (c) time worked on a non-workday except for prearranged holiday work during regular work hours, and (d) time worked outside of regular hours on a workday."

The agency states that it has no question as to the legality of subsections 1(a) and 1(b), but that it does question the legality of subsections 1(c) and 1(d) since they establish overtime entitlements beyond that authorized by 5 U.S.C. 5544 (Supp. II, 1972). Subsections 1(c) and 1(d) provide that when an employee is required to work hours outside of his regular tour of duty on either a daily

or weekly basis, overtime is paid even though the employee does not work more than 8 hours in a day or 40 hours in a week. These latter provisions have been described as penalty pay, designed to penalize the employer for requiring an employee to work outside the regular tour of duty. The agency questions whether subsections 1(c) and 1(d) are valid in light of our decision in B-189782, February 3, 1978, 57 Comp. Gen. ____.

Overtime pay for prevailing rate employees, whether or not they are covered by a collective-bargaining agreement, is governed by 5 U.S.C. 5544, which provides in pertinent part as follows:

"(a) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, is entitled to overtime pay for overtime work in excess of 8 hours in a day or 40 hours a week. However, an employee subject to this subsection who regularly is required to remain at or within the confines of his post of duty in excess of 8 hours a day in a standby or on-call status is entitled to overtime pay only for hours of duty, exclusive of eating and sleeping time, in excess of 40 a week. * * *"

We have held that, with the exception of certain specified situations, overtime compensation is authorized under that statute only for periods of work as distinguished from periods of duty. B-189782, *supra*. The provisions of 5 U.S.C. 5544 provide clearly that overtime pay is authorized for overtime work in excess of 8 hours a day or 40 hours a week. Unless the employee works in excess of those amounts of time, there is no statutory basis for the payment of overtime pay. In this connection, one of the purposes of overtime compensation is to discourage the employer from unnecessarily requiring overtime work while providing the employee with an incentive to tolerate the added inconvenience. *Kelly v. United States*, 119 Ct. Cl. 197, 211 (1951), affirmed 342 U.S. 193 (1952). Thus, in B-189782, *supra*, we recognized that penalty pay is a special type of overtime. In that decision, we held that payments of penalty pay may not be made since 5 U.S.C. 5544 does not authorize added increments of overtime compensation for any purpose. Further, although employees exempted from coverage of the prevailing rate statute by section 9(b) of Public Law No. 93-392 may negotiate wages and benefits otherwise covered by that statute, they may not negotiate pay and benefits governed by other statutes and regulations, such as overtime pay. 56 Comp. Gen. 361 (1977). Since the provisions of 5 U.S.C. 5544 require employees to work in excess of 8 hours in a day or 40 hours in a week before overtime compensation may be paid, agencies have no authority to pay overtime when an employee is required to work outside his regular tour of duty, but does not work in excess of 8 hours in a day or 40 hours in a week.

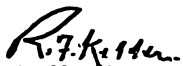
The second question presented for our consideration concerns the correctness of the arbitrator's opinion regarding the computation of overtime hours. As noted in the arbitrator's opinion, the regular shift for the employees in question was from 7:45 a.m. to 4:15 p.m. Because of an annual overhaul of equipment, the employees were required to work overtime both before and after their regular shift. For example, on July 21, 1975, the employees were required to work from 6 a.m. to 6:30 p.m. Thus, the employees worked 1-3/4 hours before their normal shift and 2-1/4 hours after the shift. Section 2 of Article III, of Supplemental Labor Agreement No. 2 provides:

"Overtime shall be paid for to the nearest half hour at the rate of double the basic hourly wage rate."

The parties agree that if an employee works anywhere from 1 minute through 14 minutes of overtime, he gets no overtime pay. However, if he works 15 minutes of overtime, he gets 1/2 hour overtime pay. In the situation described above, the agency added together the additional hours worked and paid the employees overtime for the total of 4 hours. The union, however, contended that the hours were worked in separate periods, and that aggregation of the hours was therefore not proper. Under the union's position, there would be a preshift payment for 2 hours of overtime (rounding 1-3/4 hours upward), a postshift payment for 2-1/2 hours of overtime, a total of 4-1/2 hours of overtime pay.

The arbitrator agreed with the union's position. It was his opinion that the overtime hours were worked in separate periods. He concluded that the preshift work was overtime pursuant to section 1(d) of Article III of the Labor Agreement, which provided for overtime pay for hours worked outside the regular shift. Likewise, he concluded that the postshift work was overtime under either section 1(b) or 1(d) of Article III. In his view, since each period of time "stands on its own," and since the contract did not provide for cumulation of overtime hours worked, the two periods of work were considered to be separate for "rounding out" purposes. The agency has questioned the correctness of this determination.

As noted above, to the extent that subsection 1(d) provides for payment of overtime pay to employees who do not work more than 8 hours in a day or 40 hours in a week, that subsection violated 5 U.S.C. 5544, and is therefore invalid. In reaching his conclusion that the overtime in question here was worked in two separate periods, the arbitrator relied, in part, upon subsection 1(d) of the contract. Since the underlying basis for the arbitrator's opinion has thus been determined to be invalid, the opinion is not to be followed. Further, the matter of preshift and postshift overtime has been considered by the Court of Claims in Baylor v. United States, 198 Ct. Cl. 331 (1972). There, the Court aggregated the total preshift and postshift work performed in order to determine the amount of overtime to be paid each workday. This procedure has consistently been followed by decisions of this Office. 53 Comp. Gen. 489 (1974); Raymond A. Allen, et al., B-188687, September 21, 1977. Accordingly, in this case the periods of preshift and postshift duty should be aggregated to determine the total amount of overtime compensation properly payable.


Acting Comptroller General
of the United States



THE LIBRARY OF CONGRESS

WASHINGTON, D. C. 20540

LABOR-MANAGEMENT PROGRAM

BEFORE THE UMPIRE

Library of Congress

and

American Federation of
State, County, and
Municipal Employees,
Local Nos. 2477 and 2910Negotiability of
Flexitime in
Photoduplication
Service

DECISION OF THE UMPIRE

This matter is before the Umpire pursuant to a petition for review filed by AFSCME from a determination by the duly designated Library official that the AFSCME proposal for flexitime in the Photoduplication Service is non-negotiable. The AFSCME proposal provides:

Flexitime in Photoduplication Service:

Coretime:

8:30 a.m. - 11:30 a.m.
2:30 p.m. 3:30 p.m.

Flexible Band:

7:00 a.m. - 8:30 a.m.
11:30 a.m. - 2:30 p.m.
3:30 p.m. - 5:00 p.m.

The above will be tried for a period of 90 days during which time the Library will keep a record of the effect of this flexible time. At the end of the 90 days the results will be reviewed by the Parties. If it is the opinion of the Library that this flexible time is prohibiting or impeding the Library from accomplishing its organizational mission, the Library may, if it so chooses, change the flexible time. Prior to such change, the Library will inform the Union/Guild of its intent and consult with the Union/Guild at least seven calendar days prior to implementation of such change. If the Guild/Union disagrees with the Library's decision it could appeal such decision directly to the Umpire for his prompt decision.

The Library declared this proposal to be "non-negotiable" on the ground that it "would restrict management's rights to maintain the efficiency of its operations and the right to determine the methods and means by which its operations are to be conducted" (referring to Section 7.B.2(d) and (e) of LCR 2026), and also because--

...This proposal is outside the purview of the Library's obligation to meet and confer under Section 7.A.2 (e) and (f) insofar as it would: require the hiring of additional supervisors, making this proposal integrally related to and consequently determinative of the Library's staffing patterns; and require the Library

to meet and confer over the methods, means, or technology of the plan or execution of work.

In its brief to the Umpire, the Library confines its argument to the contentions (1) that the proposal would interfere with the Library's right "to determine the methods, means and personnel by which its operations are to be conducted" (Section 7.B.2(e) of the regulation) and (2) that bargaining over the proposal would require the Library contrary to Section 7.A.2(e) to meet and confer over "the number, types, and grade of positions or employees assigned to an organizational unit, work project, or tour of duty." In essence both prongs of the Library's argument rest on its contention that the proposal would require the hiring of three additional supervisors and the working of 360 hours of supervisory overtime.

The Library submitted an affidavit from the Chief of the Photoduplication Service which recites that the current work hours are from 8 a.m. to 4:30 p.m., but that Management has offered AFSCME a flexitime from 7 a.m. to 4:30 p.m., or thirty minutes less than is sought by AFSCME in the proposal here in issue. According to the affidavit, however, the Management proposal would itself involve the hiring of some additional supervisors and supervisory overtime. The fact that the Library has met and conferred with respect to flexitime in this Division does not conclusively establish that it was required to do so under Section 7.A. The affidavit recites that constant supervision is required in Photoduplication because each member of the staff works with highly technical equipment and valuable materials, and is frequently confronted with problems which must be resolved by a supervisor before the operator can continue work. In addition the affidavit indicates that a supervisor should be present to deal with potential health and safety hazards, such as electrical fires, and also to carry on training programs. The Library notes that the Photoduplication Service is self-supporting, and that increased costs, passed on to the users of the service could result in a lowering of demand and loss of work.

AFSCME takes issue with the Library's factual allegations. It contends that some employees in Photoduplicating now work without supervision. It further notes that other divisions in the Library, which are operating on flexitime in excess of that proposed for this division, also us

expensive equipment but are not under continual supervision. According to AFSCME, its proposal is not "integrally related to or determinative of the number of staff in the Photoduplication Service." The Library rejoins as to the unsupervised employees that they constitute a small minority in a special category, and that on the whole there is constant supervision.

Both parties rely on the decision in Marshall Space Flight Center, FLRC No. 76A-81. In that case, FLRC held that a flexitime proposal was negotiable, but noted that "if certain support facilities were needed by unit personnel, the proposal would not limit management's ability to assure that the work schedules of those personnel included hours when such facilities were available."

As this is the first "negotiability" issue to be decided on its merits under LCR 2026, it is appropriate to consider certain general principles. The concept that a matter may be "non-negotiable" even though it concerns terms and conditions of employment is peculiar to bargaining in the public sector. In the private sector some matters may not be subjects of compulsory bargaining, but only because they are held not to constitute terms and conditions of employment. Under the Executive Order governing federal employee labor-relations in the Executive Branch, and under the Library's Regulation 2026, however, certain otherwise bargainable matters may be held "non-negotiable" if they affect "the methods, means and personnel by which...operations are to be conducted," or "the number, types, and grade of positions assigned to one organizational unit, work project, or tour of duty."

The phrases just quoted on which the Library relies in this case are plainly capable of varied interpretation. Almost anything worth bargaining about might be said to affect "methods, means and personnel." The proper construction of the terms depends in large part on an understanding of the reason underlying the "non-negotiability" rule in the public sector, and also on the application of general principles of statutory interpretation.

Apparently, the underlying reason for the doctrine of "non-negotiability" is the concern of the framers of² the original Executive Order that bargaining not impinge on matters governed by law or Civil Service regulations such as those in the Federal Personnel Manual.

See Arbuzin, Collective Bargaining in the Federal Service, 44 G. O. Law Rev. 572, 580-582. One may well be inclined to wonder why, if a controlling statute or regulation is involved, it is necessary to add to their controlling effect, a further provision relating to "non-negotiability." Plainly a contract provision contrary to controlling law is a nullity, and, even if this were not so clear, a simple statement to that effect in the Executive Order (or in Regulation 2026) would seem to suffice. The concept of declaring a subject "non-negotiable" should perhaps be nothing more than a means of obtaining an early ruling on whether a proposed clause, if agreed to, would be contrary to controlling law or regulation. Although the language of Regulation 2026 precludes so strict a construction as that just suggested, and gives some greater scope to the concept of non-negotiability, it is certainly appropriate to apply the concept narrowly to effectuate its apparent purpose. This same approach is dictated by accepted principles of statutory construction. Plainly, Regulation 2026 is remedial in character, designed to grant rights to employees and to unions, in an effort to improve labor relations which became exacerbated under the Library's unilateral control. The coverage or scope of such a regulation should therefore be broadly construed. See, e.g., McComb v. Super-A Fertilizer, 165 F.2d 824, 826 (1st Cir. 1948), and cases there cited. Conversely, any exception to the scope of the bargaining obligation created by Regulation 2026 must be narrowly and strictly construed, and be granted only to matters unmistakably within the terms and spirit of the exception. See A.H. Phillips Co. v. Walling, 324 U.S. 490, 493.

The foregoing observations apply with even greater force to the Library's program than to the Executive Order. A finding that a matter is "negotiable" is far from a determination that the proposal will be agreed to. The Library's duty in such matters is to bargain in good faith and some of the considerations which might have led the Library negotiators to seek a ruling of non-negotiability may well be valid grounds for the Library to insist to impasse on its view. Finally, even if the matter went to impasse and the Library did not prevail under the procedure set up for resolving impasses (a possibility which, if it eventuated, would seem to be some evidence that the matter was properly held to be negotiable), the Librarian himself has the final power of review.

In approaching issues of negotiability therefore, the Umpire starts with the premise that the Library bears a heavy burden of establishing that a matter relevant to terms and conditions of employment is nevertheless removed from the scope of bargaining. Of course, proposals which directly and explicitly go to the number of employees assigned to an organizational unit, for example, will be held non-negotiable. Where the "non-negotiability" argument is strained, or where it is presented as a conceivable secondary or tertiary result of a union proposal, however, it will be rejected. Also, the tactic of negotiating over a subject and then belatedly discovering that it is "non-negotiable" is not calculated to inspire either confidence in the labor organizations as to the good faith of the past negotiations, or confidence in reviewing authorities that the claim of non-negotiability is anything more than an expression that the proposal is unacceptable on its merits. In a program initially flawed, at least in theory, by the retention of all final reviewing authority in the hands of top management, any abuse of the doctrine of "non-negotiability" would result in turning the Library's labor relations program into what Justice Jackson colorfully described as "only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will." Edwards v. California, 314 U.S. 160 at 186, concurring opinion.

Applying the foregoing principles to the facts of this case, it seems reasonably clear that the Union's proposal would not directly determine "the methods, means, and personnel by which...operations are to be conducted" or require the Library to meet and confer over "the number, types, and grade of positions or employees assigned to an organizational unit," except in the sense that any flexitime proposal anywhere in the Library might have such a consequence. The Library says that if it acceded to this demand, it would hire more supervisors. Perhaps it would, but the Union is not demanding that it do so. Such a demand would be non-negotiable. But as the Union points out, it is far from inevitable that the Library would hire additional supervisors, as it might be willing to let certain employees go unsupervised for a brief period, or it might be able to schedule the existing supervisory staff to accomplish the Library's purposes. All that is involved in the Union's proposal is one-half hour

per day more than the Library has itself proposed. If the Library took the position that all flexitime demands were "non-negotiable," there might at least be logic and consistency, if not merit, in the position. To negotiate over flexitime to the extent of granting one hour in the morning, and then to declare that the demand for an additional half-hour in the evening invades the area of non-negotiability is to raise serious questions as to the bona fides of the defense. Of course, the Library can take the view that it negotiated over the morning flexitime although not required to do so, but such swallowing of a camel while straining at a gnat would seem to go more to the mechanics of bargaining than to its legitimate scope.

Both sides rely on the FLRC decision in Marshall Space Flight Center, which issued in 1977. The decision in that case held that the flexitime proposal was negotiable. The Library relies on certain qualifying language in which FLRC observed "flexitime in general, or some facets thereof may not be appropriate in some work situations." FLRC also noted that the proposal in that case "would not require the creation of additional shifts, the hiring or transfer of additional personnel..." and "will not require management to increase the number and types of nonunit support personnel" because "the proposal would not limit management's ability to assure that the work schedules of [unit] personnel included hours when such [nonunit support] facilities were available."

The Umpire notes that Regulation 2026 requires him to follow decisions of FLRC, where appropriate, but says nothing about searching FLRC holdings for dicta. Also, when Regulation 2026 was promulgated in 1975, there existed a body of FLRC decisions of which the Librarian was aware and to which he referred as binding, where appropriate. It is by no means clear that the Librarian, when he issued his Regulation, intended thereafter to have his program bound by as yet unissued rulings of which he was unaware and of which he therefore could not expressly approve or disapprove. In any event, and quite apart from such questions, the Umpire is satisfied that the Union proposal in this case would not inevitably impose on the Library the hiring of additional personnel. The Union's basic proposal to the Library as advanced before, and approved by Arbitrator Seidenberg, includes the following as Article XXI, Section 4:

The Library agrees to meet; confer and bargain with the Guild/Union on the subject of flexitime on a departmental basis (which shall include the Office of the Librarian). For the purpose of this provision, "flexitime" is defined as a work schedule under which staff members are permitted to vary their hours of work on a daily basis, subject to operating requirements and within general schedules of working hours and "core periods" during which all staff members are required to be at work.

Any agreements negotiated with the Guild/Union for the respective departments involved will be subject to the following limitations and shall include clauses which provide:

a. that the Library reserves the right to require an individual employee or group of employees to be assigned specific tours of duty outside the flexitime when such assignment is necessary to accomplish the organizational mission;

b. that the Library reserves the right to require an employee to perform work assigned or to require him/her to appear for work when ordered to do so in order to accomplish its organizational mission. Such agreements may identify and set out such employee or groups of employees.

At least seven calendar days prior to making a determination set out in a. above, the Library agrees to consult with the Guild/Union, and to negotiate the impact.

Upon the exercise of either of the management rights set out above in a. and b. the Guild/Union shall have the right to appeal such decisions only to the Umpire for his prompt decision.

Any and all agreements concerning flexitime in existence at the time of the effective date of this Agreement will become a part of this Agreement and shall be appended thereto.

When the Union's proposal for a trial period of flexitime in this case is read in conjunction with the general language of the proposed Agreement, it is reasonably clear that the Union's proposal cannot be read as exceeding the area of negotiability. As any doubts in this matter must be resolved in favor of giving the broadest possible scope to the bargaining obligation, the Library's finding of non-negotiability is set aside.

ORDER

The Library shall bargain with the Union in good faith over the Union proposal for flexitime in the Photoduplicating Laboratory.

Washington, D.C.
May 17, 1978


Frederick U. Reel
Umpire



THE LIBRARY OF CONGRESS

WASHINGTON, D. C. 20540

LIBRARY OF CONGRESS
LABOR-MANAGEMENT PROGRAM

In the matter of

AFSCME, Local 2910

and

Library of Congress

Negotiability of
scheduling and parking
space for Reader
Services Department

DECISION OF THE UMPIRE

This matter is before the Umpire pursuant to a petition for review filed by AFSCME from a determination by the duly designated Library official that certain AFSCME proposals with respect to the Serial Division are non-negotiable. The basic facts are not in dispute.

In May 1976, the hours of service in the reading room were extended on Monday through Friday from a 5 p.m. closing to 9:30 p.m. At that time one reference librarian volunteered for a regular 1 p.m. to 9:30 p.m. shift and was relieved of weekend duty. In April 1978 the Acting Head of the Reference Section, Serial Division, proposed to change this arrangement by implementing a regular rotational assignment to evening and weekend duty among all nine reference librarians. AFSCME made a counter-proposal which provided in part as follows:

1. Qualified reference librarians shall be scheduled to work the evening tour as follows:
 - a. If there is a volunteer for evening duty, that volunteer normally shall be scheduled to work evenings. If two or more qualified employees volunteer, the volunteer with the longest service in the division shall be scheduled to work evenings; the other volunteers shall substitute on a rotational basis for the senior volunteer in the absence of the latter. The person scheduled to work evenings shall not be required to work weekends.
 - b. If no qualified reference librarian volunteers for evening duty, assignment to the evening tour shall be rotated among qualified reference librarians in alphabetical order. One staff member shall also be scheduled to serve as backup for the evening tour on a weekly rotational basis, and shall be asked to work from 4:30-9:30 in the absence of the person regularly scheduled to work in the evening.

3. The Library agrees to provide a reserved parking space on Library premises beginning at 12:30 p.m. for the use of the person working the evening tour.

The Library has declared that paragraph 1a. of the above proposal "is not negotiable as it is in contravention of Section 7.A.(2) of LCR 2026" and that paragraph 3 is not negotiable under Section 7.B.(1).

Turning first to the relatively minor issue of parking space the Library relies on the provision of LCR 2026 which makes collective agreements subject to "the regulation of appropriate authorities, including policies of appropriate authorities to which the Library is subject." The Library points out that under Section 7 of its parking regulations, LCR 1818-4.1, "Reserved parking spaces at the Main Building will be assigned to members of the staff performing night ...duties from 5:00 to 9:30 p.m. Monday through Friday..." The parking regulation is somewhat ambiguous as it is unclear whether it is the employee's duties which run through the stated hours or whether it is the space itself which is limited to those hours. Assuming that the Library correctly reads the regulation as limiting the time the space is available (thus putting the Union's request for space starting at 12:30 outside the time permitted by the parking regulation), the Umpire is then confronted with AFSCME's claim that its collective bargaining Agreement with the Library supersedes the Library's parking regulation. The Agreement expressly states in Article XXXI, Section 3, that "To the extent that provisions of the Library of Congress Regulations are in conflict with this Agreement, the provisions of this Agreement shall govern." As the Agreement provides, Article XXVI, Section 4, for parking for employees performing night work (assuming availability after other considerations are met), AFSCME's proposal in this case would seem to be negotiable. However, at the time of the determination of non-negotiability, the Agreement between AFSCME and the Library had just been signed and had not become formally effective. The Umpire will not assume that the Library acted in bad faith, either in agreeing to Article XXXI of the Agreement or in its determination of non-negotiability.* In the Umpire's view, with the effective date of the collective bargaining Agreement, the AFSCME proposal as to parking space became negotiable, and if now renewed, should be the subject of good faith bargaining.

*At an earlier point in this Decision (p.2), the Umpire expressed his belief that the Library was acting in good faith when it executed its agreement with AFSCME. The Umpire's confidence in this respect was somewhat shaken when after preparing this Decision he received the unauthorized "reply Brief" attached hereto as an Appendix. The semantic distinction the Library there seeks to draw between its conceded obligation to "consult" and its contested obligation to "confer" is unworthy of any employer, let alone a government institution. Apart from that, having entered into a contract one provision of which deals with the subject of parking space for night workers, the Library cannot be heard to say that an attempt to implement that provision is "non-negotiable." The mere fact that such a contention can be seriously advanced is simply a further demonstration of the compelling need for construing the bargaining obligation broadly and the "non-negotiability" exemption narrowly if LCR 2026 is to be more than an empty facade. Does the Library really contend that the "public interest" in reserved management rights extends to the point of precluding negotiating over parking spaces? Such an invocation of the public interest can only call to mind Dr. Johnson's celebrated aphorism on patriotism.

The major issue on this appeal is whether the Union's proposal for voluntary manning of the evening shift (essentially, a continuation of the system existing ever since evening service was rendered) is "negotiable" in the face of the Library's proposal for a rotational system. In the light of the Umpire's decision on "Negotiability of Flexitime," dated May 17, 1978, the result here is a foregone conclusion. Indeed, in the Umpire's view, the instant case presents a far more extreme example of the lengths to which the Library is prepared to carry its views of non-negotiability. Even if the prior decision, now pending an appeal to the Librarian, should be reversed, the facts in the present case require a finding of negotiability. Because the Umpire's prior decision has been the subject of some misconception or misrepresentation, and because the Library in the present case continues to press for a broad construction of "non-negotiability,"

the Umpire deems it desirable to restate at greater length the reasons for rejecting the Library's position.

To begin with, it is the height of irresponsibility to characterize the prior decision as creating "co-management of the Library, by the unions and management, in all of the major managerial areas, hiring, firing, budget, technology of the work, mission of the organization, methods, means of operation, etc." Each of the enumerated matters is confined to management by statute or controlling outside regulation. It is precisely because those significant areas are already removed from the scope of bargaining that the concept of "non-negotiability" must be confined within realistic limits. In articulating this method of construction, the Umpire relied on the long recognized and repeatedly applied principles that the coverage of remedial provisions should be broadly construed and that exemption therefrom should be narrowly construed. The Library has apparently taken exception to that concept and applied to it the epithet of "legislating," presumably because similar words have not appeared in FLRC decisions. The doctrines of broad coverage and narrow exemptions are time-honored judicial tools of construction known to every judge and every lawyer engaged in that task, and are as binding on FLRC, the Library, the Librarian, and the Umpire, as on any other citizen or institution in the United States subject to the rule of law, as interpreted under our system by the Supreme Court. It may be pertinent to note that these principles are as binding on the agencies that administer laws or regulations as they are on those to whom the law or regulation is directed. Thus, for example, under the original Fair Labor Standards Act of 1938, employees were allowed to recover in suits brought under that Act even though the government agency administering the statute thought they were not covered by it or exempt from its provisions. More recently, charging parties before the NLRB have had their rights vindicated in court (notably in the District of Columbia Circuit) even where the administrative agency has held (erroneously) that the statute it administered had not been violated. If the epithet "legislating" has any place in this discussion, it must be applied to those who would ignore or alter the accepted judicial doctrines for construing coverage and exceptions.

That LCR 2026 is remedial in character can scarcely be questioned. The history of labor relations at the Library demonstrates that LCR 2026 was adopted to remedy what had become an intolerable condition in which employees, deprived of rights granted elsewhere in the federal sector, took matters into their own hands. So intense was the need for remedial action that LCR 2026 was promulgated and placed into effect during the time that the position of Librarian of Congress was vacant.

The early history of LCR 2026 has confirmed its remedial character, and the need for careful monitoring of the Library's operations under it. As stated in the prior decision, LCR 2026, although intended to be remedial, contained an inherent inconsistency or flaw in that all questions which might arise under it were subject to ultimate decision by a management representative, the Librarian. This provision in a regulation otherwise designed to relieve employees from their prior state of total dependence has led on several occasions almost to the total disruption of the machinery created by LCR 2026. On one occasion AFSCME withdrew from all bargaining because the Librarian had expressed a view of a matter in dispute at a lower level before it reached the Umpire. Bargaining was resumed only after the Librarian made clear that he was not passing on the merits of an issue not yet before him. Only a short time later, CREA properly pointed out that the integrity of the entire program had been threatened by a premature ruling by the Deputy Librarian on matters of negotiability. Again the situation was saved only by a formal disavowal and expunging of the premature ruling. These matters of history are important not only because they demonstrate the reefs on which this program nearly foundered, but also because they demonstrate the importance of great vigilance in restraining the Library's labor relations representatives from acting as if LCR 2026 were not on the books, and from invoking "managerial prerogative" as if it were as unfettered as in the days before the Regulation. Finally, and highly pertinent to the present

controversy, it must be remembered that the genesis of the "Seidenberg interest arbitration"-- the basis for the successful consummation of a labor agreement which is the ultimate purpose of LCR 2026 --was the action of the Library negotiators in issuing a whole broadside of "non-negotiability" positions after months of bargaining with AFSCME and with CREA. It was the gross misuse of the doctrine of non-negotiability (a misuse since confirmed by the acceptance of Dr. Seidenberg's determinations) that led the Umpire to propose the Seidenberg proceeding as the sole method of accomplishing the purposes of LCR 2026.

In an effort to counter the judicially accepted principles of broad coverage and narrow exemption, the Library has pointed out the differences between private and public sector bargaining. Of course, the principles of construction are applicable to all laws and regulations, not just those dealing with labor relations, and apply with equal force to government and private parties. However, the Library is quite correct in suggesting that there are fundamental differences in the areas of public and private collective bargaining. It scarcely requires argument to show that much that is bargainable in the private sector is not bargainable when government is the employee. To use the rubric "management rights" to describe the reserved area is hardly illuminating, but whatever phrase is employed, no one doubts that certain rights are reserved -- e.g., "hiring, firing, budget, technology of the work, mission of the organization, methods, means of operation" -- the very items which the Library seems to find equatable with flexitime! Curiously enough, in its brief to the Umpire in this case the Library relies on various authorities who have said that the reserved "management rights" in Government are those spelled out in the Order itself. It may therefore be appropriate to examine the precise language of the Order on which the Library here relies. In so doing, we must bear in mind that the ultimate issue is whether the Library must bargain over whether the evening shift in the Serial Division is to be manned under a rotating or a volunteer method of assignment.

Section 7 A (2) on which the Library relies provides:
The obligation to meet and confer does not include the following matters:

- a. the mission of the Library of Congress;
- b. the budget of the Library of Congress;
- c. the organization of the Library of Congress;
- d. the number of employees of the Library of Congress;
- e. the number, types, and grade of positions or employees assigned to an organizational unit, work project, or tour of duty;
- f. the methods, means, or technology of the plan or execution of such work;
- g. the Library of Congress' internal security policies.

None of the above exceptions to the bargaining obligations has any application in this case. The Umpire believes that not even the Library finds in the Union proposal anything remotely relating to mission, budget, organization, number of employees, or internal security. The Union's proposal also would not alter the number, the type, or the grade of positions or employees assigned to the tour of duty. "The technology of the plan" or the "execution of such work" is having the service available to the public from 5 to 9:30 p.m. The "methods" or "means" consist of having an employee on duty. How that employee is selected from an agreed group, or who that employee is from among that group is certainly a matter of concern to the employees but in no way affects the "public interest" which as the Library concedes lies at the heart of its theory of management rights.

Finally, the Library relies on certain decisions of FLRC. Under LCR 2026, decisions (not dicta) of FLRC are to be followed. Whether such a requirement as to as yet unwritten decisions can be attacked as vague or indefinite, and whether it is a valid delegation by a member of the legislative branch of the Government to an executive agency not subject to his decision or control, it is binding on the Umpire. But the cases cited by the Library on this matter do not support its position. In Plum Island FLRC 71A-11, the agency eliminated a shift and established two new shifts. Such changes in tours

of duty were held not bargainable. Obviously, if the Library were eliminating the night duty, or were establishing it for the first time, this would go to methods, means, execution, and other "managerial rights" which the Library retains. In Veterans Administration, FLRC 75A-13, not only did the decision sustain the Union as to negotiability, but even the dicta on which the Library relies supports AFSCME here, for FLRC said it would require bargaining on the criteria for assignment, the very issue AFSCME seeks to raise.

In the prior negotiability case, the Library raised a thin color of a budgetary claim. Here it raises nothing but a rhetorical insistence on "management rights" as rooted in the "public interest". One may well inquire "what rights" and "what interest". The public has an interest in having the place manned. Perhaps the Library believes that the system of selection it proposes is more efficient and hence also in the "public interest". Perhaps the Library believes that its "management rights" extend to determining the selection among equally available qualified employees. But this type of "public interest" and "management rights" lies at the heart of collective bargaining. Of course, the Library -- or any other government agency -- purports to act in the public interest whenever it acts. But if every time the Library acts in a manner that involves employees it can argue "non-negotiability" because it is acting in the public interest, then it can raise that defence whenever it chooses to avoid bargaining on any subject. This is why "methods, means", etc. has to be read in context, with coverage broadly construed and the exemption narrow. This is why non-negotiable matters should be confined to areas in which law or regulation in the public interest prohibit employee intervention. Of course, the Library in the course of good faith bargaining can assert a "public interest" in efficiency as it seeks, in bargaining, to achieve its end. But it cannot assert a blanket "public interest" to avoid bargaining.

All that is involved here is whether a particular evening service shall be manned by volunteers if available, or by rotation. No question of budget, of qualifications, or of service to the public is involved. A matter more purely "labor relations" and less involved with any reserved "management rights" could scarcely be conceived. The case might have been invented to demonstrate the reductio ad absurdum of the Library's theories of non-negotiability. If the Union representing employees cannot bargain in this situation, then is not LCR 2026 "a promise to the ear to be broken to the hope, a teasing illusion, like a munificent bequest in a pauper's will?" Quite apart from any principle of construction, the language of Section 7A (2) has no application to this case.*

ORDER

The Library shall bargain with the Union in good faith over the Union's proposals with respect to the selection of the employee to work the evening shift in the Serial Division, and with respect to parking space for the employee so assigned.



Frederick Reel
Umpire

September 5, 1978



APPENDIX
THE LIBRARY OF CONGRESS

WASHINGTON, D. C. 20540

August 30, 1978

Dear Mr. Reel:

The Library wishes to clarify one point with regard to the negotiability of reserved parking spaces. As stated in the Union brief Article XXVI of the parties' collective bargaining agreement (which was not in effect at the time of the parties negotiations in issue) regarding the assignment of reserved parking spaces expressly provides in section 2 that the Library will "work with" the Union to establish an equitable system for assigning reserved parking spaces.

It is widely acknowledge that a bargaining obligation arises only through use of the terms "bargain" or "meet and confer". As the language in section 2 quoted above only obliges the Library to "work with" (i.e. consult) the Union regarding reserved parking spaces, it is clear that the Library therefore has no obligation to bargain with the Union on this issue.

Moreover Article XXVI section 4 providing that a reserved parking space shall be assigned upon request for each staff member who performs night duty is specifically subject to "availability of spaces" and allocation required by section 2. Since section 2 only requires the Library to consult with the Union, it is clear that section 4 does not require the Library to bargain with the Union regarding reserved parking spaces.

Very truly yours,

William M. Lamoreaux
Assistant Labor Relations Officer

Mr. Frederick U. Reel
7202 Beechwood Road
Alexandria, VA

cc: Mr. Williams

II. HISTORY

A. EARLY DEVELOPMENTS

Union representation of Federal employees is hardly a recent development. Federal unions trace their history to the early 1800's. However, it was not until the passage of the Lloyd-LaFollette Act in 1912[1] that union representation of Federal employees was recognized in law. That Act established the principles that postal employees have a right to join an organization of postal employees which is not affiliated with any outside organization imposing a duty to engage or assist in a strike against the Government, and that the right of such employees to petition Congress may not be interfered with or denied. By extension, it became the common law of Federal personnel practice that any Government employee had the right to join or not to join any organization which did not assert the right to strike against or advocate the overthrow of the Government. By 1961, about 33 percent of all Federal employees (primarily postal employees) belonged to employee organizations.

Despite these developemnts, the Federal Government had little in the way of formal policy concerning the relationship between Federal management and employee organizations. Lacking guidance, the various agencies of the Government proceeded on widely varying courses. Some had established extensive relations with labor organizations; most had done little; a number had done nothing. Circumstances clearly called for a Government-wide policy which acknowledged the legitimate role which labor organizations representing Federal employees should have in the formulation and implementation of Federal personnel policies and practices.

NOTE. Footnotes appear at the end.

B. THE FIRST EXECUTIVE ORDER

After his inauguration in 1961, President Kennedy appointed a Presidential Task Force of top level Government officials, with Secretary of Labor Arthur J. Goldberg, as Chairman, and Civil Service Commission Chairman John W. Macy, Jr., as Vice-Chairman, to review and advise him on employee-management relations in the Federal service. In establishing the Task Force, the President declared his belief that the "participation of federal employees in the formulation and implementation of employee policies and procedures affecting them contributes to the effective conduct of public business." The Task Force, following extensive public hearings and the consideration of the views of all interested parties, submitted its report and recommendations to the President in November 1961[2].

The Task Force concluded that labor organizations were capable of contributing to the more effective conduct of the public business by ensuring the positive participation of employees in the formulation and improvement of Federal personnel policies and practices. It believed that despite the obvious similarities in many respects between conditions of public and private employment, the equally obvious dissimilarities are such that it would be neither desirable, nor possible, to fashion a Federal system of employee-management relations directly modeled upon the system which had grown up in the private economy. However, it believed that certain of the ground rules which Congress had laid down for employee-management relations in the private sector should be carried over to the Federal service to ensure that the public interest and the interests of individual employees were protected. The Task Force emphasized that however desirous the management of an agency may be to respond to the wish of employees to negotiate collectively on matters of mutual interest, it remained true that many of the most important matters affecting Federal employees were determined by Congress, and were not subject to unfettered negotiation by officials of the executive branch. Finally, the Task Force expressed its conviction that there need be no conflict between its proposed system of employee-management relations and the Civil Service merit system, which remained the essential basis of personnel policy of the Federal Government.

Having acknowledged these fundamental principles, the Task Force made a number of significant proposals, among which were the following:

1. *The Federal employee's right to organize.*—Federal employees have the right to join bona fide employee organizations. This right encompasses the right to refrain from joining. Wherever any considerable number of employees have organized for the purpose of collective dealing, the attitude of the Government should be that of an affirmative willingness to enter such relations.

2. *Forms of recognition.*—Bona fide organizations of Federal employees, which are free of restrictions or practices denying membership because of race, color, creed or national origin, which are free of all corrupt influences, and which do not assert the right to strike

or advocate the overthrow of the Government of the United States, should be recognized by Government agencies.

Organizations of Federal employees should be granted recognition essentially according to the extent to which they represent employees in a particular unit or activity of a Government agency. This recognition may be informal, formal, or exclusive.

a. Informal recognition.—Informal recognition gives an organization the right to be heard on matters of interest to its members, but places an agency under no obligation to seek its views. Informal recognition will be granted to any organization, regardless of what status may have been extended to any other organization.

b. Formal recognition.—Formal recognition will be granted to any organization with 10 percent of the employees in a unit or activity of a Government agency, where no organization has been granted exclusive recognition. Formal recognition gives an organization the right to be consulted on matters of interest to its members.

c. Exclusive recognition.—Exclusive recognition will be granted to any organization chosen by a majority of the employees in an appropriate unit. Exclusive recognition gives an organization the right to enter collective negotiations with management officials with the object of reaching an agreement applicable to all employees of the unit. Such agreements must not conflict with existing Federal laws or regulations, or with agency regulations, or with Government-wide personnel policies, or with the authority of the Congress over various personnel matters.

3. The scope of consultations and negotiations with employee organizations.—Consultations or negotiations, according to the form of recognition granted, may concern matters in the area of working conditions and personnel policies, within the limits of applicable Federal laws and regulations, and consistent with merit system principles.

Accordingly, as an employee organization has been granted formal or exclusive recognition, it may consult with or negotiate with management officials on matters of concern to employees.

4. Procedures to be adopted in the event of impasses.—Impasses in negotiations between Government officials and employee organizations granted exclusive recognition should be solved by means other than arbitration. Methods for helping to bring about settlements should be devised and agreed to on an agency-by-agency basis.

5. Form of agreements.—Agreements between management officials and employee organizations granted exclusive recognition should be reduced to writing in an appropriate form. Decisions reached by management officials as a result of consultation with employee organizations granted formal recognition may also be communicated in writing to the organization concerned. Negotiations should be kept within reasonable time limits.

6. Services that may be provided for employee organizations.—Bulletin boards should be made available to employee organizations. Officially approved or requested consultations with employee organizations should take place on official time. An agency may require that negotiations with an employee organization granted exclusive recognition take place on employees' time. No internal business of an em-

ployee organization should be conducted on official time. If authorized by Congress, voluntary dues withholding may be granted to an employee organization, provided the cost is paid for by the organization.

7. *Grievances.*—Employee organizations should have a recognized role in grievance systems. Advisory arbitration may be provided by agreement between an agency and an employee organization granted exclusive recognition.

8. *Union membership.*—The union shop and the closed shop are inappropriate to the Federal service.

9. *Technical services for the Federal employee-management relations program.*—Technical services required to implement the proposals contained in the report should be provided by the Civil Service Commission and the Department of Labor. Upon request, the Secretary of Labor shall choose a person or persons to make advisory determinations on appropriate units for exclusive recognition and to perform similar services. The Department of Labor and the Civil Service Commission jointly should prepare recommendations for standards of conduct for employee organizations and a code of fair labor practices for the Federal service.

There recommendations were accepted and were promulgated in January 1962 as Executive Order 10988.[3]

Pursuant to that Order, President Kennedy in 1963 prescribed Standards of Conduct for Employee Organizations and a Code of Fair Labor Practices in the Federal Service.[4] Following a 1963 Comptroller General ruling that existing statutes and a previously issued Executive order authorized Civil Service Commission to promulgate regulations permitting employees to approve allotments from their pay for the purpose of paying their union dues, the Commission issued such regulations.[5]

A review of the experience attained under E.O. 10988 was begun by a Presidential Review Committee on Employee-Management Relations in the Federal Service in 1967–68. The Committee completed a draft report which proposed a number of changes in the program but no action was taken on the draft report before the change of administrations in 1969.[6]

In 1969, the new President appointed an Interagency Study Committee to review and evaluate the program under the direction of the Chairman of the Civil Service Commission. Serving with him were the Secretary of Labor, the Secretary of Defense, the Postmaster General and the Director of the Bureau of the Budget.

The Study Committee considered, reexamined and, to a considerable extent, reaffirmed the findings and recommendations of the 1967–68 Presidential Review Committee.[7] It reported to the President that the policies of the 1962 Order had brought about more democratic management of the workforce and better employee-management communication; that negotiation and consultation had produced improvements in a number of personnel policies and working conditions; and that union representation of employees in exclusive bargaining units had expanded from 29 units covering 19,000 employees in 2 agencies to 2,305 exclusive units covering 1.4 million employees in 35 agencies (including the Post Office Department)—52 percent of

the total Federal workforce subject to the Order. They also reported that, with the great growth of union representation, significant changes were needed in program policies if the program were to continue on a constructive course. The size and scope of labor-management relations in 1969 produced conditions far different from those to which the policies of the 1962 Order were addressed. They recommended changes in the program to meet these different conditions. The proposals for change centered in six major areas:

A central authority to administer the program and make final decisions on policy questions and disputed matters.

Third-party processes for resolving disputes on unit and election questions, for investigation and resolution of complaints under the "Standards of Conduct for Employee Organizations" and "Code of Fair Labor Practices," and for assistance in resolving negotiation impasse problems and grievances.

Revision in the previously authorized multiple forms of recognition and improved criteria for appropriate units and consultation and negotiation rights.

Clarification and improvements in the status of supervisors.

An enlarged scope of negotiations and better rules for ensuring that management representatives do not arbitrarily or erroneously limit negotiations.

Union financial reporting and disclosure.

The Study Committee stated its belief that desirable changes could be made in these areas without serious disruption to the then-existing Federal labor-management relations program. These changes would be built upon the foundation of experience gained by unions and agencies under Executive Order 10988 and were intended to remove many of the existing causes of agency and union dissatisfaction. The changes recommended were intended solely to correct deficiencies in the existing program; change was not proposed for change's sake or in order to adopt some other model for Federal labor-management relations. Finally, the Study Committee noted that in proposing these adjustments, it had been mindful of the need to provide "an equitable balance of rights and responsibilities among the parties directly at interest—the employees, labor organizations, and agency management—and the need, above all, in public service to preserve the public interest as the paramount consideration."

The recommendations of the Study Committee were accepted and were promulgated in October 1969 as Executive Order 11491.[8]

C. EXECUTIVE ORDER 11491

Executive Order 11491 became effective on January 1, 1970, setting the stage for a new era in labor-management relations. While the new Order maintained the basic principles and objectives of labor-management relations in the Federal service underlying Executive Order 10988, a number of fundamental and far-reaching changes were made in the overall labor-management relations structure. Among the more significant changes made in the six major areas reflected in the proposals of the Study Committee were the following:

1. *Central authority to administer the program—the Federal Labor Relations Council.*—In order to reduce pressures on labor-manage-

ment relationships arising from the lack of authoritative central rulings and to strengthen parity between employee and agency representatives through third-party resolution of disputed matters, the Order established the Federal Labor Relations Council as the central authority to administer the program. Specifically, the Council was established to oversee the entire Federal service labor-management relations program; to make definitive interpretations and rulings on the provisions of the Order; to decide major policy issues; to entertain, at its discretion, appeals from decisions of the Assistant Secretary of Labor for Labor-Management Relations; to resolve appeals from negotiability decisions made by agency heads; to act upon exceptions to arbitration awards; and periodically to report to the President on the state of the program and to make recommendations for its improvement.

2. *Third-party processes.*—Several additional third-party processes were adopted to assist in the resolution of various labor-management disputes.

a. *Assistant Secretary of Labor for Labor-Management Relations.*—The Assistant Secretary of Labor for Labor-Management Relations was empowered to decide questions pertaining to appropriate units for the purpose of exclusive recognition and related issues; to supervise and certify the results of elections to determine employee choice regarding exclusive representation; to determine, under criteria established by the Council, the eligibility of labor organizations for national consultation rights with agencies; and to decide alleged unfair labor practice complaints and alleged violations of the standards of conduct for labor organizations. The farmers of the Order viewed the assignment of these responsibilities to the Assistant Secretary, with provision for a limited right of appeal to the Council, as a remedy for several serious deficiencies in program arrangements caused by the lack of third-party processes. Impartial action by an official who was independent of the parties, and who was assigned this responsibility by the President in these areas, was considered necessary for the fair and effective conduct of labor-management relations in the Federal service. Where questions arise involving the Department of Labor, the Order provided that the Assistant Secretary's responsibilities should be performed by a member of the Civil Service Commission, designated by the Chairman of the Commission.

b. *Federal Mediation and Conciliation Service.*—The success of limited experimental efforts by the Federal Mediation and Conciliation Service in providing mediation services to the Federal program in earlier years had demonstrated that its services should be expanded to include the same types of mediation assistance it offers in the private sector. Therefore, the Order authorized the Service to extend its services on a full and regular basis to parties in Federal program negotiations.

c. *Federal Service Impasses Panel.*—The Federal Service Impasses Panel was established as an agency within the Federal Labor Relations Council to provide additional assistance in negotiations when earnest efforts, including direct negotiations and resort to the services of the Federal Mediation and Conciliation Services, have been unavailing in bringing the parties to full agreement. The Panel was

authorized, in its discretion, to utilize the technique of factfinding with recommendations to form the basis for further negotiation and settlement by the parties, or to recommend other procedures for resolution of the impasse, or to settle the impasse by appropriate action.

d. Grievance arbitration.—The Order authorized the negotiation of grievance procedure, including binding arbitration, for the resolution of disputes between unions and agencies over the interpretation and application of agreements. It also authorized the negotiation of grievance procedures, including binding arbitration, for the resolution of employee grievances relating both to provisions of the agreements as well as to provisions of laws, regulations and agency policies, provided these procedures were consistent with requirements established by the Civil Service Commission. The framers of the Order noted that labor organizations understandably objected to an agency's unilateral right to reject an advisory arbitration award, as was possible under Executive Order 10988, and determined that arbitration awards should be accepted by the parties with a limited right to have exceptions to such awards considered by the Council.

3. Recognition and appropriate unit criteria.—The Order simplified the recognition accorded labor organizations by agencies to two forms—exclusive recognition and national rights. Formal and informal recognition and national consultation rights. Formal and informal recognition were abolished. Agencies were required to accord exclusive recognition to labor organizations selected, in secret ballot elections by a majority of employees voting in appropriate units. In addition, "effective dealings" and "efficiency of agency operations" were added as criteria to the existing "community of interest" criterion for the determination of whether a unit of employees was appropriate for the purpose of exclusive recognition. In recognition of the strong and steady surge in the organization of Federal employees and the dynamics of changed conditions in the program, these revisions had as their objectives reducing the extent of unit fragmentation, eliminating the overlapping of labor organizations in their relationships with agencies, and promoting more stable and effective labor-management relations.

Agencies were required to accord national consultation rights to labor organizations, qualifying under criteria established by the Council, as the representative of a substantial number of employees of the agency.

Pursuant to the instructions in the Report accompanying the Order, the Council, in February 1971, after considering the views of agencies and labor organizations, developed and issued eligibility criteria for the granting of national consultation rights. The criteria required that national consultation rights be accorded at the agency level or the level of an agency's primary national subdivision (defined as a first level organizational segment which has functions national in scope that are implemented in field activities) to a labor organization which so requests and which holds exclusive recognition for either a minimum of 10 percent or at least 5,000 of the employees involved.

4. Status of supervisors.—Experience under E.O. 10988 had raised serious questions about the status of supervisors in the labor-management relations program and their status was clarified in E.O. 11491.

In order to insure that supervisors would become fully integrated into management and, further, to insure that they would not in any way compromise the free choice by subordinate employees in the selection of their bargaining representatives, the new Order prohibited the recognition of bargaining units which included management officials or supervisors (with minor exceptions concerning the continued existence of certain separate supervisory units) and prohibited supervisors from representing or participating in the management of a union. The Order also adopted a definition of "supervisor" similar to that found in the private sector.

5. *Negotiation of agreements.*—Several significant changes were made concerning the negotiation of agreements:

a. *Scope of negotiations.*—The language defining the scope of negotiations was clarified expressly to permit negotiations on such matters as the assignment of employees to particular shifts, the assignment of overtime and the appropriate arrangements for employees adversely affected by the impact of realignment of workforces or technological change.

b. *Negotiability dispute procedures.*—Special procedures were established to resolve negotiability disputes. The Council was authorized to decide whether a proposal advanced in connection with negotiations is contrary to statute, regulations of appropriate authority outside the agency or the Order. The Council was also authorized to resolve disputes as to whether an agency's regulation, relied upon by that agency as a basis for a determination that a bargaining proposal is nonnegotiable, is itself contrary to statute, regulations of appropriate authority outside the agency or the Order.

c. *Approval of agreements.*—The requirement that a negotiated agreement must be approved by the agency head or his designated representative was retained. However, in order to prevent "second-guessing" on substantive issues, the scope of such review was limited to the agreement's conformity with laws, existing published agency policies and regulations, and regulations of appropriate authorities outside the agency.

d. *Official time.*—The Order provided that employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management, reflecting the belief that an employee who negotiates an agreement on behalf of a labor organization is working for that organization.

6. *Unfair labor practices and standards of conduct for labor organizations.*—The previously established Code of Fair Labor Practices and Standards of Conduct for Labor Organizations were, with several significant changes, incorporated into the new Order. As to the changes in the Code of Fair Labor Practices, the obligations to consult, confer and negotiate which previously applied only to management were extended to labor organizations. In addition, the Order was changed to clarify the provision relating to proscribed strikes and picketing.

As to the changes in the Standards of Conduct for Labor Organizations, the Order required labor organizations having or seeking recognition to file financial and other reports, to provide for bonding of officials and organization employees, and to comply with trusteeship and election standards under regulations promulgated by the Assistant Secretary.

D. THE POSTAL REORGANIZATION ACT OF 1970

As a result of the Postal Reorganization Act of 1970, labor-management relations in the United States Postal Service became generally subject to the provisions of the National Labor Relations Act.[9] Consequently, postal employees were no longer subject to the provisions of the Order.

E. 1971 AMENDMENTS TO THE ORDER

The Federal Labor Relations Council initiated a general review and assessment of operations under E.O. 11491 after 1 year, in accordance with a directive by the President at the time the Order was signed. The Council held public hearings in October 1970, where several members of Congress, top union officials, and key Government officials testified or submitted written remarks pertaining to experience under the Order and suggested improvements.

Following the hearings, the Council carefully considered the testimony elicited and conducted an intensive study of experience under the Order. Several issues emerged, and after due consideration, the Council concluded that revision of the Order was necessary.[10] The Council recommended certain changes to the President which he adopted in Executive Order 11616,[11] thereby amending Executive Order 11491. These amendments to the Order were signed on August 26, 1971, and became effective on November 24, 1971.

The major changes made by these amendments were in the areas of grievance procedures and arbitration; unfair labor practice procedures; official time; and dues withholding. In addition, the phrase "asserts the right to strike" was deleted from the prohibitions contained in the Order's definition of "labor organization." More specifically, the major changes were as follows:

1. *Grievance procedures and arbitration.*—As a result of this first review of the Order, the Council concluded that employees were faced with complicated choices in seeking relief, the role of the exclusive labor organization was diminished and distorted by permitting a rival organization to represent a grievant in disputes over the interpretation and application of the agreement negotiated by the exclusive representative, and the scope of negotiation for agencies and labor organizations was unnecessarily limited. In order to remedy those faults, the Order was amended to require that the negotiated agreement include a grievance procedure which would be the exclusive procedure available to the parties, and to provide that the scope of the negotiated grievance procedure and arbitration be restricted to grievances over the interpretation or application of the agreement. The provision permitting the Civil Service Commission to establish requirements for negotiated grievance procedures was deleted, leaving the parties free to negotiate the scope and coverage of the negotiated grievance procedure subject only to the constraints contained within the Order itself. By limiting the scope of the negotiated grievance procedure to grievances over the interpretation or application of the agreement, the Council believed that the confusion and anomalies in the then-existing arrangements would be reduced. Grievances over matters not covered in the agreement could be presented under any

procedure available for that purpose but not under the negotiated procedure, and matters for which statutory appeal procedures existed were excluded, as previously, from processing under the negotiated procedure. Consistent with the scope and coverage of the negotiated grievance procedure, arbitration under such procedures was limited to interpretation and application of the agreement, and the Order was amended to provide that arbitration could be invoked only by the agency or exclusive representative. By thus delineating the scope of negotiated grievance procedures, these revisions were intended to reduce the overlap and duplication of rights and remedies rooted in the confusing intermixture of individual employee rights established by law and regulation with the collective rights of employees established by negotiated agreements.

In order to provide for the resolution of disagreements that might arise between the parties to a negotiated agreement over whether a grievance is subject to the negotiated grievance procedure or whether a grievance under the procedure is subject to arbitration, the Assistant Secretary of Labor for Labor-Management Relations was authorized to resolve such questions of grievability and arbitrability.

2. *Unfair labor practice procedures.*—So as to ensure the development of a single body of unfair labor practice precedents and a single, uniform procedure for processing and resolving such complaints, the revised Order provided that the processing of unfair labor practice complaints be placed within the exclusive jurisdiction of the Assistant Secretary and the Council. Further, the amended Order eliminated the requirement that when the issue in certain unfair labor practice complaints was subject to a grievance procedure, that procedure would be the exclusive procedure for resolving the complaint. Instead, the aggrieved party was given the option of seeking redress under the grievance procedure or the unfair labor practice procedure. However, issues which can properly be raised under an appeals procedure may not be raised under the unfair labor practice complaint procedure.

During the 1971 general review, the Council received a proposal that a special procedure for expedited processing of alleged violations of section 19(b)(4) of the Order be established. The Council concluded that such an expedited procedure would be desirable. Following discussion and coordination with the Assistant Secretary, he revised his regulations to establish such a procedure.

3. *Official time.*—The prohibition on the use of official time by employees acting as union representatives in negotiations with agency management was modified to permit the parties to agree to a reasonable amount of official time for employees representing the union in negotiations. The amended Order permitted the parties to agree to arrangements that the agency will authorize official time for up to 40 hours or up to one-half of the time spent in negotiations during regular working hours for a reasonable number of employees, normally not to exceed the number of management representatives. The absolute prohibition on official time was eliminated in order to avoid delay in negotiations and undue hardship on employees who represent the union, but the amount of official time was expressly limited so as to maintain a reasonable policy with respect to union self-support and an incentive to economical and businesslike bargaining practices.

4. *Dues withholding.*—The requirement that the costs of dues withholding be recovered from labor organizations was eliminated to make such service charges negotiable.

F. THE FOREIGN SERVICE AMENDMENT

In consideration of the unique conditions of Foreign Service employment, the Secretary of State requested that Foreign Service employees be excluded from coverage under E.O. 11491. The President agreed to the exclusion on the condition that a separate employee-management relations program be established for the Foreign Service that met the approval of the Federal Labor Relations Council. The Foreign Service agencies working closely with the employee organizations representing Foreign Service employees subsequently submitted to the Council a proposed Executive order which the Council recommended for adoption. On December 17, 1971, the President signed Executive Order 11636[12], exempting the Foreign Service from the coverage of E.O. 11491 as amended, and establishing a separate program for such personnel.

G. 1975 AMENDMENTS TO THE ORDER

The Federal labor-management relations program continued to evolve and develop to the extent that, in 1973, approximately 1,100,000 nonpostal employees, about half of the white-collar and nearly all of the eligible blue-collar Federal employees, or 56 percent of the nonpostal Federal workforce, were included in exclusive bargaining units. As of June 1974, negotiations were underway which were expected to raise from 86 to 94 percent the number of employees in exclusive units covered by agreements. Analysis of agreements indicated a considerable increase in the substantive content of their provisions; Federal employers and labor organizations were negotiating agreements within third-party intervention; and where third-party assistance was required in negotiation disputes, it resulted in informal settlements in most cases. Additionally, the machinery for resolution of disputes in such areas as representation, negotiability, grievances, arbitration, and unfair labor practices was established and operating smoothly and effectively. However, mindful of the continuous need to consider whether further adjustments in the Order were required so as to improve the program, the Council initiated a general review of the program in September 1973 in which it utilized procedures to ensure increased participation by interested parties. The Chairman of the Council, Robert E. Hampton, announced these procedures in a speech in Washington, D.C., before the Federal Bar Association National Conference on Labor Relations in the Federal Service.

As a first step, the Council invited all concerned to propose subject matter areas for the review. The Council received a substantial number of responses from unions, other employee organizations, private associations, executive departments and agencies, and individuals. After careful examination of the issues proposed, the Council invited interested parties to submit detailed position papers on 11 areas selected for the central focus of the review. Thereafter, public hearings were held

at which representatives of selected agencies and labor organizations gave further testimony on their views. Many of the witnesses submitted additional written statements following the hearings to supplement their previous written and oral testimony.

Following the hearings, the Council intensively reviewed and analyzed the material it had received and, based on its findings, recommended changes in the Order. [13]

The President adopted the Council's recommendations and issued Executive Order 11838, [14] further amending Executive Order 11491, on February 6, 1975. These amendments became effective on May 7, 1975. Amendments or clarifications were made in several key areas, including: the impact of agency policies and regulations on the scope of negotiations; grievance and arbitration procedures; consolidation of existing bargaining units; supervisors; guards; approval of agreements; the resolution of negotiability disputes arising in unfair labor practice proceedings; the obligation to negotiate; and the investigation of unfair labor practice complaints.

1. Impact of agency policies and regulations on the scope of negotiations.—The 1975 amendments substantially enlarged the scope of negotiations. Previously, the scope of negotiations on personnel policies and practices and matters affecting working conditions had been limited by any internal agency regulation issued above the bargaining level, regardless of the degree of necessity for such regulation. The Council determined that meaningful negotiations on personnel policies and practices and matters affecting working conditions had been unnecessarily constricted in a significant number of instances by higher level agency regulations not critical to effective agency management or the public interest. While the Council reaffirmed the conclusion of the 1969 Interagency Study Committee that agency regulatory authority must be retained, modifications in the role of internal agency regulations as a bar to negotiations were adopted, consistent with essential agency requirements, to implement, the purposes of the evolving and dynamic Federal labor-management relations program. E.O. 11838 limited the effect of internal agency regulations governing personnel policies and practices and matters affecting working conditions on the scope of negotiations. It provided that only regulations issued at agency headquarters or primary national subdivision levels and for which a compelling need exists, under criteria developed by the Council, may bar negotiations on a conflicting proposal submitted at the local level. As a result, internal agency regulations issued below the agency headquarters and primary national subdivision levels no longer serve as bars to negotiations. Further, as to those internal agency regulations issued at the agency headquarters or primary national subdivision levels, only those which meet the "compelling need" standard serve to bar negotiation on a conflicting proposal. However, even if a regulation does not meet the level of issuance or compelling need requirements, it nevertheless remains completely operative as a viable agency regulation, if otherwise valid, and continues to apply in a given exclusive bargaining unit except to the extent that the local agreement contains different provisions.

2. Grievance and arbitration procedures.—The Council reexamined the question of the nature and scope of negotiated grievance procedures

in the Federal service and concluded that the coverage and scope of the negotiated grievance procedure should be determined by the parties themselves, so long as it does not otherwise conflict with statute, Executive Order, and so long as it does not cover matters subject to statutory appeal procedures. This change was intended to give unions and employees greater flexibility at the negotiating table to fashion grievance procedures suitable to their particular needs. While the change eliminated the requirement that the scope of the negotiated grievance procedure be limited to grievances over the interpretation and application of the agreement, parties may voluntarily do so. On the other hand, the change also permits them to include grievances over agency regulations within the discretion of agency management pertaining to personnel policies and practices and matters affecting working conditions, whether or not the regulations and policies contained in the agreement, provided the grievances are not over matters otherwise excluded from negotiation by the Order or subject to statutory appeal procedures. Thus, with this change, the parties may agree to make their negotiated grievance procedure the exclusive procedure for resolving some or all employee grievances, thereby replacing the agency grievance procedure to the extent agreed upon by the parties.

The Order was also amended to ensure the development of a body of precedent in decisions relating to the coverage of statutory appeal procedures by requiring that questions of whether a grievance over a matter subject to statutory appeal procedures be resolved by the Assistant Secretary. Where disagreements on questions of whether a grievance is subject to the negotiated grievance procedure or whether a grievance is subject to arbitration do not involve the applicability of statutory appeal procedures, they may, by agreement of the parties, be submitted to arbitration, or, absent such agreement, may be referred to the Assistant Secretary for decision.

3. Consolidation of existing bargaining units.—The 1975 amendments sought to facilitate the consolidation of existing bargaining units, thereby reducing the extent of unit fragmentation that had developed over the 12 years of labor-management relations under Executive orders. Such consolidation would permit parties to arrive at agreements broader in coverage and scope than the agreements which covered smaller, fragmented units. The amended Order now permits an agency and a labor organization to agree bilaterally to consolidate, without an election, those bargaining units represented by the labor organization within the agency. Affected employees are to be given notice of a proposed bilateral consolidation, with the right to petition the Assistant Secretary to hold an election on the issue of the proposed consolidation. A proposed consolidation of existing units is to be submitted to the Assistant Secretary to determine whether it conforms to the appropriate unit criteria contained in the Order. Where there is no bilateral agreement on the proposed consolidation, either party may petition the Assistant Secretary to hold an election on the consolidation issue. Election, certification, and agreement bars do not apply to the consolidation of existing units. These procedures apply only to situations where there is no question concerning the representation desires of employees who would be included within the proposed consolidation.

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Supervisors.—The Council recognized that the function of evaluating employee performance is an important part of supervisory responsibility. However, it deemed exercise of this function alone to be insufficient to establish a person as a supervisor under the Order. Therefore, the Order was amended to delete the criterion of employee performance evaluation as a sole determinant of supervisory status in the definition of "supervisor." The Council also concluded that the implementation of agency systems for intramanagement communication and consultation with supervisors and associations of supervisors had reached the stage where they should be dealt with outside Executive Order. The Council recognized that the Civil Service Commission would continue to provide guidance in this area to agencies through the Federal Personnel Manual.

5. Guards.—The amended Order eliminated the requirements that units for guards be separate from units of other employees and that newly established units of guards be represented by labor organizations which represent guards exclusively. The Council determined that the separate representation policy for guards encouraged fragmentation in units and rivalries among labor organizations. Further, mixed units recognized prior to the establishment of the separate representation policy, guards had demonstrated no conflicts of interest in performing their duties and, so long as the existing prohibition on strikes by Federal employees is continued, such conflicts need not be anticipated.

6. Approval of agreements.—Council analysis of data on the agency approval process for negotiated agreements indicated that delays in the review of negotiated agreements by agency authorities had an unfavorable effect on the labor-management relations program and warranted remedial action. The Order was revised to provide that action must be taken by an agency head or his designated representative to approve or disapprove a negotiated agreement within 45 days from the date of its execution by the parties. Specifically, the failure of an agency to approve or disapprove a negotiated agreement within 45 days would result in the agreement going into effect automatically, subject to the condition that should a particular agreement provision subsequently be found violative of law, the Order, or regulation of appropriate authority outside the agency, it would be deemed void and unenforceable.

7. The resolution of negotiability disputes arising in unfair labor practice proceedings.—The Assistant Secretary was assigned express authority to resolve those negotiability issues which arise in the context of unfair labor practice proceedings resulting from unilateral changes in established personnel policies and practices and matters affecting working conditions, with the right to have such negotiability determinations reviewed on appeal by the Council. The Council, during the general review, had determined that unnecessary additional steps in the adjudicatory process would be required if such negotiability issues were brought to the Council for initial adjudication and that the purposes of the Order would be better served, on balance, by permitting the Assistant Secretary to resolve such issues in the first instance.

8. The obligation to negotiate.—The Council concluded that employee participation in the determination of midcontract changes in

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personnel policies and practices and matters affecting working conditions is no less critical to their well-being and the efficient administration of Government than their participation during the relatively brief period of formal contract negotiations. However, the Council determined that no amendment of the Order was necessary since there is an obligation under existing provisions of the Order for an agency to provide the exclusive bargaining representative with adequate notice and an opportunity to negotiate prior to changing established personnel policies and practices and matters affecting working conditions during the term of an existing agreement, unless the issues thus raised are controlled by existing contractual commitments or unless a clear and unmistakable waiver is present. The Council explained this existing obligation in the Report and Recommendations accompanying the 1975 amendments.

In addition, the Council cleared up the confusion which had developed over the apparent interchangeable use of the terms "consult," "meet and confer," and "negotiate" with respect to relationships between agencies and labor organizations in the Order. The Council affirmed that:

The parties to exclusive recognition have an obligation to "negotiate" rather than to "consult" on negotiable issues unless they mutually have agreed to limit this obligation in any way.

"Consultation" is required only as it pertains to the duty owed by agencies to labor organizations which have been accorded national consultation rights under the Order; and

The term "meet and confer," as used in the Order, is intended to be construed as a synonym for "negotiate."

9. *Investigation of unfair labor practice complaints.*—In the Report and Recommendations accompanying the 1975 amendments, the Council recommended that the Assistant Secretary modify his procedure to permit members of his staff to conduct independent investigations of unfair labor practice cases as he deems necessary in order to determine whether there is a reasonable basis for the issuance of complaints. Such an independent investigation will facilitate the informal resolution of unfair labor practice issues and where such informal resolution is not possible, will facilitate the adjudicatory process because parties will have an investigatory file which has been developed independently by a professional investigator.

H. TENNESSEE VALLEY AUTHORITY AMENDMENT

At the request of the Tennessee Valley Authority and the labor organizations representing the employees of the TVA, the President further amended the Order by excluding the Tennessee Valley Authority from its coverage. This amendment was accomplished by the issuance of Executive Order 11901 on January 30, 1976. [15] It was issued to maintain the stability of the unique, bilaterally developed TVA labor-management relations program which was suited to the particular needs of TVA, TVA employees and the labor organizations representing those employees, and which predated, by better than two decades, the Federal labor-management relations program established by Executive order.

Part I
Part II
1. 3 C.F.R. § 2400-2411
2. 3 C.F.R. § 2410 (1972)
3. 3 C.F.R. § 2410 (1972)
4. 3 C.F.R. § 2410 (1972)
5. 3 C.F.R. § 2410 (1972)
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100. 3 C.F.R. § 2410 (1972)

NOTES

PART I. INTRODUCTION

3 C.F.R. 861 (Comp. 1966-70), 5 U.S.C. § 7301 (1970) ; *as amended* by Exec. Order No. 11616, 3 C.F.R. 605 (Comp. 1971-75) ; Exec. Order No. 11636, 3 C.F.R. (Comp. 1971-75) ; Exec. Order No. 11838, 3 C.F.R. 957 (Comp. 1971-75) ; Exec. Order No. 11901, 41 Fed. Reg. 4807 (1976). Exec. Order No. 11491, *as amended* by Exec. Order Nos. 11616, 11636, and 11838 can also be found in Federal Labor Relations Council, *Labor-Management Relations in the Federal Service* 7 (1975).

PART II. HISTORY

37 Stat. 555, *as amended*, 5 U.S.C. §§ 7101-02 (1970).
 President's Task Force on Employee-Management Relations in the Federal Service, *A Policy for Employee-Management Cooperation in the Federal Service* 1).
 3 C.F.R. 521 (Comp. 1959-63).
 Memorandum of May 21, 1963, 3 C.F.R. 848 (Comp. 1959-63).
 5 C.F.R. §§ 550.301-309 (1964).
 Draft Report of the President's Review Committee on Employee-Management Relations in the Federal Service, April 1968, in U.S. Department of Labor, *1968 Annual Report* 33 (1969).
 Interagency Study Committee on Federal Labor Relations, *Labor-Management Relations in the Federal Service* 31 (1969). The 1969 Report can also be found in Federal Labor Relations Council, *Labor-Management Relations in the Federal Service* 63 (1975).
 3 C.F.R. 861 (Comp. 1966-70), 5 U.S.C. § 7301 (1970).
 39 U.S.C. § 1209 (1970).
 Federal Labor Relations Council, *Labor-Management Relations in the Federal Service* 27 (1971). The 1971 Report can also be found in Federal Labor Relations Council, *Labor-Management Relations in the Federal Service* 55 (1975).
 1. 3 C.F.R. 605 (Comp. 1971-75).
 2. 3 C.F.R. 634 (Comp. 1971-75).
 3. Federal Labor Relations Council, *Labor-Management Relations in the Federal Service* 28 (1975).
 4. 3 C.F.R. 957 (Comp. 1971-75). Exec. Order No. 11838 can also be found in Federal Labor Relations Council, *Labor-Management Relations in the Federal Service* 21 (1975).
 5. 41 Fed. Reg. 4807 (1976).

PART III. COUNCIL ORGANIZATION, RULES AND REGULATIONS, AND RELATIONSHIPS WITH OTHER AGENCIES

1. 5 C.F.R. §§ 2400-2411 (1971).
 2. 5 C.F.R. § 2410 (1972).
 3. *See*, respectively, 5 C.F.R. §§ 2400-2412 (1973) ; 5 C.F.R. §§ 2400-2412 (1974) ; and 5 C.F.R. §§ 2400-2413 (1976).

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A Policy for

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*Report of the President's Task Force
on Employee-Management Relations in
the Federal Service*

November 30, 1961

(1177)

Statement by the President

The Task Force on Employee-Management Relations in the Federal Service which I appointed last June has submitted a report recommending a constructive, forward-looking program of employee-management relations within the Federal establishment keyed to current needs. The Task Force has done an excellent job in a difficult and complicated field.

While preserving the public interest as the paramount consideration in the administration of employee-management relations in the Federal Service and retaining appropriate management responsibilities, the Task Force report recognizes the right of Federal employees and employee organizations to participate in developing improved personnel policies and working conditions. In recommending that employee organizations be consulted and that under specified conditions agreements with such organizations may be entered into, the Task Force has urged a proper course of action that should result in increased governmental efficiency as well as improved relations with Federal employees.

The report clearly recognizes that Federal employees do not have the right to strike, that both the union shop and the closed shop are inappropriate to the Federal Government, that where salaries and other conditions of employment are fixed by the Congress these matters are not subject to negotiation, and that all agreements must be consistent with merit system principles.

Additional recommendations of the Task Force call for regularizing arbitration procedures in handling individual employee grievances; extending to non-veterans appeal rights already held by veterans; requesting legislation to authorize voluntary withholding of employee organization dues by the Federal Government, at the expense of the organization; and appointment by the Secretary of Labor, when necessary, of panels of expert arbitrators to make advisory recommendations as to what constitutes appropriate units for negotiating purposes and to supervise elections by employees.

The Task Force reached its conclusions after holding public hearings in cities throughout the country, and after consulting the heads of Federal departments and agencies. Its recommendations will provide an effective system for developing improved employee-management relations. As an employer of more than 2,300,000 civilian employees, the Federal Government has long had an obligation to undertake the reappraisal which has now been made so well by the Task Force.

I have directed that an Executive order giving effect to the Task Force recommendations be prepared for issuance by the end of the year.

THE WHITE HOUSE
DECEMBER 5, 1961

**PRESIDENT'S TASK FORCE ON EMPLOYEE-MANAGEMENT
RELATIONS IN THE FEDERAL SERVICE
Washington 25, D.C.**

OFFICIAL BUSINESS

November 30, 1961

Dear Mr. President :

In accordance with the instructions of your memorandum of June 22, 1961, I am transmitting herewith the report of the President's Task Force on Employee-Management Relations in the Federal Service.

The principal recommendation which we wish to make to you may be seen from the title of our report: "A Policy for Employee-Management Cooperation in the Federal Service."

At the present time, the Federal Government has no Presidential policy on employee-management relations, or at least no policy beyond the barest acknowledgement that such relations ought to exist. Lacking guidance, the various agencies of the Government have proceeded on widely varying courses. Some have established extensive relations with employee organizations; most have done little; a number have done nothing. The Task Force is firmly of the opinion that in large areas of the Government we are yet to take advantage of this means of enlisting the creative energies of Government workers in the formulation and implementation of policies that shape the conditions of their work.

This situation has attracted increasing interest from the Congress, from Federal officials, from scholars in the field of public administration, and from public spirited groups such as the National Civil Service League. The Task Force has received much assistance from these sources in our study of existing practices within the Government, and in our consideration of policies for the future. As was to be expected, we enjoyed the full cooperation of the many employee organizations, but we would like to remark upon the mature and reasoned quality of that cooperation. The employee organizations of the Federal Government are not strangers in our midst. Some of the largest date back to the 19th Century. Altogether they have enlisted some 33% of Federal employees; for decades they have maintained themselves as nationwide, stable, responsible organizations.

The Task Force believes the time has come to establish a governmentwide Presidential policy which acknowledges the legitimate role which these organizations should have in the formulation and implementation of Federal personnel policies and practices.

We believe, further, that the proposals which we are recommending, if adopted on a governmentwide basis, would constitute an historic development in Federal personnel policy. At the same time we would emphasize the fact that it was not necessary for us to seek far or wide to come up with our recommendations. With but minor exceptions, everything which we propose as a governmentwide policy for the future is at this moment the existing, established policy of one Federal agency or another. We have fashioned a program of our own ma-

terials, choosing that which has already been tested and has proved its worth within the Federal Government.

In proposing a governmentwide policy on employee-management relations, we are not proposing the establishment of uniform governmentwide practices. The great variations among the many agencies of the Government require that each be enabled to devise its own particular practices, in cooperation with its own employees. Our object is to lay down the general policies which should guide such efforts. Our proposals, then, are as follows :

A. *The Federal Employee's Right to Organize.*

Federal employees have the right to join bona fide employee organizations. This right encompasses the right to refrain from joining. Wherever any considerable number of employees have organized for the purpose of collective dealing, the attitude of the Government should be that of an affirmative willingness to enter such relations.

B. *Forms of Recognition.*

Bona fide organizations of Federal employees, which are free of restrictions or practices denying membership because of race, color, creed or national origin, which are free of all corrupt influences, and do not assert the right to strike or advocate the overthrow of the Government of the United States should be recognized by Government agencies.

Organizations of Federal employees should be granted recognition essentially according to the extent to which they represent employees in a particular unit or activity of a Government agency. This recognition may be informal, formal, or exclusive.

1. *Informal Recognition*

Informal recognition gives an organization the right to be heard on matters of interest to its members, but places an agency under no obligation to seek its views. Informal recognition will be granted to any organization, regardless of what status may have been extended to any other organization.

2. *Formal Recognition*

Formal recognition will be granted to any organization with 10% of the employees in a unit or activity of a government agency, where no organization has been granted exclusive recognition. Formal recognition gives an organization the right to be consulted on matters of interest to its members.

3. *Exclusive Recognition*

Exclusive recognition will be granted to any organization chosen by a majority of the employees in an appropriate unit. Exclusive recognition gives an organization the right to enter collective negotiations with management officials with the object of reaching an agreement applicable to all employees of the unit. Such agreements must not conflict with existing Federal laws or regulations, or with agency regulations, or with governmentwide personnel policies, or with the authority of the congress over various personnel matters.

C. *Veterans Organizations.*

The recognition of employee organizations should not affect the special relationship of veterans organizations with Government agencies.

D. *Religious and Social Organizations.*

The recognition of employee organizations should not preclude limited dealings with employee groups formed for religious or social purposes.

E. *The Scope of Consultations and Negotiations with Employee Organizations.*

Consultations or negotiations, according to the form of recognition granted, may concern matters in the area of working conditions and personnel policies, within the limits of applicable Federal laws and regulations, and consistent with merit system principles.

Accordingly, as an employee organization has been granted formal or exclusive recognition, it may consult with or negotiate with management officials on matters of concern to employees.

F. *Procedures to be Adopted in the Event of Impasses.*

Impasses in negotiations between Government officials and employee organizations granted exclusive recognition should be solved by other means than arbitration. Methods for helping to bring about settlements should be devised and agreed to on an agency by agency basis.

G. *Form of Agreements.*

Agreements between management officials and employee organizations granted exclusive recognition should be reduced to writing in an appropriate form. Decisions reached by management officials as a result of consultation with employee organizations granted formal recognition may also be communicated in writing to the organization concerned. Negotiations should be kept within reasonable time limits.

H. *Services That May be Provided for Employee Organizations.*

Bulletin boards should be made available to employee organizations. Officially approved or requested consultations with employee organizations should take place on official time. An agency may require that negotiations with an employee organization granted exclusive recognition take place on employees' time. No internal employee organization business should be conducted on official time. If authorized by Congress, voluntary dues withholding may be granted to an employee organization, provided the cost is paid for by the organization.

I. *Grievances.*

Employee organizations should have a recognized role in grievance systems. Advisory arbitration may be provided by agreement between an agency and an employee organization granted exclusive recognition.

J. *Appeals.*

A more uniform system of appeals of adverse actions should be established by Government agencies. Veterans and nonveterans should have identical rights to appeal adverse actions to the Civil Service Commission.

K. *Union Membership.*

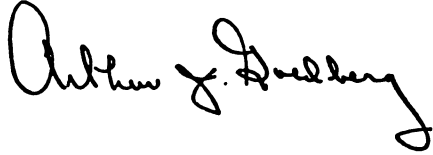
The union shop and the closed shop are inappropriate to the Federal service.

L. *Technical Services for the Federal Employee-Management Relations Program.*

Technical services required to implement the proposals contained in this report should be provided by the Civil Service Commission and the Department of Labor. Upon request, the Secretary of Labor shall choose a person or persons to make advisory determinations on appropriate units for exclusive recognition and to perform similar services. The Department of Labor and the Civil Service Commission jointly should prepare recommendations for standards of conduct for employee organizations and a code of fair labor practices for the Federal service.

In conclusion, I would like to note that it is the opinion of the Task Force that all of the measures proposed by us may be accomplished by Executive Order, with the exception of the provision for the withholding of employee organization dues which will require authorization by the Congress.

Respectfully,



ARTHUR J. GOLDBERG
Chairman
Secretary of Labor

John W. Macy, Jr.
Vice Chairman
Chairman, U.S. Civil Service Commission

David E. Bell
Director, Bureau of the Budget

Robert F. McNamara
Secretary of Defense

J. Edward Day
Postmaster General

Theodore C. Sorensen
Special Counsel to the President

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THE TASK FORCE

The Honorable Arthur J. Goldberg, *Chairman*
Secretary of Labor

The Honorable John W. Macy, Jr., *Vice-Chairman*
Chairman, U.S. Civil Service Commission

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Director, Bureau of the Budget

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The Honorable J. Edward Day
Postmaster General

The Honorable Theodore C. Sorensen
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U.S. Civil Service Commission

The Honorable Lee C. White
Special Counsel to the President

Staff Director: Daniel P. Moynihan, Special Assistant to the Secretary of Labor
Consultant: Ida Klaus, Counsel to the New York City Department of Labor

THE WHITE HOUSE

Following is the text of a Memorandum from the President addressed to heads of departments and agencies on the subject of Employee-Management Relations in the Federal Service, June 22, 1961

The right of all employees of the federal government to join and participate in the activities of employee organizations, and to seek to improve working conditions and the resolution of grievances should be recognized by management officials at all levels in all departments and agencies. The participation of federal employees in the formulation and implementation of employee policies and procedures affecting them contributes to the effective conduct of public business. I believe this participation should include consultation by responsible officials with representatives of employees and federal employee organizations.

In view of existing policy relating to equal employment opportunity, management officials will maintain relationships only with those employee organizations which are free of restrictions or practices denying membership because of race, color, religion, or national origin. Further, such officials shall refrain from consultation or relationships with organizations which assert the right to strike against or advocate the overthrow of the government of the United States.

Further steps should be explored fully and promptly. We need to improve practices which will assure the rights and obligations of employees, employee organizations and the Executive Branch in pursuing the objective of effective labor-management cooperation in the public service. I know this is not a simple task. The diversity of federal programs, the variety of occupations and skills represented in federal employment, the different organizational patterns of federal departments and agencies, and the special obligations of public service complicate the task of formulating government-wide policy guidance. Nevertheless, this important subject requires prompt attention by the Executive Branch. With that objective in mind, I am designating a special task force to review and advise me on employee-management relations in the federal service, composed of the following officials:

The Secretary of Defense
 The Postmaster General
 The Secretary of Labor
 The Director of the Bureau of the Budget
 The Chairman of the Civil Service Commission
 The Special Counsel to the President

The Secretary of Labor will serve as Chairman of this task force. This study will cover the broad range of issues relating to federal employee-management relations, including but not limited to definition of appropriate employee organizations, standards for recognition of such organizations, matters upon which employee organizations may be appropriately consulted, and the participation of employees and employee representatives in grievances and appeals. In the course of this study employees and employee organization representatives, department and agency officials, consultants in labor-management relations, and interested groups and citizens shall be given an opportunity to present their views for the consideration of the task force. In view of the need for decisions on this important issue at a reasonably early date, I am asking the task force to report their findings and recommendations to me not later than November 30, 1961.

All department and agency heads and their staffs are directed to cooperate fully with the task force in the accomplishment of this study.

I

Background

In his memorandum of July 22, 1961, establishing a special Task Force on Employee-Management Relations in the Federal Service, the President declared his belief that "The participation of Federal employees in the formulation and implementation of employee policies and procedures affecting them contributes to the effective conduct of the public business." This has been the frame of reference in which the Task Force has carried out its assignment of formulating governmentwide policy recommendations.

There are many interests involved in the development of policy proposals on employee-management relations in the Federal Government, not least, of course, those of the employee organizations and of the employees themselves. Nonetheless, the essential interest is that of the public. The primary question with regard to any aspect of the subject, therefore, is whether it will contribute to the effective conduct of the public business.

The public interest in responsible, stable trade unions in the private sphere of the economy has long been recognized. For a quarter century, since the enactment of the National Labor Relations Act in 1935, it has been the public policy of the United States Government to encourage workers in private industry to organize and bargain collectively. During this period trade unions have been established as the recognized representatives of employees in most of the nation's large industrial concerns. Labor-management relations in these industries have reached a high level of complexity and sophistication, and have extended to a wide range of subject matter.

Despite the many differences between public and private employment, there has been a corresponding and somewhat similar development of employee organizations within the Federal Government. The Task Force studies indicate that some 33% of all Federal employees, altogether some 762,000 persons, including 489,224 in the Post Office Department, belong to employee organizations.* This matches almost precisely the national proportion of organized workers in non-agricultural establishments exclusive of Federal employment, which

*This figure excludes foreign nationals, the F.B.I., C.I.A., and some small agencies that did not report to the Task Force.

was 32.4% in 1960. It is a proportion half again as great as that of the total labor force in which 23.3% of the workers are organized.

This is hardly a recent development. Organizations of craftsmen have been active in Naval installations since the early 1800's. The largest union composed entirely of Federal Government employees, the National Association of Letter Carriers with some 150,000 members, was organized in the late nineteenth century and was one of the first affiliates of the American Federation of Labor. Almost one half million postal employees belong to unions, most of which have been maintained for many years, frequently in the face of pronounced hostility. Postal workers are by no means, however, the only heavily organized group within the Federal service. Contrary to the widely held impression, only 41% of Federal employees are in the classified service, and only part of these are white-collar workers. A majority of Federal employees are either postal employees or blue-collar workers. Most of the latter work in industrial establishments much like those in the private economy, and are paid according to rates prevailing in nearby private industry. Union membership is common among these blue-collar workers.

Despite these developments, the Federal Government has little in the way of formal policy to guide collective dealings between Federal management and employee organizations. The one important statute dealing with the subject, the Lloyd-Lafollette Act of 1912, is half a century old and essentially negative in content. It simply declares that membership in an organization of postal employees which is not affiliated with any outside organization imposing a duty to engage or assist in a strike against the Government is not grounds for reduction in rank or removal, and that the right to petition Congress may not be denied or interfered with. By extension, it has become the common law of Federal personnel practice that any government employee has the right to join or not to join any organization which does not assert the right to strike against or advocate the overthrow of the Government.

Since 1951 the Federal Personnel Manual has contained passages which encourage government officials to solicit and consider the views of employees in the formulation of personnel policy, but it is only since 1958 that this policy has been interpreted to apply to employee organizations as well as to employees generally.

Of the fifty-seven departments and agencies whose personnel practices were studied by the Task Force, it appears that a relatively large number, twenty-two, do not have any stated labor relations policies whatever. Most of these, however, are smaller agencies. Eleven agencies have the barest minimum of policy, providing simply that employees have the right to join, or not to join, legitimate employee organizations.

Twenty-one of the departments and agencies have patterned their employee relations policies on a guide prepared in 1952 by the Federal Personnel Council, an advisory group of Federal personnel officers. In general, these policies establish the right of employees to belong to legal employee organizations; express management's desire to encourage discussion with employee organizations; lay down certain criteria as to matters which may be discussed; state standards of conduct for the organizations; and specify the services, such as the use of bulletin boards, which may be provided to organizations. While no premium should attach to detail as such, it may be noted that the Department of Interior is alone among the departments of Government in providing a comprehensive code of labor relations procedures.

It should not be thought that the absence of an affirmative, governmentwide policy on employee organizations has completely thwarted the development of employee-management relations, anymore than it has inhibited membership in employee organizations. In both matters, the experience within the Federal Government has followed generally the pattern of private employment.

Within the Government, membership is larger among craftsmen and other blue collar workers; smaller among white collar workers. Government corporations and Federal enterprises such as the Tennessee Valley Authority have heavy trade union membership; many of the other agencies of the government, such as the Atomic Energy Commission, appear to have no employee organization members whatever. Among the cabinet departments, membership ranges from that of the Post Office in which 84% of the 582,427 employees are union members, to the Department of State which reported to the Task Force that a careful search had uncovered a total of eleven members of employee organizations.

The more similar a government activity is to that of a private activity in which workers are normally organized, the more often it will be found that the government workers are also organized and that relations with management officials approach the pattern of such relations in private enterprise. Thus, in the Tennessee Valley Authority and various units of the Department of Interior, relationships that are close to full scale collective bargaining between trade unions and management officials have been going on for years, to the complete satisfaction of all the parties concerned. Certain of these relations have developed under special statutes, others, such as those in the Bureau of Reclamation of the Department of Interior, have developed naturally, on the basis of mutual interest and desire.

The existence of systems such as those to be found in parts of the Interior Department make it clear that the absence of a governmentwide policy on employee-management relations has not positively pre-

vented the development of such relations, but there can be no question that it has been inhibiting. For the most part employee organizations in the Federal service have received but limited recognition, for limited purposes. Their role in the development of personnel policies has been peripheral at best. The Task Force is strongly of the opinion that employee organizations are capable of contributing more to the effective conduct of the public business than has heretofore been the case.

II

General Considerations

Over the past decade there has been increasing interest in the question of employee-management relations in the Federal service. As far back as 1949, the Commission on Organization of the Executive Branch of the Government, the Hoover Commission, proposed that the heads of departments and agencies should be required to provide for the positive participation of employees in the formulation and improvement of the Federal personnel policies and practices. In 1955, the American Bar Association's committee on labor relations issued a report much to the same effect:

A government which imposes upon other employers certain obligations in dealing with their employees may not in good faith refuse to deal with its own public servants on a reasonably similar favorable basis, modified, of course, to meet the exigencies of the public service. It should set the example for industry by being perhaps more considerate than the law requires of private enterprise.

More recently, the National Civil Service League, the outstanding impartial citizen organization in the field of public personnel, completed an extended study "Employee Organizations in Government" which strongly endorsed the further development of employee-management relations along these lines. Members of Congress have been particularly interested in this problem; a number have sponsored legislation to endow employee organizations with specific rights to participate in decisions affecting their members.

In the public hearings which the Task Force has held in Washington and six other cities throughout the Nation, the view was repeatedly presented that the time is past due for the Federal Government to come forth with a positive and comprehensive policy in this field. This view was by no means limited to representatives of employee organizations. A clergyman representing one of the Nation's leading churches had this to say:

The very least that the Federal Government can do to make up for lost time is to encourage its employees to exercise their right to organize, and to insist that responsible administrators of Government agencies take the initiative in developing a system of labor relations under which unions of Government employees would not only be permitted, but would be encouraged to speak for and to represent their constituents more effectively.

Representatives of employee organizations, while differing on many of the specific policies which they proposed for adoption, were united in their view that the Federal Government has yet much to do if it is to meet its responsibilities in this field. The Task Force heard repeated testimony from representatives of employee organizations that the absence of a positive policy of support for employee-management relations has been interpreted by many government officials as an excuse for hostile and obstructionist attitudes. Representatives of employee organizations were similarly united in their view that even where the heads of Government agencies have demonstrated an unmistakable wish to encourage cooperative relations, this view has frequently not made its way down to the operating levels of the agency.

Subsequent to its public hearings, the Task Force invited all of the departments and agencies of the Government to submit recommendations for a governmentwide policy in the field of employee-management relations. Here again a considerable range of policies were proposed for adoption, but there was much general support for the proposition that it would be profitable to adopt a governmentwide policy to guide agencies in devising systems most suited to their special needs.

The absence of Presidential policy at this late date is an unnecessary situation; in many ways it is an anomalous one. For a quarter century it has been the public policy of the Government to encourage employees in private enterprise to organize and deal collectively; yet the Government continues to have almost nothing to say concerning the role of organizations of its own employees. During this period a growing number of municipal and state employees have formed organizations for collective bargaining purposes. Cities such as New York, Philadelphia, and Cincinnati have entered into extensive collective bargaining relationships with employee organizations. The experience of these cities, along with similar developments that have taken place in many state governments, and in parts of the Federal Government itself has shown that responsible employee organizations can contribute substantially to the efficiency and effectiveness of public services.

The Task Force wishes most emphatically to endorse the President's view that the public interest calls for a strengthening of employee-management relations within the Federal Government. A continuous history, going back three quarters of a century, has established beyond any reasonable doubt that certain categories of Federal employees very much want to participate in the formulation and implementation of personnel policies and have established large and stable organizations for this specific purpose. This is not a challenge to be met so much as an opportunity to be embraced.

Despite the obvious similarities in many respects between the conditions of public and private employment, the Task Force feels that the equally obvious dissimilarities are such that it would be neither desirable, nor possible, to fashion a Federal system of employee-management relations directly upon the system which has grown up in the private economy. Nor is it necessary. The needs of the present can be fully met by adopting elsewhere in the Government the best features of employee-management systems which have been operating successfully for many years in some areas *within* the Federal structure. It is sufficient for the Government's purposes merely to extend the operation of the best existing Government practices.

The Task Force feels, however, that certain of the ground rules which Congress has laid down for employee-management relations in the private economy should be carried over to the Federal Government in order to ensure that the public interest and the interests of individual employees are protected.

It is clear, for example, that there are many areas in the Federal Government in which civil servants have shown little or no inclination to join employee organizations or to enter into collective relationships with management officials. This makes it most important to recognize that the right of Federal employees to organize and deal collectively with management officials is matched by the right to refrain from any or all of such activities. There should be no compulsion in either direction. It is equally important to carry over the policy laid down by Congress that in the private sphere employers may not "dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. . . ." Within the Federal Government employee organizations must be free to carry on legitimate organizing activity, but they should not expect the Government to be anything but completely impartial in this activity if genuine and bona fide relations are to be maintained. After employees have organized and clearly manifested their wish to deal collectively with government management, the attitude of the government should, of course, be one of affirmative willingness to enter such relations.

If employee organizations are to be given a more significant role within the Federal Government, they must expect to assume greater responsibilities. Further consideration must be given to the question of extending to organizations of public employees the standards of conduct which have been established for trade unions in the private sphere. An example would be the reporting and disclosure of financial transactions and administrative practices now required of labor organizations in the private sector.

It should also be expected that the development of employee-management relations in the Federal Service will have the effect of making the role of government management clearer and better defined. The Task Force welcomes this prospect. One of the principal needs of the Federal service today is the development of a more emphatic concept of management responsibility on the part of government officials who have functions similar to those of managers in the private sphere. In particular such managers must be diligent to avoid any conflict of interest between their responsibility as managers and their role as members of employee organizations to which they may belong. A minimal requirement is that no management official and no personnel officer should hold office in an employee organization.

It must also be emphasized that however desirous an agency may be to respond to the wish of employees to negotiate collectively on matters of mutual interest, it remains true that many of the most important matters affecting Federal employees are determined by Congress, and are not subject to unfettered negotiation by officials of the Executive Branch. The benefits to be obtained for employees by employee organizations, while real and substantial, are limited. No valid purpose will be served by exaggerating them. It should be emphasized, however, that the established employee organizations within the Federal Government have recognized this limitation, and have shown their willingness to work within it, just as they have willingly accepted limitations on their own activities, such as the prohibition of the right to strike.

The Task Force wishes, finally, to note its conviction that there need be no conflict between the system of employee-management relations proposed in this report and the Civil Service merit system, which is and should remain the essential basis of the personnel policy of the Federal Government.

The principle of entrance into the career service on the basis of open competition, selection on merit and fitness, and advancement on the same basis, together with the full range of principles and practices that make up the Civil Service system govern the essential character of each individual's employment. Collective dealing cannot vary these principles. It must operate with their framework.

The Civil Service system has provided an excellent and, indeed, indispensable method of selecting government employees and rewarding their achievements. However, it has not, on the whole, provided a means by which employees acting in concert may promote the collective interests of civil servants. In this light it is clear that the systems are both mutually compatible, and in fact complement each other.

While Government policy in support of the Civil Service system has been established for many decades, there has been no equally affirmative policy in support of organized employee-management relations. With this need in mind, the Task Force wishes to recommend a body of general principles, as well as a number of specific practices in this area which it feels will make an important contribution toward the effective conduct of the public business. While these should be regarded as governmentwide standards, the Task Force recognizes that investigatory and intelligence units present special problems in this field. The same standards cannot always be applied to these organizations as to others in the Government.

III

Recommendations

A. The Federal Employee's Right to Organize.

Federal employees have the right to join bona fide employee organizations. This right encompasses the right to refrain from joining. Wherever any considerable number of employees have organized for the purpose of collective dealing, the attitude of the Government should be that of an affirmative willingness to enter such relations.

There must be no interference with the right of Federal employees to join bona fide employee organizations. The right to join encompasses, as well, the right not to join. Supervisors and management officials in the Federal service should exercise great care to ensure that they do not infringe this basic policy of the Federal Government.

Responsible, active employee organizations contribute to the efficient and harmonious performance of government functions. Experience within the Federal Government and on other levels of government in the United States has abundantly demonstrated this fact. Wherever any considerable number of employees at their own initiative manifest their desire to establish formal dealings with management officials, there should be no question of the willingness of the agency to enter such relations.

B. Forms of Recognition.

Bona fide organizations of Federal employees, which are free of restrictions or practices denying membership because of race, color, creed or national origin, which are free of all corrupt influences, and do not assert the right to strike or advocate the overthrow of the Government of the United States should be recognized by Government agencies.

Organizations of Federal employees should be granted recognition essentially according to the extent to which they represent employees in a particular unit or activity of a Government agency. This recognition may be informal, formal, or exclusive.

1. Informal Recognition

Informal recognition gives an organization the right to be heard on matters of interest to its members, but places an

agency under no obligation to seek its views. Informal recognition will be granted to any organization, regardless of what status may have been extended to any other organization.

2. Formal Recognition

Formal recognition will be granted to any organization with 10% of the employees in a unit or activity of a government agency, where no organization has been granted exclusive recognition. Formal recognition gives an organization the right to be consulted on matters of interest to its members.

3. Exclusive Recognition

Exclusive recognition will be granted to any organization chosen by a majority of the employees in an appropriate unit. Exclusive recognition gives an organization the right to enter collective negotiations with management officials with the object of reaching an agreement applicable to all employees of the unit. Such agreements must not conflict with existing Federal laws or regulations, or with agency regulations, or with government-wide personnel policies, or with the authority of the Congress over various personnel matters.

The public nature of Government business imposes upon Government officials certain obligations towards employees and other citizens which do not necessarily apply to the managers of a private enterprise. Government officials must at all times be prepared to hear the views of any Government employee and any organization of Government employees.

It has been the policy of the Federal Government to solicit and consider the views of Federal employees in the formulation and adjustment of personnel policy. Recently, this policy has been extended to include employee organizations. In general, these relations have proceeded on an informal and essentially permissive basis. However, in those departments and agencies in which a large proportion of the employees have banded together for the purpose of collective dealing, they have quite frequently succeeded in establishing a fruitful relationship. Where only a small proportion of employees have organized, relations with management have tended on the whole to be irregular and insubstantial.

There is little reason to expect any marked change in the wide variation in the extent of employee organization membership among the various departments and agencies. For that reason, relations between management officials and employee organizations in many departments and agencies may be expected to continue on the present essentially informal basis. However, in the interest of establishing

more stable and significant relations in those departments and agencies where significant numbers of employees have organized or do so in the future, the Task Force considers it desirable to provide for more formal types of recognition.

As a general proposition, recognition should, under the conditions specified below, be granted to any trade union, association, council, federation, brotherhood, or society having as a primary purpose the improvement of working conditions among Federal employees; and any craft, trade or industrial union whose membership may include both Federal employees and employees of private organizations.

In order to be recognized by a Federal department or agency, an employee organization must be free of any restrictions or practices denying membership because of race, color, creed or national origin. It must not assert the right to strike against, or advocate the overthrow of the Government of the United States. It must be free of all corrupt influences and from the undermining efforts of communist agents and all others who are opposed to the basic principles of our democracy.

The Task Force proposes that three types of recognition be extended to employee organizations, essentially according to the proportion of organization members among employees at a particular government activity. Any form of recognition may be withdrawn upon the determination by appropriate means at periodic intervals that the employee organization no longer meets the requisite criteria.

1. Informal Recognition

Any organization of Federal employees, regardless of what status may have been extended to any other organization, shall be accorded informal recognition. This is simply an extension of the right of any Government employee to be heard. No appropriate group of Government employees should be denied access to management officials to present their view on matters of concern to their members. However, management officials are not obligated to seek the views of such an organization. There is also, obviously, a limit to the amount of time management officials may give such organizations.

2. Formal Recognition

Wherever an employee organization in a Government activity has achieved and maintained a sizable membership, it is desirable that management officials should grant it formal recognition. For this purpose, an organization may reasonably be required to have as members 10% of the employees of the unit or activity concerned. Consistent with this policy, each agency should be free to establish its own procedures and to define the units within which membership will be measured. As a general rule, formal recognition should apply to a dis-

crete Government activity, such as a post office or a navy yard. An organization of craftsmen would be expected to have as members at least 10% of all the members of its craft employed in its unit. An organization seeking overall representation for the various skills and occupations in a single unit must have as members at least 10% of all employees in those areas, skills, and occupations.

An organization requesting formal recognition should be required to submit to its agency a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of objectives.

In granting formal recognition to an employee organization, agency officials will by that act undertake to consult with such organization from time to time on the formulation and implementation of all personnel policies that are of concern to its membership. An organization which has been granted formal recognition should be enabled from time to time to raise matters for discussion with management, and should be permitted at all times to present views in writing. It is to be expected that management officials will pay careful attention to such proposals.

More than one organization may be granted formal recognition within the same activity, and the existence of a formally recognized organization in no way precludes the continuation of informal recognition for smaller organizations.

Formal recognition at the national level may be granted by the head of an agency to those organizations which, in the opinion of the agency head, have a sufficient number of locals or total membership within the agency. As in the case of formal recognition at the local level, formal national recognition would not preclude dealing at the national level with any other lawful organization on matters of peculiar interest to it, whether or not such organization has received formal recognition.

3. Exclusive Recognition

In a small number of activities of the Federal Government the practice of exclusive recognition has already been adopted. Under this system, if an employee organization is chosen by the majority of the employees in an appropriate unit it becomes the *only* formal recognized representative for the unit. In its dealings with management officials it is considered to speak for *all* of the employees of the unit, a responsibility which it must, of course, meet.

It should be emphasized that exclusive recognition in the form proposed by the Task Force would not prevent any individual employee from bringing matters of personal concern to the attention of management officials, nor, for example, from choosing his own representative in a grievance action. Similarly, under a system of exclusive recognition other organizations of limited membership continue to receive informal recognition, and may from time to time merely present their

views to management. However, only one voice may speak for all the employees in the appropriate unit, and management may negotiate and reach agreement only with it. Representatives of the organization with exclusive recognition normally have the right to be present at any discussion of personnel policy matters between management and other employees or employee representatives.

The essence of exclusive recognition is that it makes it possible for management officials and employee representatives by the process of collective negotiations to reach agreements on personnel policies and practices. An agreement with an organization having exclusive recognition applies to all of the employees in the unit. An agreement must be approved by the head of the agency, or an official designated by him.

Wherever exclusive recognition is now practiced in the Federal Government it has proved successful, and the Federal officials concerned have unanimously recommended its adoption elsewhere in the Government.

The Task Force accepts the view that in appropriate circumstances exclusive recognition is wholly justifiable and in such circumstances will permit the development of stable and meaningful employee-management relations based upon bilateral agreements. Such agreements may, of course, be reached between management and a single employee organization or, alternately, a council of organizations. It is to be expected that there will be circumstances in which employees, although organized, may not wish exclusive recognition. However, the general Federal practice should be to provide for exclusive recognition in an appropriate unit wherever a majority of employees desire it.

An appropriate unit is a grouping of employees for purposes of representation in collective dealings with management. The kind of grouping on which it is based should permit effective and rational dealing. The essential quality of such a unit is that its members should have a clear and identifiable community of interest, so that it becomes possible for them to deal collectively as a single group. An appropriate unit is thus based on a factual situation: what is appropriate must be decided in the first instance on a case by case basis by the agency concerned.

Appropriate units may be established on plant, craft, functional, or departmental lines. No unit should be established simply on the basis of the extent of union organization.

Except where established practice, joint agreement, or special circumstances dictate a different course, no unit should be established for purposes of exclusive recognition which includes among the employees concerned (1) any managerial executive; (2) an employee engaged in personnel work in other than a purely clerical capacity;

(3) both supervisors who effectively evaluate the performance of other employees and other employees whom they supervise; (4) both professional employees and employees who are not professional employees, unless a majority of such professional employees vote for inclusion in such unit. Supervisors and professional employees should be free to establish organizations of their own and, where appropriate, separate units may be established and such organizations may be granted recognition.

Any agreement between management officials and an employee organization to grant exclusive recognition should include a statement recognizing that in the administration of any agreement reached between the parties, the officials and employees concerned are governed by the provisions of applicable Federal laws and regulations, including policies set forth in the Federal Personnel Manual, and the agency's regulations, all of which are regarded as paramount, and any such agreement must at all times be applied subject to all such laws, regulations and policies. Subject to existing collective agreements, such agreements should recognize that the responsibility of management officials for a Government activity requires that they retain the right (1) to direct its employees; (2) to hire, promote, demote, transfer, assign, and retain employees in positions within the activity on the basis of merit and efficiency, in accordance with applicable Federal laws and regulations; (3) to suspend or discharge employees for proper cause; (4) to relieve employees from duties because of lack of work or for other legitimate reasons; (5) to maintain the efficiency of the Government operations entrusted to them; and (6) to determine the methods, means, and personnel by which operations are to be carried on.

C. Veterans Organizations.

The recognition of employee organizations should not affect the special relationship of veterans organizations with Government agencies.

For many years, veterans organizations have enjoyed a special relationship with Government agencies. Congress has granted special rights and privileges to Government employees who are veterans. Over the years, veterans organizations have been active on behalf of their members in exercising these rights and privileges. The Task Force feels that there is no conflict between such activities of veterans organizations on behalf of their members and the work of regular employee organizations. The development of more formal employee-management relations should not be permitted to inhibit, restrict or impair these valuable services of veterans organizations.

D. Religious and Social Organizations.

The recognition of employee organizations should not preclude limited dealings with employee groups formed for religious or social purposes.

Some notice must be taken of the existence among Federal employees of a considerable variety of associations which are formed primarily for purposes other than the improvement of working conditions. The Task Force feels that there should be no objection to management officials dealing with such associations on matters involving individual members, or on policies having particular application to their group (e.g. work schedules on a religious holiday) even though exclusive recognition has been granted to another employee organization. As a normal practice, a representative of an employee organization with exclusive recognition has the right to be present on such occasions.

It is to be understood, however, that such dealings shall not assume the character of formal consultation or negotiation on matters of general employee-management policy, nor shall the furtherance of the interest of one group of employees be permitted to discriminate against or injure the interests of other employees. This would plainly be contrary, e.g., to the Government policy of withholding recognition from any employee organization which adheres to or practices discrimination based on race, color, creed, or national origin.

E. The Scope of Consultations and Negotiations with Employee Organizations.

Consultations or negotiations, according to the form of recognition granted, may concern matters in the area of working conditions and personnel policies, within the limits of applicable Federal laws and regulations, and consistent with merit system principles.

Accordingly, as an employee organization has been granted formal or exclusive recognition, it may consult with or negotiate with management officials on matters of concern to employees.

It must be recognized that a major and perhaps controlling distinction between the type of employee-management relations that have developed in private industry and those which are possible in the Federal service is that in the latter neither the employer nor his employees are free to bargain in the ordinary sense. The employees cannot strike, nor be represented by an organization affiliated with a group which asserts the right to strike against the Government. The employer in most parts of the Federal Government cannot negotiate on pay, hours of work or most fringe benefits. These are established by law.

Generally, negotiations may take place on policies in such areas of employee concern as working conditions, promotion standards, grievance procedures, safety, transfers, demotions, reductions in force, and other matters, consistent with merit system principles. It may be noted that in the public hearings held by the Task Force the representatives of the major employee organizations in the Federal Government made it clear that they are aware of these limitations and are quite content to negotiate within them.

In this matter as in most others, the Task Force is of the opinion that each department and agency of the Government should be left to determine its own practice. As a general rule, however, it may be said that a negotiable matter must be within administrative discretion, that is, it must be within the authority of the manager who is negotiating, and permissible by applicable laws, executive orders, and Administration and agency policy. In general, it will be in the area of working conditions and personnel policies and practices. It should not include matters concerning an agency's mission, its budget, its organization and assignment of personnel, or the technology of performing its work. Major reorganizations or changes in work methods, while not negotiable themselves, will involve implementation problems that may be negotiable such as promotion, demotion and training procedures.

Specific areas that might be included among subjects for consultation and collective negotiations include the work environment, supervisor-employee relations, work shifts and tours of duty, grievance procedures, career development policies, and where permitted by law the implementation of policies relative to rates of pay and job classification. This list is not, of course, all-inclusive, nor should it be expected that every agency will feel free to negotiate in all such areas.

F. Procedure to be Adopted in the Event of Impasse in Negotiations.

Impasses in negotiations between Government officials and employee organizations granted exclusive recognition should be solved by other means than arbitration. Methods for helping to bring about settlements should be devised and agreed to on an agency by agency basis.

Most discussions of employee-management relations in Government devote considerable attention to the question of procedures to be adopted if an impasse is reached in negotiations between management officials and an organization granted exclusive recognition. It is evident that the recourses open to private employers and employees such as strike action are not available to their counterparts in government.

Among the few Federal activities at which collective bargaining relations have been established, provision has been made for the

arbitration of impasses in negotiations. While it has been most rare for the parties to such arrangements actually to invoke them—there has never, for example, been an arbitration of a negotiation impasse at the Tennessee Valley Authority—this has almost certainly been due in some measure to the similarity of such negotiations to those which take place in the private economy, and to the great familiarity of the parties involved with the process of private collective bargaining.

The important differences between the nature of negotiations between employees and management in the private economy, as against most parts of the Federal Government, and the relative lack of experience in any form of employee-management negotiations on the part of most Government officials and employees, leads the Task Force to feel that the arbitration of negotiation impasses is not an appropriate technique for general adoption by the Federal Government at this time. In the developing stages of employee-management relations it is quite likely that the availability of arbitration would have an escalation effect whereby the parties, instead of working out their differences by hard, serious negotiation, would continually take their problems to a third party for settlement. It should be clear that not much in the way of established understandings and relations will develop out of such procedures. The Task Force was interested to note that the Tennessee Valley Authority specifically recommended against the general adoption of arbitration as means of settling negotiation impasses.

There are, however, many devices other than arbitration for helping to bring about settlements in negotiations. The Task Force is of the opinion that as employee-management relations in the Federal service develop further, there will be increasing interest in and need for services of this kind. In the first instance, such techniques should themselves be the subject of negotiations, with each department and agency devising means most appropriate to its own needs and circumstances.

G. Form of Agreements.

Agreements between management officials and employee organizations granted exclusive recognition should be reduced to writing in an appropriate form. Decisions reached by management officials as a result of consultation with employee organizations granted formal recognition may also be communicated in writing to the organization concerned. Negotiations should be kept within reasonable time limits.

Agreements reached between management officials and employee organizations granted exclusive recognition should normally be reduced to writing in an appropriate form such as a memorandum

of agreement, a memorandum of understanding, or an exchange of letters. Where appropriate, such agreements will be followed by the promulgation of a regulation or other appropriate formal document by the agency.

Decisions reached by management officials following consultation with representatives of an employee organization granted formal recognition on a members-only basis may also be communicated in writing to the organization concerned.

All agreements between management officials and employee organizations must be made with the understanding that in emergency situations a Government activity must be free to take whatever actions are necessary to carry out its mission, regardless of prior commitments.

The object of negotiations should be to produce agreement by a diligent, serious and brief exchange of information and views. Both parties must enter negotiations in good faith. If either permits the exchange to degenerate into an affair of attrition and exhaustion, higher Government officials will have no alternative but to exercise the sovereign responsibility of the Government to proceed with the public business.

H. Services That May be Provided for Employee Organizations.

Bulletin boards should be made available to employee organizations. Officially approved or requested consultations with employee organizations should take place on official time. An agency may require that negotiations with an employee organization granted exclusive recognition take place on employees' time. No internal employee organization business should be conducted on official time. If authorized by Congress, voluntary dues withholding may be granted to an employee organization, provided the cost is paid for by the organization.

It is now a general practice in the Government to make bulletin boards available for appropriate informational purposes. This practice should continue.

At the present time, there is also virtual unanimous agreement that consultation between employee organizations and management should be conducted on official time. The Task Force is of the opinion that this practice should continue, inasmuch as management officials will always be in a position to control the amount of time involved.

Considerable time may be required for negotiations between management officials and representatives of an employee organization that has been granted exclusive recognition. If this becomes burdensome, it would be appropriate for management to require that employee representatives negotiate on their own time. The Task Force notes that this is strongly endorsed and adhered to by the Tennessee Valley Authority.

Although practice within the Federal Government is somewhat varied at the present time, it should be the general rule that no solicitation of dues or membership or other internal employee organization business may be conducted on official time.

One of the requests most frequently heard by the Task Force at its public hearings is that the Government provide for the withholding of employee organization dues from the paychecks of members. This is a common practice in private industry, it being provided in 71% of the major collective bargaining agreements, and is also widespread in state and municipal governments which deal with employee organizations. Ten states have authorized the practice for state employees by statute and in thirty-eight states it is permitted by law for state and/or local governments. It is widely regarded as an important means of ensuring the stability of employee organization membership, freeing the organization leaders for more important duties.

Withholding of dues has for some time been the practice in the Tennessee Valley Authority and the Bonneville Power Administration. However, because certain Federal statutory provisions have been interpreted to prohibit payroll deductions from the salaries of Federal employees except when specifically authorized by statute, or when the statutory authority under which the agency operates is sufficiently broad to take the agency outside these statutory proscriptions, as in the case of TVA and Bonneville, the practice has not been adopted elsewhere in the Government.

The Task Force considers that withholding dues is a proper service that may be provided to an employee organization that has been granted formal recognition for purposes of consultation, or has been granted exclusive recognition. This should not be a matter of right, but rather a privilege that may be granted in the case of formally recognized organizations, or an agreement to be negotiated for in the case of organizations with exclusive representation.

Withholding of dues must be entirely voluntary, based upon individual authorization, and provision must be made for employees to revoke the authorization at stated intervals. The cost of dues withholding should be paid by the employee organization, not by the Government.

Although the Task Force has endeavored to confine its recommendations to matters within the range of executive authority, the potential importance of the withholding of dues is such as to warrant an exception. This is a matter which must be authorized by law. The Task Force accordingly recommends that the President propose legislation to the Congress that would provide such authorization.

I. Grievances.

Employee organizations should have a recognized role in grievance systems. Advisory arbitration may be provided by agreement between an agency and an employee organization granted exclusive recognition.

Employee grievances are a central element of an employee-management relations program. At the present time, agencies of the Federal Government are required to establish grievance handling systems according to standards prescribed in the Federal Personnel Manual.

Grievance systems are inspected by the Civil Service Commission to determine whether these standards are met. The Task Force studies indicate that, by and large, Government agencies have taken this responsibility seriously and have made a sincere effort to provide procedures through which individual complaints, dissatisfactions and injustices can be evaluated and appropriate action taken.

There are, however, shortcomings and deficiencies in many of the existing systems. The most important deficiencies are best seen by contrasting them with those in the private sphere of the economy. In ordinary circumstances a private enterprise will look upon its grievance system as part of an overall industrial relations structure.

For many Government agencies, complaints and dissatisfactions are considered to be purely personal problems which have no bearing upon group or collective relationships. This outlook finds expression in limitations upon representation at early stages of the proceeding, in attacks upon steward systems, and in the disinclination to acknowledge the organizational identity of representatives provided for an aggrieved employee by his trade union. At least one agency has expressed to the Task Force its belief that the "injection of a third party" in the form of an employee organization representative only makes grievance procedures more difficult—and to no purpose inasmuch as the agency provides aggrieved employees with assistance in handling their cases. This is a form of paternalism which will prevent the development of a mature relationship between employee organizations and management. When the issues involved concern the implementation of an agreement by an agency and the exclusive representative of its employees, such an attitude could easily destroy the confidence and good will which are essential to such a relationship.

The Task Force feels that most large agencies of the Government in which employee organizations are active will find it both necessary and desirable to provide such organizations with a recognized role in the grievance system. The system, moreover, should be thought of in terms of its effect on collective relationships within the agency, as well as in terms of its effect on individuals.

It must also be noted that despite the sincere efforts of agencies to establish fair and expeditious grievance procedures, the Task Force en-

countered widespread feeling that the systems should make it possible to obtain an objective, third party judgment when either or both of the parties feel it is necessary. There are a small number of activities within the Federal Government which have already done this by means of advisory arbitration. The Task Force feels that this practice could be adopted much more extensively. In order not to undermine the final authority and responsibility of an agency head for his own operations, arbitral awards should not only be advisory, but should also take place at a level of the grievance procedure which precedes any consideration by the agency head.

The Task Force believes that, as a general rule, advisory arbitration of this type should only be provided by agreement between an agency and an employee organization granted exclusive recognition. The agreement should establish a defined set of issues that will be subject to arbitration, and should provide that the costs of arbitration be shared. Advisory arbitration should be confined to grievances, complaints and misunderstandings which are personal to an individual employee, and to the specific implementation of existing policies.

Advisory arbitration of grievances should not be permitted to introduce arbitration of policy questions by the back door. Grievances must be individual, they may relate only to the implementation of policy, not to its content, and resort to arbitration must depend upon the consent of the individual employee concerned, as well as to that of the employee organization that represents him.

If these limitations are observed, the employee organizations will have the strongest interest in assuming their responsibility of screening out the frivolous and the obvious, of mollifying or restraining the eccentric, chronic grievant, and of abiding by the arbitral result. The Government, for its part, will be able to procure an objective and impartial review of decisions which may appear to the grievant to be arbitrary, capricious, or incorrect, but which often in fact are entirely justifiable.

No agreement between an agency and an employee organization granted exclusive recognition on the subject of grievances and appeals may be allowed to impair the right of an individual employee to handle his own grievance or appeal, and to choose his own representative. However, a representative of an organization granted exclusive recognition has the right to be present at such proceedings.

The Task Force feels that there would be much to be gained if all the agencies of the Government were to undertake a general review and evaluation of their grievance procedures. Agencies should be free to experiment and to devise techniques most suited to their individual needs. One agency, for example, believes that there could be a real improvement in the quality of grievance hearings if it were to abolish

ad hoc boards in favor of a permanent, trained panel of hearing officers. Such innovations can and should be tried.

J. Appeals.

A more uniform system of appeals of adverse actions should be established by Government agencies. Veterans and non-veterans should have identical rights to appeal adverse actions to the Civil Service Commission.

In the private sector of the economy, the term "grievance" generally applies to the entire range of employee complaints and dissatisfactions. In the Federal service, however, the term "grievance" has generally had a more limited reference to employee complaints or dissatisfactions relating to working conditions and relationships. The term "appeal" generally refers to a request by an employee for reconsideration of an agency decision to take an adverse action, such as a separation or demotion, against him. Most Federal employees may appeal such actions either within their agency or to the Civil Service Commission. Not all agencies, however, permit an employee opportunity to seek reconsideration of an adverse action within the agency. The protection given an employee in an adverse action situation, accordingly, depends to a considerable extent on the particular system for review of such actions that his agency may have adopted. In addition, the right to appeal to the Civil Service Commission varies. A veteran may appeal to the Civil Service Commission on the merits of the action taken against him as well as on procedure matters, while a nonveteran in the competitive service generally may appeal only on the basis of alleged procedural violations.

The Task Force has found that these disparities in rights and procedures have produced much dissatisfaction with the handling of appeals in the Federal service. In a matter as fundamental as the right to be protected against a possible arbitrary or capricious management decision that may result in the loss of a job or reduction in pay, all employees in the career service should have basically the same rights, although particular procedures may vary.

The Task Force specifically proposes that the necessary steps be taken to extend to all employees in the competitive civil service rights in adverse action cases identical to those provided to preference eligibles under Section 14 of the Veterans' Preference Act of 1944, as amended.

The right that Federal employees presently have to appeal an adverse action to the Civil Service Commission should be continued. The Civil Service Commission provides much the same sort of objective, impartial review which advisory arbitration would provide in other grievance matters. However, an effort should be made to resolve as many appeals as possible within the agency.

In order to permit agencies to settle as many adverse action disputes as possible within the agency, and to provide a greater measure of equity to employees, each department and agency should develop procedures for the reconsideration of management decisions to take adverse actions against employees. In terms of fundamental rights of employees, there should be some basic similarity among these systems, with due allowance for flexibility to account for differences in agency organization and relationships with employee organizations.

For some time, the Civil Service Commission has been considering standards for appeals of adverse actions within the agencies, which would provide for more expeditious handling, fewer levels of review, and improved technical quality. The Commission's work makes it now feasible to establish governmentwide policies for intra-agency appeals procedures. The Task Force therefore recommends that the President issue the executive order on intra-agency appeals systems prepared by the Civil Service Commission.

The Task Force believes that, to the extent feasible, appeals procedures in the agencies should be integrated into the agencies' grievance systems, that such systems should be developed in consultation or negotiation with employee organizations, that there should be a minimum number of levels of review, and that duplicate channels of appeal should not be permitted.

K. Union Membership.

The union shop and the closed shop are inappropriate to the Federal service.

The Task Force wishes to state its emphatic opinion that the union shop and the closed shop are contrary to the civil service concept upon which Federal employment is based, and are completely inappropriate to the Federal service.

L. Technical Services for the Federal Employee-Management Relations Program.

Technical services required to implement the proposals contained in this report should be provided by the Civil Service Commission and the Department of Labor. Upon request, the Secretary of Labor shall choose a person or persons to make advisory determinations on appropriate units for exclusive recognition and to perform similar services. The Department of Labor and the Civil Service Commission jointly should prepare recommendations for standards of conduct for employee organizations and a code of fair labor practices for the Federal service.

The Task Force is persuaded that the Federal employee-management relations program will prove most successful if it continues to receive guidance and support from Government officials appointed di-

rectly by the President. It will also be necessary to provide a considerable range of technical services on matters about which most agencies in the Government have but little experience. The adoption of the policy of permitting exclusive recognition, for example, will immediately raise questions as to appropriate units for which exclusive recognition may be granted. There will unquestionably be efforts on the part of employee organizations to establish very small or gerrymandered units in which majorities can be artificially obtained. Similarly, it cannot be doubted that questions will arise as to whether a majority of a given unit wish exclusive recognition, and means will have to be devised for making this determination. If management officials are to carry out their responsibilities in this field, it cannot be doubted that additional personnel training services should be provided. It is the belief of the Task Force that the long run efficiencies of such services will more than compensate for the initial cost.

The Task Force feels that these technical services may best be provided by assigning them, as appropriate, to the Civil Service Commission and to the Department of Labor.

The Civil Service Commission, as the central personnel agency of the Government, should take the lead in developing employee-management relations training for Federal personnel. The Commission should establish and maintain facilities to assist in carrying out the objectives of this report. It should be the duty of the Commission to develop a program for the guidance of employee-management relations in the Federal service; to provide technical advice to agencies on employee-management programs; to assist in the development of programs for training agency personnel in the purposes and procedures of consultation, negotiation, and the settlement of disputes in the Federal service; and for the training of management officials in the discharge of their employee-management relations responsibilities in the public interest. The Civil Service Commission should provide for continuous study and review of the Federal employee-management relations program; and, from time to time, make recommendations to the President for its improvement.

As a normal matter, agencies will determine appropriate units and questions of the majority status of an employee organization by internal means of their own devising. As an additional means, the services of the Secretary of Labor may be invoked. Upon the request of an agency or a formally recognized employee organization, or both, the Secretary of Labor shall choose one or more persons from the National Panel of Arbitrators maintained by the Federal Mediation and Conciliation Service to hold hearings or elections, and to make a determination. Such a determination shall be advisory to the head of the agency concerned. The costs of such proceedings shall be borne by

the agency. In the event that the matter at issue concerns the Department of Labor, the Chairman of the Civil Service Commission shall choose from the National Panel of Arbitrators.

Earlier in this report, the Task Force referred to the question of extending to organizations of Government employees the standards of conduct which have been established for trade unions in the private sphere of the economy. A similar question concerns the extent to which standards of fair labor practices analogous to those which have been developed for the private economy, primarily by the National Labor Relations Board, should be adopted for employee-management relations in Government. These are complex questions involving many considerations. The Task Force recommends that the President direct the Department of Labor and the Civil Service Commission jointly to prepare proposed standards of conduct for employee organizations and a proposed code of fair labor practices in employee-management relations in the Federal service.

As a temporary measure, to assist in getting the employee-management relations program underway, the Task Force recommends that the President establish a small interagency committee to consist of the Secretary of Defense, the Postmaster General, the Secretary of Labor, and the Chairman of the Civil Service Commission. The Secretary of Labor should serve as Chairman. In addition to other matters which may be referred to it by the President, the committee should receive and review the proposals by the Department of Labor and the Civil Service Commission for standards of conduct for employee organizations and fair labor practices in the Federal service.

As a long range measure, the Task Force wishes to recommend that the Federal Government take steps to provide for instruction in employee-management relations in appropriate educational or training activities of the Government, and to encourage the study of the subject at colleges and universities preparing students for careers in the public service. In time to come it is likely that these will be skills of increasing significance to the art of public administration. It would be of great value for future Government managers to encounter the subject in the early stages of their education, just as it will be of importance to the Federal Government to see to it that this education continues throughout the careers of Federal executives.

Executive Order 10988

EMPLOYEE-MANAGEMENT COOPERATION IN THE FEDERAL SERVICE

WHEREAS participation of employees in the formulation and implementation of personnel policies affecting them contributes to effective conduct of public business; and

WHEREAS the efficient administration of the Government and the well-being of employees require that orderly and constructive relationships be maintained between employee organizations and management officials; and

WHEREAS subject to law and the paramount requirements of the public service, employee-management relations within the Federal service should be improved by providing employees an opportunity for greater participation in the formulation and implementation of policies and procedures affecting the conditions of their employment; and

WHEREAS effective employee-management cooperation in the public service requires a clear statement of the respective rights and obligations of employee organizations and agency management:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution of the United States, by section 1753 of the Revised Statutes (5 U.S.C. 631), and as President of the United States, I hereby direct that the following policies shall govern officers and agencies of the executive branch of the Government in all dealings with Federal employees and organizations representing such employees.

SECTION 1. (a) Employees of the Federal Government shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity. Except as hereinafter expressly provided, the freedom of such employees to assist any employee organization shall be recognized as extending to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress or other appropriate authority. The head of each executive department and agency (hereinafter referred to as "agency") shall take such action, consistent with law, as may be required in order to assure that employees in the agency are apprised of the rights described in this section, and that no interference, restraint, coercion or discrimination is practiced within such agency to encourage or discourage membership in any employee organization.

(b) The rights described in this section do not extend to participation in the management of an employee organization, or acting as a representative of any such organization, where such participation or activity would result in a conflict of interest or otherwise be incompatible with law or with the official duties of an employee.

SEC. 2. When used in this order, the term "employee organization"

means any lawful association, labor organization, federation, council, or brotherhood having as a primary purpose the improvement of working conditions among Federal employees, or any craft, trade or industrial union whose membership includes both Federal employees and employees of private organizations; but such term shall not include any organization (1) which asserts the right to strike against the Government of the United States or any agency thereof, or to assist or participate in any such strike, or which imposes a duty or obligation to conduct, assist or participate in any such strike, or (2) which advocates the overthrow of the constitutional form of Government in the United States, or (3) which discriminates with regard to the terms or conditions of membership because of race, color, creed or national origin.

SEC. 3. (a) Agencies shall accord informal, formal or exclusive recognition to employee organizations which request such recognition in conformity with the requirements specified in sections 4, 5 and 6 of this order, except that no recognition shall be accorded to any employee organization which the head of the agency considers to be so subject to corrupt influences or influences opposed to basic democratic principles that recognition would be inconsistent with the objectives of this order.

(b) Recognition of an employee organization shall continue so long as such organization satisfies the criteria of this order applicable to such recognition; but nothing in this section shall require any agency to determine whether an organization should become or continue to be recognized as exclusive representative of the employees in any unit within 12 months after a prior determination of exclusive status with respect to such unit has been made pursuant to the provisions of this order.

(c) Recognition, in whatever form accorded, shall not—

(1) preclude any employee, regardless of employee organization membership, from bringing matters of personal concern to the attention of appropriate officials in accordance with applicable law, rule, regulation, or established agency policy, or from choosing his own representative in a grievance or appellate action; or

(2) preclude or restrict consultations and dealings between an agency and any veterans organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude an agency from consulting or dealing with any religious, social, fraternal or other lawful association, not qualified as an employee organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members, when such consultations or dealings are duly limited so as not to assume the character of formal consultation on matters of general employee-management policy or to extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.

SEC. 4. (a) An agency shall accord an employee organization, which does not qualify for exclusive or formal recognition, informal

recognition as representative of its member employees without regard to whether any other employee organization has been accorded formal or exclusive recognition as representative of some or all employees in any unit.

(b) When an employee organization has been informally recognized, it shall, to the extent consistent with the efficient and orderly conduct of the public business, be permitted to present to appropriate officials its views on matters of concern to its members. The agency need not, however, consult with an employee organization so recognized in the formulation of personnel or other policies with respect to such matters.

SEC. 5. (a) An agency shall accord an employee organization formal recognition as the representative of its members in a unit as defined by the agency when (1) no other employee organization is qualified for exclusive recognition as representative of employees in the unit, (2) it is determined by the agency that the employee organization has a substantial and stable membership of no less than 10 per centum of the employees in the unit, and (3) the employee organization has submitted to the agency a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of objectives. When, in the opinion of the head of an agency, an employee organization has a sufficient number of local organizations or a sufficient total membership within such agency, such organization may be accorded formal recognition at the national level, but such recognition shall not preclude the agency from dealing at the national level with any other employee organization on matters affecting its members.

(b) When an employee organization has been formally recognized, the agency, through appropriate officials, shall consult with such organization from time to time in the formulation and implementation of personnel policies and practices, and matters affecting working conditions that are of concern to its members. Any such organization shall be entitled from time to time to raise such matters for discussion with appropriate officials and at all times to present its views thereon in writing. In no case, however, shall an agency be required to consult with an employee organization which has been formally recognized with respect to any matter which, if the employee organization were one entitled to exclusive recognition, would not be included within the obligation to meet and confer, as described in section 6(b) of this order.

SEC. 6. (a) An agency shall recognize an employee organization as the exclusive representative of the employees, in an appropriate unit when such organization is eligible for formal recognition pursuant to section 5 of this order, and has been designated or selected by a majority of the employees of such unit as the representative of such employees in such unit. Units may be established on any plant or installation, craft, functional or other basis which will ensure a clear and identifiable community of interest among the employees concerned, but no unit shall be established solely on the basis of the extent to which employees in the proposed unit have organized. Except where otherwise required by established practice, prior agreement, or

special circumstances, no unit shall be established for purposes of exclusive recognition which includes (1) any managerial executive, (2) any employee engaged in Federal personnel work in other than a purely clerical capacity, (3) both supervisors who officially evaluate the performance of employees and the employees whom they supervise, or (4) both professional employees and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit.

(b) When an employee organization has been recognized as the exclusive representative of employees of an appropriate unit it shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership. Such employee organization shall be given the opportunity to be represented at 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. The agency and such employee organization, through appropriate officials and representatives, shall meet at reasonable times and confer with respect to personnel policy and practices and matters affecting working conditions, so far as may be appropriate subject to law and policy requirements. This extends to the negotiation of an agreement, or any question arising thereunder, the determination of appropriate techniques, consistent with the terms and purposes of this order, to assist in such negotiation, and the execution of a written memorandum of agreement or understanding incorporating any agreement reached by the parties. In exercising authority to make rules and regulations relating to personnel policies and practices and working conditions, agencies shall have due regard for the obligation imposed by this section, but such obligation shall not be construed to extend to such areas of discretion and policy as the mission of an agency, its budget, its organization and the assignment of its personnel, or the technology of performing its work.

SEC. 7. Any basic or initial agreement entered into with an employee organization as the exclusive representative of employees in a unit must be approved by the head of the agency or an official designated by him. All agreements with such employee organizations shall also be subject to the following requirements, which shall be expressly stated in the initial or basic agreement and shall be applicable to all supplemental, implementing, subsidiary or informal agreements between the agency and the organization :

(1) In the administration of all matters covered by the agreement officials and employees are governed by the provisions of any existing or future laws and regulations, including policies set forth in the Federal Personnel Manual and agency regulations, which may be applicable, and the agreement shall at all times be applied subject to such laws, regulations and policies ;

(2) Management officials of the agency retain the right, in accordance with applicable laws and regulations, (a) to direct employees of the agency, (b) to hire, promote, transfer, assign, and retain employees

in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees, (c) to relieve employees from duties because of lack of work or for other legitimate reasons, (d) to maintain the efficiency of the Government operations entrusted to them, (e) to determine the methods, means and personnel by which such operations are to be conducted; and (f) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency.

SEC. 8. (a) Agreements entered into or negotiated in accordance with this order with an employee organization which is the exclusive representative of employees in an appropriate unit may contain provisions, applicable only to employees in the unit, concerning procedures for consideration of grievances. Such procedures (1) shall conform to standards issued by the Civil Service Commission, and (2) may not in any manner diminish or impair any rights which would otherwise be available to any employee in the absence of an agreement providing for such procedures.

(b) Procedures established by an agreement which are otherwise in conformity with this section may include provisions for the arbitration of grievances. Such arbitration (1) shall be advisory in nature with any decisions or recommendations subject to the approval of the agency head; (2) shall extend only to the interpretation or application of agreements or agency policy and not to changes in or proposed changes in agreements or agency policy; and (3) shall be invoked only with the approval of the individual employee or employees concerned.

SEC. 9. Solicitation of memberships, dues, or other internal employee organization business shall be conducted during the non-duty hours of the employees concerned. Officially requested or approved consultations and meetings between management officials and representatives of recognized employee organizations shall, whenever practicable, be conducted on official time, but any agency may require that negotiations with an employee organization which has been accorded exclusive recognition be conducted during the non-duty hours of the employee organization representatives involved in such negotiations.

SEC. 10. No later than July 1, 1962, the head of each agency shall issue appropriate policies, rules and regulations for the implementation of this order, including: A clear statement of the rights of its employees under the order; policies and procedures with respect to recognition of employee organizations; procedures for determining appropriate employee units; policies and practices regarding consultation with representatives of employee organizations, other organizations and individual employees; and policies with respect to the use of agency facilities by employee organizations. Insofar as may be practicable and appropriate, agencies shall consult with representatives of employee organizations in the formulation of these policies, rules and regulations.

SEC. 11. Each agency shall be responsible for determining in accordance with this order whether a unit is appropriate for purposes

of exclusive recognition and, by an election or other appropriate means, whether an employee organization represents a majority of the employees in such a unit so as to be entitled to such recognition. Upon the request of any agency, or of any employee organization which is seeking exclusive recognition and which qualifies for or has been accorded formal recognition, the Secretary of Labor, subject to such necessary rules as he may prescribe, shall nominate from the National Panel of Arbitrators maintained by the Federal Mediation and Conciliation Service one or more qualified arbitrators who will be available for employment by the agency concerned for either or both of the following purposes, as may be required: (1) to investigate the facts and issue an advisory decision as to the appropriateness of a unit for purposes of exclusive recognition and as to related issues submitted for consideration; (2) to conduct or supervise an election or otherwise determine by such means as may be appropriate, and on an advisory basis, whether an employee organization represents the majority of the employees in a unit. Consonant with law, the Secretary of Labor shall render such assistance as may be appropriate in connection with advisory decisions or determinations under this section, but the necessary costs of such assistance shall be paid by the agency to which it relates. In the event questions as to the appropriateness of a unit or the majority status of an employee organization shall arise in the Department of Labor, the duties described in this section which would otherwise be the responsibility of the Secretary of Labor shall be performed by the Civil Service Commission.

SEC. 12. The Civil Service Commission shall establish and maintain a program to assist in carrying out the objectives of this order. The Commission shall develop a program for the guidance of agencies in employee-management relations in the Federal service; provide technical advice to the agencies on employee-management programs; assist in the development of programs for training agency personnel in the principles and procedures of consultation, negotiation and the settlement of disputes in the Federal service, and for the training of management officials in the discharge of their employee-management relations responsibilities in the public interest; provide for continuous study and review of the Federal employee-management relations program and, from time to time, make recommendations to the President for its improvement.

SEC. 13. (a) The Civil Service Commission and the Department of Labor shall jointly prepare (1) proposed standards of conduct for employee organizations and (2) a proposed code of fair labor practices in employee-management relations in the Federal service appropriate to assist in securing the uniform and effective implementation of the policies, rights and responsibilities described in this order.

(b) There is hereby established the President's Temporary Committee on the Implementation of the Federal Employee-Management Relations Program. The Committee shall consist of the Secretary of Labor, who shall be chairman of the Committee, the Secretary of Defense, the Postmaster General, and the Chairman of the Civil Service Commission. In addition to such other matters relating to the implementation of this order as may be referred to it by the President,

the Committee shall advise the President with respect to any problems arising out of completion of agreements pursuant to sections 6 and 7, and shall receive the proposed standards of conduct for employee organizations and proposed code of fair labor practices in the Federal service, as described in this section, and report thereon to the President with such recommendations or amendments as it may deem appropriate. Consonant with law, the departments and agencies represented on the Committee shall, as may be necessary for the effectuation of this section, furnish assistance to the Committee in accordance with section 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691). Unless otherwise directed by the President, the Committee shall cease to exist 30 days after the date on which it submits its report to the President pursuant to this section.

SEC. 14. The head of each agency, in accordance with the provisions of this order and regulations prescribed by the Civil Service Commission, shall extend to all employees in the competitive civil service rights identical in adverse action cases to those provided preference eligibles under section 14 of the Veterans' Preference Act of 1944, as amended. Each employee in the competitive service shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be processed in an identical manner to that provided for appeals under section 14 of the Veterans' Preference Act. Any recommendation by the Civil Service Commission submitted to the head of an agency on the basis of an appeal by an employee in the competitive service shall be complied with by the head of the agency. This section shall become effective as to all adverse actions commenced by issuance of a notification of proposed action on or after July 1, 1962.

SEC. 15. Nothing in this order shall be construed to annul or modify, or to preclude the renewal or continuation of, any lawful agreement heretofore entered into between any agency and any representative of its employees. Nor shall this order preclude any agency from continuing to consult or deal with any representative of its employees or other organization prior to the time that the status and representation rights of such representative or organization are determined in conformity with this order.

SEC. 16. This order (except section 14) shall not apply to the Federal Bureau of Investigation, the Central Intelligence Agency, or any other agency, or to any office, bureau or entity within an agency, primarily performing intelligence, investigative, or security functions if the head of the agency determines that the provisions of this order cannot be applied in a manner consistent with national security requirements and considerations. When he deems it necessary in the national interest, and subject to such conditions as he may prescribe, the head of any agency may suspend any provision of this order (except section 14) with respect to any agency installation or activity which is located outside of the United States.

Approved—January 17th, 1962.

JOHN F. KENNEDY

THE WHITE HOUSE,
January 17, 1962.

Study Committee Report and Recommendations, August 1969, Which Led to the Issuance of Executive Order 11491

Presidential policies governing relationships between employee organizations and agency management in the executive branch were established by Executive Order 10988 in January 1962.

The order recognized that the efficient administration of Government and the well-being of employees require orderly and constructive relationships between employee organizations and management officials. It noted that employee-management relations in the Federal service should be improved by providing employees an opportunity for greater participation in developing policies and procedures affecting the conditions of their employment, while preserving the public interest as the paramount consideration. To that end, it set forth policies governing the respective rights and obligations of Federal employees, employee organizations, and agency management in pursuing the objective of effective employee-management cooperation in the public service.

Seven years later we have evaluated the experience under Executive Order 10988 and the broad spectrum of views about that experience which were obtained from organizations, agency officials, and nongovernmental experts in labor-management relations in the

covering 1,416,073 employees—52 percent of the total Federal workforce subject to the order.¹ Exclusive recognition now covers 87 percent of all postal employees, 67 percent of wage (blue collar) employees, and 28 percent of salaried (white collar) employees. Also, many thousands more have union representation in 1,087 units of Formal recognition and a similar number of Informal units.

Federal agencies now deal with 130 separate organizations holding exclusive or formal recognition. Labor-management agreements in force, excluding local agreements in the postal field service, total 1,181 and cover 1,175,524 employees or 43 percent of the workforce. Over 800,000 employees have voluntarily authorized payroll deductions for payment of their union dues, in an annual amount in excess of \$23 million.

With the great growth of union representation, it is the opinion of both labor organizations and agency managers that significant changes are needed in program policies if the program is to continue on a constructive course in the future. The size and scope of labor-management relations activity today have produced conditions far different from those to

extensive study conducted by the 1967-68 Presidential Review Committee on Employee-Management Relations in the Federal Service.

We find that the 1962 order produced some excellent results, beneficial to both agencies and employees. This has been acknowledged by virtually all concerned. At the same time, we find growing difficulties in program operations and dissatisfaction on the part of both agencies and unions due to the failure to adjust the policies of Executive Order 10988 to changing conditions in the Federal labor-management relations program.

Accomplishments in the program have been substantial. The new policies have contributed to more democratic management of the workforce and marked improvement in communication between agencies and their employees. Through labor-management consultation and negotiation, improved personnel policies and working conditions have been achieved in a number of areas: The scheduling of hours of work, overtime, rest periods, and leave; safety and industrial health practices; training and promotion policies; grievance handling; and many other matters of significance to employees and management. These gains have been achieved while maintaining a labor-management atmosphere of reasonable harmony.

During the past 7 years, the extent of union representation has grown dramatically. From the 29 exclusive units in TVA and the Department of Interior, covering about 19,000 employees, which existed prior to the order, exclusive union representation has grown to 2,305 exclusive units in 35 agencies

which the policies of the 1962 order were addressed. There are difficulties in maintaining appropriate distinctions in the rights accorded under exclusive, formal, and informal recognition, in dealing fairly with disputes that occur in union organizing activity and in the negotiation and administration of agreements, and in resolving issues that arise because of the variety of agency policies adopted under the decentralized arrangements provided by Executive Order 10988.

The need for program change appears to center in six major areas:

- A central body to administer the program and make final decisions on policy questions and disputed matters.
- Revision in the multiple forms of recognition authorized, and improved criteria for appropriate units and consultation and negotiation rights.
- Clarification and improvements in the status of supervisors.
- An enlarged scope of negotiation and better rules for insuring that it is not arbitrarily or erroneously limited by management representatives.
- Third party processes for resolving disputes on unit and election questions, for investigation

¹ Total employment in the executive branch, as of November 1968, excluding FBI, CIA, NSA, and foreign nationals serving outside the United States. Unit data includes, for the Post Office Department, only the 7 national exclusive units; not included are approximately 24,600 exclusive units in local post offices.

and resolution of complaints under the "Standards of Conduct for Employee Organizations" and "Code of Fair Labor Practices," and for assistance in resolving negotiation impasse problems and grievances.

- Union financial reporting and disclosure.

We believe that desirable changes in these areas can be accomplished without serious disruption to the ongoing program by a new order which builds upon the foundation of experience gained by the parties under Executive Order 10988. The changes should remove many of the current causes of agency and union dissatisfaction and provide a framework for responsible dealings by both sides in the future.

In fashioning the recommendations which follow, we have been mindful of the desirability of preserving the features of Executive Order 10988 which have worked well. We do not propose change for change's sake or in order to adopt some other model for Federal labor-management relations. Our recommendations deal only with deficiencies in the present order that need correction and weaknesses in operations that need strengthening, for overall the program is healthy and thriving. We have been mindful, too, in proposing these adjustments, of the need to provide an equitable balance of rights and responsibilities among the parties directly at interest—the employees, labor organizations, and agency management—and the need, above all, in public service to preserve the public interest as the paramount consideration.

niques and attitudes for the meaningful consideration of issues and problems during the developmental stages of Federal labor-management relations.

While these objectives have been met in part, their accomplishment has not been free of adverse effects. Agencies have found that the lack of authoritative central rulings on policy questions has tended to build up unreasonable pressures on the labor-management relationship. The mere appearance of bias inherent in the one-sided processes prescribed in various provisions of the order and the standards and code has placed an excessive burden on agency decisionmaking in disputed matters. It has brought continued labor organization complaints of basic inequality of status in the arrangements and has strengthened their demands for program supervision by a central authority and for impartial, third-party handling of disputed matters.

The need for a central authority in the program under present conditions has been amply demonstrated. Accordingly, we recommend the establishment of a Federal Labor Relations Council, consisting of the Chairman of the Civil Service Commission as chairman of the Council, the Secretary of Labor, an official of the Executive Office of the President, and such other officials of the executive branch as the President may, from time to time, designate in order to insure effective oversight of the program. The Council should be supported by an adequate professional and administrative staff furnished by the Civil Service Commission.

The Council should be authorized to administer the entire Federal service labor relations program;

RECOMMENDATIONS

A. Central Authority To Administer the Program—The Federal Labor Relations Council

A Federal Labor Relations Council, consisting of the Secretary of Labor, the Chairman of the Civil Service Commission, an official of the Executive Office of the President, and such other officials of the executive branch as the President may, from time to time, designate should be established to oversee the entire Federal service labor relations program, to make definitive interpretations and rulings on any provision of the order, to decide major policy issues, to entertain, at its discretion, appeals from decisions on certain disputed matters, to issue appropriate regulations, and to report to the President on the state of the program with recommendations.

Experience with the program and the recommendations of agencies and unions clearly reflect the need to establish a central authority to administer the program under present conditions.

The 1961 task force concluded that authority to administer the program should be vested in the heads of executive departments and agencies, with various technical guidance and assistance functions assigned to the Department of Labor and the Civil Service Commission. This decision was designed to facilitate accommodation to the wide diversity of labor relations situations among the agencies, to allow flexibility for mutually agreed innovations, to encourage the development of cooperative relations between unions and agencies, and to foster the development of tech-

to make definitive interpretations and rulings, as needed, on any provisions of the order or on major policy issues; to entertain, at its discretion and in accordance with such rules as it may prescribe, appeals from decisions on certain disputed matters; to issue appropriate regulations; and, from time to time, to report to the President on the state of the program and to make recommendations for its improvement.

A central Council of high executive officials composed in this manner would ensure the desired balance of judgment and expertise in the personnel management and labor relations fields. Although armed with full authority, the Council should use calculated restraint in exercising its responsibilities so as to leave the agencies and labor organizations free to work out their differences to the maximum extent possible without damaging the overall program.

B. Recognition and Unit Determination

(1) *The term "labor organization" should be substituted for the term "employee organization" and should be redefined.*

(2) *Informal recognition should be abolished.*

(3) *Formal recognition also should be abolished. Existing formal recognitions should remain in effect until the method and timing for terminating such recognitions is established by regulation of the Federal Labor Relations Council which should be issued within 1 year, after study of the equities involved. No new formal recognitions should be granted after the date of the new order.*

(4) *National formal recognition should be abolished and in lieu thereof national consultation rights should be established. The Federal Labor Relations Council should develop eligibility criteria for granting national consultation rights. National consultation rights should not be granted to an organization for a unit when another organization already holds exclusive recognition at the national level for that unit. A labor organization should have a right of appeal in instances where it believes national consultations rights have been improperly withheld.*

(5) *Exclusive recognition should be made available without membership requirements and determined by use of secret ballot elections in all cases. The 60-percent representative vote rule should be abolished. Only one valid election should be held in any unit or any subdivision of that unit in a 12-month period.*

(6) *In addition to the "community of interest" criterion, an appropriate unit should be one that promotes effective dealings and efficiency of agency operations. A unit should not include guards together with other employees. Criteria for establishing units for national exclusive recognition should be the same as those used for establishing the appropriateness of other units for exclusive recognition.*

Executive Order 10988 took careful note of the long-established policy of the Federal Government to solicit and consider the views of its employees in formulating and revising personnel policy. It was designed to accommodate the wide variations in employee organizations among the agencies and departments. It was structured to provide three types of

lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with Federal agencies concerning grievances, personnel policies, and practices, or other matters affecting the working conditions of their employees.

2. Informal Recognition.

Informal recognition was originally intended to serve as a transitional feature in order not to disrupt existing relationships with small union groups in the early, developmental phases of the program. Reported experience with this form of recognition indicates that while a small number of unions still find it to be a useful tool, a substantial number of both union and agency officials believe it has outlived its usefulness.

In general, union experience has shown that it detracts from the dignity and prestige of exclusive recognition, and that it is inappropriate in units where another organization holds exclusive representation rights. Agency experience also has been largely on the negative side. Federal management officials have found that informal recognition is no longer meaningful; that it encourages fragmentation, creates overlapping relationships, and places an undue administrative burden on management; and that unions with such recognition lack the strength to contribute substantially to stable labor relations.

The body of experience reported demonstrates quite clearly that informal recognition now contributes little toward strengthening employee-management relations in the Federal Government. Its con-

recognition—informal, formal, and exclusive—generally determined according to the extent to which an employee organization or labor organization represented Federal employees in a particular government activity or unit within the activity.

During the 7 years that have elapsed since the order became effective, there has been a strong and steady surge in the organization of Federal employees. In keeping with the dynamics of changing conditions, it is appropriate at this time to reconsider the original policies for recognition and dealings with organizations and to evaluate the experience gained with each type of recognition in terms of its contribution to the development of stable and significant Federal labor relations.

1. *Definition of Qualified Organizations.*

The use of the term “employee organization” and the definition of this term in Executive Order 10988 seem needlessly artificial in the Federal program as it exists today. The terms more commonly in use are “union” or “labor organization.” We recommend adoption of “labor organization” for standard usage in the new order since it directly reflects the relationship of most Federal employee groups with the general labor movement.

To minimize problems of interpretation and to assure employees of the widest possible choice in selecting organizations to represent them, we further recommend the adoption of a simplified definition of the term “labor organization”, patterned upon that contained in the Labor Management Relations Act, as follows: The term “labor organization” means a

tinuance, therefore, is no longer appropriate in a program that has reached a high level of exclusive recognition.

We recommend that the granting of informal recognition be discontinued at this time and that existing informal recognitions be terminated 6 months from the effective date of the new order.

3. *Formal Recognition.*

The 1961 task force recommended that formal recognition be granted to an employee organization when it achieved and maintained a sizable membership, which was determined to be 10 percent of the employees in the unit of recognition. The establishment of this type of recognition was a reflection of what was common practice in labor relations in the Government at that time. Exclusive recognition existed only on a very limited scale and in only two agencies. The prevailing mode of relationship was permissive, unstructured, and consultative.

Formal recognition, thus, permitted continuation of existing relationships. It also gave employees and organizations an opportunity to gather strength to meet the requirements of the then newly-established exclusive recognition. Formal recognition served these purposes well during the early years of the program. However, in recent years it has produced problems which hinder the development of stable and orderly labor relations. It has contributed to excessive fragmentation of units, confusing and overlapping relationships, and difficulties in maintaining an appropriate difference in the rights and obligations under this form of recognition compared with

those prescribed for exclusive. For these reasons, the majority of agencies have indicated that formal recognition should be discontinued.

On the other hand, most unions have recommended its retention. They regard formal recognition as a significant form of assistance in further organizing the work force, particularly because it makes possible obtaining dues withholding privileges.

We have considered the possibility that formal recognition might be retained and its terms be modified so as to alleviate some of the present difficulties. For example, it has been proposed that membership requirements be raised to 30 percent and that consultation rights be limited to the formulation of personnel policy. However, we believe that this proposal would not adequately alleviate present difficulties and could produce additional problems.

The prevailing form of recognition today is exclusive. Over 50 percent of the Federal work force is now covered by exclusive—far greater than the coverage in private employment. Clearly, employees and labor organizations no longer need the special assistance in organizing provided by formal recognition, and its continuance is not warranted in view of the problems involved in administering multiple forms of recognition. Accordingly, we recommend that the granting of formal recognition be discontinued at this time.

Determination of the method and timing of terminating existing formal recognitions is a matter that warrants further review in consideration of the equities involved. We recommend that the Federal Labor Relations Council study this issue in connection with

Currently, the order provides that formal recognition at the national level requires an agency to notify labor organizations granted such recognition of contemplated policy changes affecting all employees. It also provides that such labor organizations may propose changes in existing policies, confer in person with appropriate officials from time to time, and at all times present views in writing on personnel policies and practices and matters affecting working conditions that are of concern to members. And it is the intent of the order that management officials will give careful attention to union proposals.

Experience suggests the need to develop specific standards that would provide greater uniformity in the grant of consultation rights at the national level, and the need to restate the principles and requirements governing them in order to improve the utilization of such rights.

To clarify the concept, we recommend that the terminology “formal recognition at the national level” be discontinued and the term “national consultation rights” be substituted as more descriptive of the intended purpose. To promote greater uniformity, we recommend that the Federal Labor Relations Council, after consultation with agencies and labor organizations, develop eligibility criteria for granting national consultation rights. To insure the availability of such rights, we further recommend that the order provide for appeal in instances where such rights are withheld by an agency.

Consistent with the principle of exclusive recognition, national consultation rights should not be granted in any unit where an organization already

the implementation of other changes recommended in this report and that the Council, within 1 year, issue regulations providing for the termination of all existing formal recognition. Until regulations for general termination are promulgated, existing formal recognitions should continue in effect unless a particular recognition is terminated in the normal course of applying the terms of the new order. No new formal recognitions should be granted after issuance of the new order.

4. *National Consultation.*

There has been some dissatisfaction with the operation of formal recognition at the national level on the grounds that there is confusion as to the rights involved and the process is somewhat ineffective. We find some merit in this criticism. The current provision for granting national formal recognition is couched in broad language and allows a wide latitude of discretion to an agency head in determining the conditions under which recognition will be granted. In the absence of firm guidelines, departments and agencies necessarily have adopted their own standards, and their application have resulted in some inconsistencies. Similarly, the nature and extent of communication with labor organizations and the consideration given to their expressed views has differed among the agencies.

Labor organizations have suggested ways in which the functioning of this type of recognition might be improved. These views indicate a need to express more fully what this concept was intended to accomplish.

holds exclusive recognition at the national level.

We recommend that national consultation rights include all of the following, but not the right to negotiate:

- Notification to the labor organization by the agency of proposed substantive changes in personnel policies that are of concern to employees it represents;
- Opportunity for the labor organization to comment on such proposals;
- Opportunity for the labor organization to suggest changes in personnel policies that are of interest to employees it represents and to have its suggestions receive careful consideration;
- Opportunity for the labor organization to confer in person upon request at reasonable times;
- Opportunity for the labor organization to submit its views in writing at any time.

These changes should facilitate greater understanding of mutual problems and substantially contribute to the improvement of labor relations.

The Council, upon establishing eligibility criteria for national consultation rights, should set a date for abolishing formal recognition at the national level. Until such date, existing rights and benefits of national formal recognition should be continued.

5. *Exclusive Recognition.*

Federal labor-management relations have been productive and the objectives of the order best served in situations where exclusive recognition is held.

However, the 10-percent membership requirement specified by the order for exclusive recognition has not proven significantly beneficial and has created administrative problems in determining eligibility. Similarly, experience has been unsatisfactory with the use of authorization cards, dues withholding authorizations, petitions, and other such materials as the basis for determining whether a majority of the employees in a unit wish to have a labor organization as the exclusive representative. While such signed materials can adequately show the interest of employees in choosing a representative, or in changing or discontinuing a representative, they are not sufficiently conclusive to be the basis for a determination of the will of the majority without an election.

Therefore, we recommend that hereafter in the Federal program the 10-percent membership requirement should be eliminated and that all determinations whether a labor organization is the choice of a majority of the employees in an appropriate unit as exclusive representative should be based upon the results of a secret ballot election. All elections should be conducted under the supervision of the Assistant Secretary of Labor for Labor-Management Relations.

Also, in the administration of the program there has been some confusion as to the interpretation of section 3(b) of the present order, which provides that agencies shall not be required to redetermine majority status in any unit within 12 months after a prior determination of exclusive status has been made with respect to such unit. Questions have arisen as to whether upon losing an election in a unit the los-

of the employees present and eligible to vote in a representation election must participate in order for the election to be considered valid. It is said that the rule violates the rights of the majority and is in conflict with standards for labor relations in the private sector. We believe that the development of sound labor relations will be served better by rescinding the rule and recommend that when an election is held the right of exclusive representation be determined on the basis of selection by a majority of those voting.

6. Criteria for Unit Determination.

The present order's language has been criticized as deficient in that it does not provide adequate criteria for purposes of appropriate unit determination. We are aware of the difficulties encountered in this area of public sector labor relations. We recognize that the element of uniqueness in each situation requires handling appropriate unit determinations on a case-by-case basis, and that such determinations must be tied basically to a clear and identifiable community of interest of the employees involved. However, we recommend that in addition to meeting the "community of interest" criterion, an appropriate unit must be one that promotes effective dealings and efficiency of agency operations. We believe that these additional criteria are essential to insure effective Federal labor-management relations.

In the private sector, a unit is not considered appropriate for the purposes of collective bargaining if it includes together with other employees any individual employed as a guard to enforce against employees and other persons rules to protect property

ing organization or any other labor organization can seek exclusive recognition in a smaller unit; and whether, following a grant of exclusive recognition, employees or an agency can assert that the exclusive representative no longer represents a majority of employees in the unit.

With regard to these questions we believe that:

(1) The criteria established for private sector labor relations prohibiting more than one valid election in a unit or subdivision of that unit in a 12-month period should be followed in the Federal sector.

(2) Once a labor organization has been granted exclusive recognition, it would not contribute to the improvement of stable labor-management relations to permit a question concerning representation to be raised within 12 months after the grant of such recognition, unless there are unusual circumstances which warrant such action.

To deal with these matters, we recommend that the section be amended to provide as a general rule that only one valid election may be held in any unit or any subdivision of that unit in a 12-month period to determine whether any labor organization should become or continue to be recognized as the exclusive representative of employees.

Sixty Percent Representative Vote Rule

There is rather general dissatisfaction with the current rule which requires that at least 60 percent

of the employer or the safety of persons on the employer's premises; nor may a labor organization be certified as the representative of employees in a unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards. Labor-management relations in the Federal service has developed to the point where these same considerations should be applied. We recommend that the new order provide for separate units for guards; and for guards to be represented only by organizations which do not admit to membership, and are not affiliated directly or indirectly with organizations which admit to membership, employees other than guards. These requirements would not affect existing units or representation but should be applied in all unit and representation determinations under the new order.

National Exclusive Recognition

Question has been raised concerning a policy statement issued by the President's Temporary Committee on the Implementation of the Federal employee-management relations program which discouraged the establishment of units for the purpose of national exclusive recognition.

Relatively few problems have arisen in this area in the past seven years. However, at this stage of the program, we feel that determinations as to the appropriateness of such units should be based upon the same criteria as are used in determining the appro-

priateness of any other unit requested for the purpose of exclusive recognition.

When national exclusive recognition has been granted in an appropriate national unit, no recognition should be granted to any other labor organization for employees within the national exclusive unit. This does not preclude consultation or negotiation at any level with representatives of the nationally recognized exclusive union.

C. Status of Supervisors

The term "supervisor" should be expressly defined and supervisors should be considered part of management. Recognition should not be granted for mixed units or for units consisting solely of supervisors. Supervisors should not participate in the management or representation of labor organizations which represent other employees. Agencies should take steps to improve the status of supervisors and associations of supervisors by insuring that they are afforded the opportunity to participate in a meaningful way in the management process and to have their problems carefully considered.

Experience under the order has raised serious questions regarding the status of supervisors in the program. The questions involve issues of definition, the form of recognition, if any, to be granted for units of supervisors, and the area of conflict of interest and possible violation of the Code of Fair Labor Practices which occurs when supervisors participate in organizations of their subordinates.

The 1961 task force expected that the development

in separate units by labor organizations which traditionally represent such supervisors in the private sector, and which hold exclusive recognition for units of such supervisors on the date of the new order.

Any supervisor who has a union dues withholding authorization in force at the time he is excluded from a formal or exclusive unit by action of the foregoing recommendation should be permitted to continue his dues authorization in effect, if he desires to do so, so long as his authorization otherwise meets the conditions of the organization's dues withholding agreement with the agency.

We believe that organizations of supervisors should have an opportunity to consult on their problems with higher management officials. Their relationship should be one which minimizes the potential for friction and conflict within the ranks of management, which fosters free communication and consultation between supervisors and their representatives and higher management officials, and which maintains a clear concept of mutual responsibility within management ranks. Agencies should take steps to assure that supervisors and associations of supervisors are afforded the opportunity to participate in a meaningful way in the management process and have their problems carefully considered.

Supervisory associations desiring to be afforded the opportunity to consult with Federal management officials on behalf of their membership should not be affiliated with any labor organization or federation of such organizations and should have no relationship to any organization which holds formal or exclusive recognition for nonsupervisory employees.

of employee-management relations in the Federal service under a formal program would have the effect of making the role of the Government manager clearer and better defined, and it welcomed this prospect.

We are equally concerned with this objective. We view supervisors as a part of management, responsible for participating in and contributing to the formulation of agency policies and procedures and contributing to the negotiation of agreements with employees. Supervisors should be responsible for representing management in the administration of agency policy and labor-management agreements, including negotiated grievance systems, and for expression of management viewpoints in daily communication with employees. In short, they should be and are part of agency management and should be integrated fully into that management. We are also concerned that recognition granted for units of supervisors not compromise in any way the free choice by subordinate employees of their own representatives.

For these reasons we recommend that recognition should not be granted for any unit which includes supervisors, or managerial executives, and that supervisors should not participate in the management or representation of labor organizations granted recognition under the order. Such persons should be excluded from current units of formal or exclusive recognition and from coverage by negotiated agreements not later than 1 year from the effective date of the new order.

Where justified by long established practice in a particular industry, supervisors may be represented

The Civil Service Commission should authorize agencies to enter into dues withholding agreements with managerial or supervisory associations with which they establish official relationships.

For the sake of clarity and uniformity, we recommend adoption of a definition of "supervisor" similar to that found in the private sector.

Finally, we recommend that the Federal Labor Relations Council, within 2 years, provide for a review of the arrangements established by agencies for dealing with supervisors and associations of supervisors on their problems and, upon the basis of such review, make such further recommendations to the President as it deems appropriate.

D. Resolution of Disputes on Unit, Representation, Unfair Labor Practice and Standards of Conduct Matters

The Assistant Secretary of Labor for Labor-Management Relations should issue decisions in unit, representation, unfair labor practice, and standards of conduct of labor organization cases. Either party should have a limited right of appeal on major policy issues to the Council.

Under the present order, the Assistant Secretary of Labor for Labor-Management Relations assists agencies and unions by providing third-party determinations on unit and representation disputes through the use of advisory arbitration. This feature of the program has worked well.

However, no comparable procedures have been available for third-party involvement in resolving

Case Handling Procedures

disputes relating to unfair labor practice charges and alleged violations of the standards of conduct for employee organizations. Nor is there any provision for the conduct of representation elections by a party not in interest in the results. Both agencies and unions have identified the lack of third-party process in these fundamental areas of labor relations as serious deficiencies in program arrangements.

We believe that the program would be improved materially by having all administrative disputes of this nature resolved by an official who is independent of the parties and is assigned this responsibility by the President. Impartial action on these matters is necessary for the fair and effective conduct of labor relations in the Federal service.

Accordingly, we recommend that the Assistant Secretary of Labor for Labor-Management Relations be assigned responsibility for the handling of complaints concerning unfair labor practices on the part of either labor organizations or agency representatives and alleged violations of the standards of conduct for labor organizations, and for the supervision of representation elections, in addition to his present responsibility for unit and representation disputes. The Assistant Secretary should be authorized to issue decisions to agencies and labor organizations in all cases, subject to a limited right of appeal on major policy issues by either party to the Federal Labor Relations Council, and to refer cases involving major policy questions to the Council for decision or general ruling.

The assignment of responsibility for the resolution

1. *Unit Cases.*

In any case where the Assistant Secretary determines that a hearing is necessary, he should designate a hearing officer to conduct the hearing and to forward to him the record. After considering the record and any briefs filed, the Assistant Secretary should issue and publish his decision.

2. *Representation Cases.*

Unresolved questions such as those concerning the timeliness and validity of an election request or the eligibility of parties to participate in an election should, upon request of a party at interest, be decided by the Assistant Secretary. Where he determines an election to be appropriate, he should appoint persons responsible to him for the supervision of the election. Such persons should have authority, acting on behalf of the Assistant Secretary, to decide details of election procedures, to supervise the election, and to report the results to him. Representation and election issues which the Assistant Secretary determines warrant hearings should be heard by persons appointed by him to make recommendations to him. Election certifications should be issued by the Assistant Secretary.

3. *Unfair Labor Practice Cases.*

Alleged unfair labor practices other than those subject to an applicable grievance or appeals procedure should be investigated by the agency and labor organization involved and informal attempts to re-

of administrative disputes in this manner will benefit both agencies and unions and bring impartiality, order, and consistency to the process. As decisions are issued, a body of precedent will be developed on which interested parties can draw for guidance in avoiding attitudes or practices that engender conflict in the labor-management relationship.

In the performance of his responsibility, the Assistant Secretary should be authorized to request the services and assistance of employees of such agencies as he may deem appropriate.

The Assistant Secretary should have the authority to require agencies and labor organizations to cease and desist from conduct violative of the order, and to require them to take such affirmative corrective action as he deems appropriate to effectuate the policies of the order. Enforcement of decisions of the Assistant Secretary should be achieved through (1) publishing and appropriate posting of decisions; (2) the required reporting by the respondent (agency or labor organization), within a specified period, to the Assistant Secretary of the corrective action taken; and (3) where the Assistant Secretary finds that necessary action has not been taken, referral of the matter to the Council for appropriate action. In the event questions arise involving the Department of Labor, the Assistant Secretary's responsibility should be performed by a member of the Civil Service Commission designated by the Chairman of the Commission.

solve the complaints should be made by the parties. If informal attempts are unsuccessful in disposing of the complaints within a reasonable period of time, both parties may agree to stipulate the facts to the Assistant Secretary and request a decision. In lieu of a joint request, either party may request the Assistant Secretary to issue a decision in the matter. If the Assistant Secretary finds that the matter at issue is subject to an applicable grievance or appeals procedure, or that a reasonable basis for the complaint has not been established, or that a satisfactory offer of settlement has been made, he may dismiss the complaint. If he finds, based on the allegations and the report of investigation of the parties, that there is a reasonable basis for the complaint, and that no satisfactory offer of settlement has been made, he may appoint a hearing officer to hold a hearing and report findings of fact and recommendations including, where appropriate, remedial action to be taken and notices to be posted. After considering the hearing officer's recommendation and any exceptions filed, the Assistant Secretary should issue and publish his decision.

4. *Standards Cases.*

Alleged noncompliance with the standards of conduct by a labor organization seeking recognition and alleged violation of the standards by a labor organization holding recognition should be investigated by the Assistant Secretary. Where investigation establishes a reasonable basis for believing that the standards have not been met or have been violated

and no appropriate corrective action has been taken by the labor organization, the Assistant Secretary may appoint a hearing officer to hold a hearing and to report findings of fact and recommendations. After considering any exceptions filed, the Assistant Secretary should issue and publish his decision. Where the labor organization has reasonable internal procedures designed to adjust the complaints of its members, the Assistant Secretary should not act until the member has exhausted such procedures, provided the organization processes the complaint in a reasonably expeditious manner.

If the Assistant Secretary finds that the standards of conduct have been violated, he may stipulate the remedial action required to be taken and should have authority to enforce such remedial action by requiring the posting of appropriate notices to members, by the issuance of public reports, or, in appropriate cases, by directing the suspension or revocation of the dues withholding privilege or the withholding, suspension, or revocation of recognition.

The role of the Assistant Secretary of Labor for Labor-Management Relations outlined above will provide impartial procedures and assistance for the disputed matters named and will utilize experienced and trained staff who are familiar with the laws and policies of government.

E. Negotiation and Administration of Agreements

(1) *The scope of negotiation should be clarified by providing for the negotiation of appropriate arrange-*

authority outside the agency or by the terms of a controlling agreement at a higher agency level). When an agreement is renegotiated or before it is extended it should be brought into conformance with current agency policies and regulations.

(6) *Agencies should not negotiate agreements with labor organizations which would abridge the right of employees to join or not join a labor organization, or which would require employees to pay money to the organization, other than through voluntary dues withholding, pursuant to a written authorization.*

(7) *Employees representing a labor organization should not be on official time when negotiating an agreement with agency management.*

1. Areas Excluded from Negotiations.

Section 6(b) of the present order includes a proviso that the obligation to negotiate does not extend to "such areas of discretion and policy as the mission of an agency, its budget, its organization, and the assignment of its personnel, or the technology of performing its work."

Generally, labor organizations have stated that they are not concerned with the mission of an agency, its budget, and its organization because these matters do not relate to personnel policies or working conditions. They are, however, concerned with the assignment of personnel and the technology of performing work because personnel actions in these areas directly affect the jobs of employees, particularly those who are being displaced by automation or other technological changes. While recognizing the right

ments for employees adversely affected by the impact of realignment of work forces or technological change.

(2) Except where negotiations are conducted at the national level, agencies should increase, where practical, delegation of authority on personnel policy matters to local managers to permit a wider scope for negotiations. Procedures should be established to resolve disputes over negotiability questions.

(3) Agencies and labor organizations should be free to engage in joint negotiations on a multiunit basis. The Council should study the question of further guidance on this matter.

(4) The requirement for agency approval of negotiated agreements is necessary and should be continued. However, approval or disapproval should be based solely upon the agreement's conformity with laws, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulations), and with the regulations of other appropriate authorities. A local agreement subject to a national or other controlling agreement at a higher level should be approved in accordance with the procedures provided in the controlling agreement or, in the absence of such procedures, in accordance with agency regulations on the subject.

(5) Administration of an agreement should be governed by laws, regulations of appropriate authorities, and the published agency policies and regulations in existence at the time the agreement was approved (unless the agency has granted an exception to a policy or regulation or it subsequently is required to be changed by law or other appropriate

of an agency to assign personnel or to introduce new machines and working processes, some labor organizations want to assure the right of exclusive representatives to negotiate protective arrangements for employees adversely affected by personnel policies, changing technology, and partial or entire closure of an installation.

The 1961 task force, in its discussion of this matter, noted that major reorganizations or changes in work methods, while not negotiable themselves, will involve implementation problems that may be negotiable—such as promotion, demotion, and training procedures. Experience has shown that many agencies and labor organizations have negotiated agreements dealing with the impact of such actions on employees.

We believe there is need to clarify the present language in section 6(b) of the order. The words "assignment of its personnel" apparently have been interpreted by some as excluding from the scope of negotiations the policies or procedures management will apply in taking such actions as the assignment of employees to particular shifts or the assignment of overtime. This clearly is not the intent of the language. This language should be considered as applying to an agency's right to establish staffing patterns for its organization and the accomplishment of its work—the number of employees in the agency and the number, type, and grades of positions or employees assigned in the various segments of its organization and to work projects and tours of duty.

To remove any possible future misinterpretation of the intent of the phrase "assignment of its personnel," we recommend that there be substituted in

a new order the phrase "the number of employees, and the numbers, types and grades of positions, or employees assigned to an organizational unit, work project or tour of duty". As further clarification, a sentence should be added to this section providing that agencies and labor organizations shall not be precluded from negotiating agreements providing for appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

2. Delegation of Authority within Agencies and Procedures for Resolving Negotiability Questions.

Much of the complaint by labor organizations about the operations of the program centers on claims that local managers do not have sufficient delegation of authority on personnel policy matters to permit effective negotiations at the installation level. It is claimed that agencies through their regulatory authority have narrowed unduly the range of negotiable matters, thereby limiting the area for bilateral negotiations. The organizations have recommended that all matters should be considered negotiable, as long as they are not inconsistent with present and future laws, thereby increasing the ability of local management officials to engage in meaningful collective bargaining.

We firmly believe that agency regulatory authority must be retained, but fruitful negotiations can take place only where management officials have sufficient authority to negotiate matters of concern to employees. Therefore, except where negotiations are

Where the dispute as to negotiability involves interpretation of a national or other controlling agreement at a higher level to which the local negotiations are subject, the dispute should be resolved in accordance with procedures contained in such agreement, or in accordance with agency regulations in the absence of negotiated procedures.

Issues as to whether a proposal advanced during negotiations, either at the local or national level, is not negotiable, because the agency head has determined that it would violate any law, regulation or rule established by appropriate authority outside the agency may be referred to the Federal Labor Relations Council for decision. Similarly, issues as to whether an agency's regulations are contrary to the new order, to interpretations of the order issued by the Council, or to applicable law or regulations of appropriate authorities, should be referred to the Council for decision.

A labor organization should be permitted to file an unfair labor practice complaint when it believes that a management official has been arbitrary or in error in excluding a matter from negotiation which has already been determined to be negotiable through the processes described in the preceding paragraphs.

In summary, we believe that much can be done within agencies to improve the negotiation process. The procedures recommended would give exclusively recognized organizations a way of resolving, during negotiations, questions as to whether a matter proposed for negotiation is in conflict with law, applicable regulations or a controlling agreement.

conducted at the national level, agencies should increase, where practicable, delegations of authority on personnel policy matters to local managers to permit a wider scope for negotiation.

Agencies should not issue over-prescriptive regulations, and should consider exceptions from agency regulations on specific items where both parties request an exception and the agency considers the exception feasible.

Where proposals for changes in agency regulations are made through the national consultation process, and by means of granting exceptions, agencies, to the extent possible, should attempt to increase the authority of local managers to accomplish the purposes of the order consistent with the public interest and the maintenance of the efficiency of the Government operations entrusted to them.

When issues arise as to the particular scope and specificity of agency regulations which limit the extent of matters negotiable at the local level, such issues should be resolved through consultation with organizations granted national consultation rights. Where disputes develop in connection with negotiations at the local level as to whether a labor organization proposal is contrary to law or to agency regulations or regulations of other appropriate authorities and therefore not negotiable, the labor organization should have the right to refer such disputes immediately to agency headquarters for an expeditious determination. A headquarters determination in interpretation of the agency's regulations should be final.

3. *Multiunit Negotiations.*

In addition to the means recommended above for increasing the scope of negotiations within delegated authority, an agency and a labor organization or group of labor organizations should be free to engage in joint negotiations covering any combination of units at any level of the agency where the parties are in agreement that such an arrangement would provide for more productive negotiations. Any multiunit agreement negotiated at the headquarters level of an agency, of course, would preclude any need for "national consultation rights" for the employees covered by such an agreement.

Where the parties are unable to reach agreement on a proposed combination of units for purposes of negotiations, the normal procedures for establishing a single appropriate unit for exclusive recognition are available.

We recognize that complex questions of multiunit and joint bargaining are emerging which influence the structure of collective bargaining in the private sector, and therefore recommend that the Council institute a study of this aspect of collective bargaining to determine whether further guidance on this matter is warranted in the Federal program.

4. *Approval of Agreements.*

Some objections have been raised by union representatives to the current requirement that a negotiated agreement must be approved by the agency head or his designated representative. It has been suggested that the requirement be eliminated completely,

or that limitations be placed on the scope of review (to preclude "second-guessing" on substantive issues) and on the length of time allowed for completion of review and subsequent approval or disapproval.

Where the approval process has resulted in unwarranted delay, or in unnecessary or arbitrary revision of locally negotiated agreements on the basis of disagreement with the language or substance of what had been negotiated, union complaints seem justified. We are of the opinion, however, that with the development of greater sophistication in administering the program such situations may disappear entirely in the future.

We believe that the requirement for agency approval is necessary and should be continued. Such requirement on the part of both management and labor is not uncommon in labor relations in the private sector. Also, in the public sector there are already a number of national unions which require higher level approval of agreements negotiated by local bodies.

We are convinced, however, that some limitations should be incorporated into the approval process. In this connection, we recommend that approval or disapproval be based solely upon the agreement's conformity with laws, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation), and with the regulations of other appropriate authorities. A local agreement subject to a national or other controlling agreement at a higher level should be approved in accordance with the procedures provided in the controlling agreement, or in the absence of such

provision in a negotiated agreement relating to payment of money to an organization must be based on voluntary, written authorization by the individual employee.

7. Use of Official Time by Employees Representing a Labor Organization in Negotiating an Agreement.

The present order provides that agencies may require that negotiations with an employee organization which has been accorded exclusive recognition be conducted during the nonduty hours of the employee organization representatives involved in such negotiations. This permissiveness has led to a wide divergence of practice among the agencies in granting official time for employees serving as union negotiators. Some agencies grant official time; others prohibit it or limit the amount of time that is to be used. This has resulted in inconsistent treatment of employees similarly situated. In addition, the grant of official time has led in some instances to the protraction of negotiations over a period of many months.

We believe that an employee who negotiates an agreement on behalf of a labor organization is working for that organization, and should not be in a duty status when so engaged.

We recommend that the new order provide that employees serving as labor organization representatives not be carried in a duty status when engaged in the negotiation of an agreement with agency management.

procedures, in accordance with agency regulations on the subject.

5. Conditions Governing Administration of an Agreement and its Renegotiation or Extension.

Some union representatives allege that agencies have changed their regulations to nullify clauses of agreements already negotiated and approved at the national level.

We believe that the administration of an agreement should be governed by published agency policies and regulations in existence at the time the agreement was approved (unless the agency has granted an exception to a policy or regulation) and by any changes in policies and regulations subsequently required by law or other appropriate authority outside the agency, or authorized by the terms of a controlling agreement at a higher agency level.

It should be understood, however, that an agreement must be brought into conformance with current agency policies and regulations at the time it is renegotiated or before it is extended, except where specific exceptions are granted or renewed.

6. Negotiation of an Agreement Involving Payment of Money to a Labor Organization.

The present order has provided that employees shall have the right, freely and without fear of penalty or reprisal, to join and assist any employee organization or to refrain from any such activity. We recommend that this right remain unimpaired.

To avoid any misunderstanding on this subject, we recommend that the new order provide that any

F. Procedures for Resolution of Impasses in Negotiations

(1) *The Federal Mediation and Conciliation Service should extend its services to the Federal labor relations program.*

(2) *A Federal Service Impasses Panel should be established to assist the parties if they are unable to reach agreement through other available means. The panel should be authorized to provide factfinding on the issues and make recommendations to the parties as a basis for settlement. In the event all issues are not resolved by the parties within 30 days, the panel should have the authority to take whatever action it deems necessary to bring the dispute to settlement.*

The present order lacks any express procedures for use if an impasse is reached in negotiations, other than a prohibition against the use of arbitration. The President's 1961 task force expressed the concern that in the developing stages of employee-management relations, the availability of arbitration would have the effect of escalating too many impasses to third-party settlement. For this reason, the task force opposed the adoption of arbitration and suggested instead that agencies devise other methods of impasse resolution for adoption through negotiation.

We believe that the task force's concern is still valid. The ready availability of third-party procedures for resolution of negotiation impasses could cause the undesired escalation effect whereby the parties, instead of working out their differences by hard, earnest and serious negotiation, continually would take their problems to a third party for settle-

ment. Therefore, we believe that arbitration or fact-finding with public recommendations should not be used by the parties unless authorized by governmental authority separate from the agency and union which are negotiating. It is generally recognized that agreements voluntarily arrived at by the parties are the hallmark of the industrial democracy enjoyed in this country.

Various methods have been used by departments and agencies under the present order in helping to bring about settlements in negotiations. They include joint factfinding committees, referral to higher authority within the agency and the organization and, to a limited extent, mediation by private third parties. Each of these has proved its usefulness and should continue to be utilized.

In recent years, the Federal Mediation and Conciliation Service has provided mediation services to the Federal program on a limited, experimental basis. The success of its efforts has amply demonstrated that use of the Service's facilities in the Federal labor-management relations program should be expanded to the maximum extent practicable. To this end, we recommend that the Federal Mediation and Conciliation Service be authorized to extend full services to the Federal program, subject to such necessary rules as it may prescribe. It should provide the same type of mediation assistance that it offers in the private sector, without charge to either party, including preventive mediation services. The parties to an impasse should, of course, continue to be permitted to agree to mediation on a cost-sharing basis by persons of their choice other than Federal Media-

impasse and decide whether negotiations should be continued, whether other voluntary methods should be utilized, or whether the impasse is of such nature that it is appropriate for the panel to assert jurisdiction. Upon determination that it should exercise jurisdiction, the panel should have the authority to determine whether to submit the matter to a factfinder or panel of factfinders and to determine and define the specific issues to be subject to factfinding. The factfinder or factfinding body would conduct a hearing and make findings on (1) the efforts made by the parties to reach agreement on the unresolved issues; (2) the history of the current negotiations, including the initial positions of the parties and the nature of the tentative agreement reached on those issues which have been resolved; (3) the context within which the negotiations have taken place; and (4) other matters relevant to the impasse. The cost of the factfinding proceedings should be shared by the parties.

The factfinding body would report its findings to the panel, which would evaluate the impasse on the basis of the findings and issue its recommendations to the agency head and organization as a basis for settlement of the impasse by them. The parties should be required to report back to the panel as to the status of the impasse within 30 days of receipt of the panel's recommendations. In the event the parties have not resolved all issues in dispute, the panel, after consideration of the reports of the parties, should take whatever action it deems necessary to bring the dispute to settlement.

tion and Conciliation Service commissioners.

We believe, further, that at this stage of the Federal program additional governmental assistance should be made available when earnest efforts by the parties to reach agreement through direct negotiations, referral to higher authority within the department or agency and the national office of the labor organizations, and the services of the Federal Mediation and Conciliation Service or other third-party mediation have been unavailing in bringing the parties to the point of full agreement.

In such cases, either or both parties should have the right to seek settlement through a governmental body established for that purpose. Accordingly, we recommend that a three-member Federal Service Impasses Panel be established and authorized, in its discretion, to assist in resolving any negotiation impasse, utilizing primarily the technique of factfinding with recommendations to form the basis for further negotiation and settlement by the parties.

In the nature of its function, the Federal Service Impasses Panel should be above all an impartial body, each of whose members will be concerned with the public interest rather than with the special interests of either party to an impasse. It should be composed of three members, appointed by the President, one of whom should be designated as chairman. The members should be chosen from persons who are familiar with the Federal Government, or knowledgeable in public personnel administration, or knowledgeable in labor-management relations.

Subject to such rules as it may prescribe, the panel should have the authority to review the nature of the

G. Grievances and Interpretation of Agreements

A negotiated grievance procedure may properly be made the exclusive procedure available to employees in the unit covered by an agreement. Arbitration should be made available for the resolution of disputes over the interpretation and application of an agreement. Exceptions to arbitrators' decisions should be sustained only on grounds similar to those applied by the courts in private sector labor-management relations. Procedures for considering exceptions to decisions should be established by the Council.

The Civil Service Commission is nearing completion of a study of grievance and appeals systems in the Federal service. It presently is consulting with agencies and labor organizations and with veteran, legal and other organizations, and employee representatives on proposals for changes which would increase promptness, effectiveness and equity to all concerned.

The Commission's study initially centered on the feasibility of consolidating all grievance and appeals procedures in a single system. This approach was responsive to earlier recommendations by labor organizations and others for the development of arrangements, to the extent feasible under existing law, providing a single employee grievance and appeals procedure in agencies comparable to grievance systems used in private employment. The Commission found that it was impractical to combine grievance and appeal procedures in this manner due to the extensive and varied appeal rights available to Federal employees by law. A single system which met all

legal requirements for adverse action appeals, for example, would be burdensome and inappropriate for the majority of employee grievances on working conditions and lesser disciplinary matters, which now can be resolved more simply and directly through negotiated grievance procedures comparable to those in private employment. The proposals presently under consideration are aimed at improving separately the agency adverse action appeals system and the grievance system.

Major improvements would be possible under the proposed simplified standards for negotiated grievance procedures. They would permit the elimination, for all employees covered by an agreement, of the dual "union system" and "agency system" that presently exists in some agencies. We find merit in this simplification. We believe that negotiated grievance procedures, so long as they provide to an employee all rights prescribed by Commission standards, may properly be adopted by the agency and labor organization as the exclusive procedure available to all employees in the unit covered by the agreement.

In addition, the current proposals would permit the parties to an agreement to include arbitration procedures for the resolution of disputes over the interpretation and application of the agreement as well as for the resolution of employee grievances.

We find that arbitration of grievances has worked well and has benefited both employees and agencies. Many thousands of grievances have been settled without referral to arbitration. In those instances in which the grievance was referred to arbitration, the arbitrators' decisions have been accepted most of the

There is a disparity in treatment among organizations representing Federal employees with respect to the reporting and disclosure of financial transactions and administrative practices. Some organizations representing such employees are required to file reports while others are free from this requirement.

The 1961 task force pointed out that if Federal employee organizations are to be given a more significant role, they must expect to assume greater responsibilities. At that time, it suggested the extension to public employee organizations of standards of conduct established for trade unions in the private sector, such as reporting and disclosure of financial transactions and administrative practices. Accordingly, the standards of conduct for employee organizations were developed and issued in 1963.

While the 1963 standards incorporated most of the substantive provisions of the private sphere, they do not include a requirement for financial and other reporting and disclosure, or for suitable bonding of organization officers and employees who handle money paid into the organization by its members, or any standards for trusteeships or elections.

Under the program established by Executive Order 10988, labor organizations of Federal employees have grown significantly in size and strength, and all should meet the same requirements with respect to reporting and disclosure, bonding and administrative practices as their counterparts in the private sector.

To bring uniformity of treatment to all labor organizations representing Federal employees, we recommend that the Assistant Secretary of Labor for

time. There have been some few instances in which agencies have rejected or modified the decision.

Labor organizations understandably object to an agency's unilateral right in this regard. We feel that arbitrators' decisions should be accepted by the parties. Challenges to such awards should be sustained only on grounds similar to those applied by the courts in private sector labor-management relations, and procedures for the consideration of exceptions on such grounds should be developed by the Council. Such exceptions should be taken expeditiously by notifying the other party, the agency head, and the national president of the organization of the full nature of the objections to the decision. If the agency and the organization cannot resolve the matter within a reasonable period of time, either party should have the right to appeal to the Council in accordance with its rules. The Council, after a review of the record, briefs and other information, then should issue its decision and publish it in the Federal Register.

H. Standards of Conduct for Labor Organizations

The Assistant Secretary of Labor for Labor-Management Relations should add to the present standards of conduct by promulgating rules for financial and other reporting and disclosure, bonding requirements, and standards for trusteeships and elections for labor organizations having recognition under the new order.

Labor-Management Relations add to the present standards of conduct by promulgating rules and regulations for reporting and disclosure of financial transactions and administrative practices, bonding requirements, and standards for trusteeships and elections for labor organizations having recognition under the new order.

I. Code of Fair Labor Practices

(1) *Labor organizations should have the same obligation as agency management to consult, confer, or negotiate as required by the order.*

(2) *The code provision on strikes and picketing should be amended to clarify the language relating to prohibited picketing and to reflect the responsibility of a labor organization to take affirmative action to prevent or stop any strike or prohibited picketing by its locals, affiliates, or members.*

In reviewing the Code of Fair Labor Practices, we find that while agency management is required to hear, consult, confer or negotiate with employee organizations, there is no similar requirement on the part of organizations. In view of our recommendations which delineate more fully the rights and obligations of agency and organization representatives and provide for impartial procedures in disputes, we recommend that the code be amended to place upon labor organizations the same obligations as required for management in the area of consulting, conferring, and negotiating.

In this connection, we believe that the concept of "good faith bargaining," which is inherent in the program, should be expressly stated in the new order as the obligation of an agency and a labor organization to meet at reasonable times and confer in good faith with respect to appropriate matters.

We find that there has been some difficulty in interpreting the "related picketing" language of the code section which prohibits a labor organization from: "Calling or engaging in any strike, work stoppage, slowdown, or related picketing engaged in as a substitute for any such strike, work stoppage or slowdown, against the Government of the United States." The wording of this provision is unnecessarily obscure and confusing. We recommend that it be revised to state clearly and simply its intended meaning, which is to prohibit the use of picketing directed at an employing agency by a labor organization in a labor-management dispute.

Labor organizations generally have accepted their responsibility for adhering to the strike and picketing prohibitions of the code, and for taking appropriate action to ensure conformance with these prohibitions by any of their locals, lodges, affiliates, or members. However, in view of recent changes in the constitutions of some labor organizations involving the dropping of a no-strike pledge, an addition is needed to the strike and picketing prohibitions in order to ensure that there is no misunderstanding as to the responsibility which accompanies union recognition. The section should make clear that a recognized labor organization may not condone a strike

with the costs of the withholding paid by the organization. The regulations should include provision which allows the employee to revoke his allotment authorization at stated 6-month intervals. An employee's allotment should be discontinued when the agreement between the agency and labor organization is terminated or ceases to be applicable to the employee, or he is suspended or expelled from membership in the organization.

K. Increased Coverage of the Order

Federal employees paid from nonappropriated funds should be covered by the new order.

It has been suggested that the coverage of the order be expanded to include Federal employees paid from nonappropriated funds.

While several agencies through administrative action have afforded nonappropriated fund employees the benefits of Executive Order 10988, we recommend that such employees should be included specifically in the new order.

L. Labor Relations Employees

Employees of agencies which administer labor relations programs should not be represented by any labor organization which represents other groups of employees under that program.

Federal employees responsible for administering the provisions of labor relations programs could face problems of conflict of interest if they were repre-

or prohibited picketing by any member or group of members within its organization which it represents under the order. Officials of the organization have the duty, in view of the procedures provided for peaceful and orderly resolution of disputes and differences between employees and management, to exercise all organizational authority available to them to prevent or to stop any such action by the organization or any of its locals, affiliates, or members.

To implement these recommendations, the code section in question should be revised so as to provide that a labor organization shall not engage in a strike, work stoppage, or slowdown; picket an agency in a labor-management dispute; or condone any such activity by failing to take affirmative action to prevent or stop it.

J. Dues Withholding

The voluntary dues withholding program should be continued.

Payroll deduction of labor organization dues in accordance with voluntary employee allotments has worked well as a union security measure in the Federal program, and this form of union security should be continued in order to foster stability in labor-management relations.

Accordingly, we recommend that the Civil Service Commission continue to provide by regulation for dues withholding based upon individual employee authorizations. Agencies and labor organizations which hold formal or exclusive recognition should be permitted to negotiate agreements for the voluntary withholding of the regular dues of the organization,

sented by a labor organization which competes with other labor organizations for benefits under the program. Employees of the Department of Labor and the Civil Service Commission responsible for administering the Federal labor relations program, and for example, employees of the National Labor Relations Board responsible for administering the Labor Management Relations Act could fall in this category.

We recommend that such employees should not be represented by any labor organization which represents other groups of employees under the labor relations program(s) or law(s) which the agency administers.

M. Availability of Information

The Department of Labor and the Civil Service Commission should develop programs for the collection and dissemination of information appropriate to the needs of agencies, labor organizations, and the public.

Both unions and agencies have expressed the need for the collection, analysis, and publication of statistical data to assist in the negotiation process, and the need for dissemination of relevant information concerning the program and its operation.

We agree that availability of additional information of this type would be beneficial to the Federal labor relations program. We recommend that steps be taken by the Department of Labor and the Civil Service Commission to develop systematic and continuing programs for the collection and dissemination of information appropriate to the needs of agencies, labor organizations and the public.

Executive Order 11491

WHEREAS the public interest requires high standards of employee performance and the continual development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency; and

WHEREAS the well-being of employees and efficient administration of the Government are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment; and

WHEREAS the participation of employees should be improved through the maintenance of constructive and cooperative relationships between labor organizations and management officials; and

WHEREAS subject to law and the paramount requirements of public service, effective labor-management relations within the Federal service require a clear statement of the respective rights and obligations of labor organizations and agency management:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including sections 3301 and 7301 of title 5 of the United States Code, and as President of the United States, I hereby direct that the following policies shall govern officers and agencies of the executive branch of the Government in all dealings with Federal employees and organizations representing such employees.

SECTION 1. Policy. (a) Each employee of the executive branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in this Order, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress, or other appropriate authority. The head of each agency shall take the action required to assure that employees in the agency are apprised of their rights under this section and that no interference, restraint, coercion, or discrimination is practiced within his agency to encourage or discourage membership in a labor organization.

(b) Paragraph (a) of this section does not authorize participation in the management of a labor organization or acting as a representative of such an organization by a supervisor, except as provided in section 24 of this Order, or by an employee when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

SEC. 2. Definitions. When used in this Order, the term—

(a) "Agency" means an executive department, a Government corporation, and an independent establishment as defined in section 104 or title 5, United States Code, except the General Accounting Office;

(b) "Employee" means an employee of an agency and an employee of a nonappropriated fund instrumentality of the United States but does not include, for the purpose of formal or exclusive recognition or national consultation rights, a supervisor, except as provided in section 24 of this Order;

(c) "Supervisor" means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to evaluate their performance, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(d) "Guard" means an employee assigned to enforce against employees and other persons rules to protect agency property or the safety of persons on agency premises, or to maintain law and order in areas or facilities under Government control;

(e) "Labor organization" means a lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees; but does not include an organization which—

(1) consists of management officials or supervisors, except as provided in section 24 of this Order;

(2) asserts the right to strike against the Government of the United States or any agency thereof, or to assist or participate in such a strike, or imposes a duty or obligation to conduct, assist or participate in such a strike;

(3) advocates the overthrow of the constitutional form of government in the United States; or

(4) discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin;

(f) "Agency management" means the agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under this Order;

(g) "Council" means the Federal Labor Relations Council established by this Order;

(h) "Panel" means the Federal Service Impasses Panel established by this Order; and

(i) "Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Relations.

SEC. 3. *Application.* (a) This Order applies to all employees and agencies in the executive branch, except as provided in paragraphs (b), (c) and (d) of this section.

(b) This Order (except section 22) does not apply to—

(1) the Federal Bureau of Investigation;

(2) the Central Intelligence Agency;

(3) any other agency, or office, bureau, or entity within an agency, which has as a primary function intelligence, investigative, or security work, when the head of the agency determines, in his sole judgment,

that the Order cannot be applied in a manner consistent with national security requirements and considerations; or

(4) any office, bureau or entity within an agency which has as a primary function investigation or audit of the conduct or work of officials or employees of the agency for the purpose of ensuring honesty and integrity in the discharge of their official duties, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with the internal security of the agency.

(c) The head of an agency may, in his sole judgment, suspend any provision of this Order (except section 22) with respect to any agency installation or activity located outside the United States, when he determines that this is necessary in the national interest, subject to the conditions he prescribes.

(d) Employees engaged in administering a labor-management relations law or this Order shall not be represented by a labor organization which also represents other groups of employees under the law or this Order, or which is affiliated directly or indirectly with an organization which represents such a group of employees.

ADMINISTRATION

SEC. 4. *Federal Labor Relations Council.* (a) There is hereby established the Federal Labor Relations Council, which consists of the Chairman of the Civil Service Commission, who shall be chairman of the Council, the Secretary of Labor, an official of the Executive Office of the President, and such other officials of the Executive branch as the President may designate from time to time. The Civil Service Commission shall provide services and staff assistance to the Council to the extent authorized by law.

(b) The Council shall administer and interpret this Order, decide major policy issues, prescribe regulations, and from time to time, report and make recommendations to the President.

(c) The Council may consider, subject to its regulations—

(1) appeals from decisions of the Assistant Secretary issued pursuant to section 6 of this Order;

(2) appeals on negotiability issues as provided in section 11(c) of this Order;

(3) exceptions to arbitration awards; and

(4) other matters it deems appropriate to assure the effectuation of the purposes of this Order.

SEC. 5. *Federal Service Impasses Panel.* (a) There is hereby established the Federal Service Impasses Panel as an agency within the Council. The Panel consists of at least three members appointed by the President, one of whom he designates as chairman. The Council shall provide the services and staff assistance needed by the Panel.

(b) The Panel may consider negotiation impasses as provided in section 17 of this Order and may take any action it considers necessary to settle an impasse.

(c) The Panel shall prescribe regulations needed to administer its function under this Order.

SEC. 6. Assistant Secretary of Labor for Labor-Management Relations.

(a) The Assistant Secretary shall—

(1) decide questions as to the appropriate unit for the purpose of exclusive recognition and related issues submitted for his consideration;

(2) supervise elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit as their exclusive representative, and certify the results;

(3) decide questions as to the eligibility of labor organizations for national consultation rights under criteria prescribed by the Council; and

(4) except as provided in section 19(d) of this Order, decide complaints of alleged unfair labor practices and alleged violations of the standards of conduct for labor organizations.

(b) In any matters arising under paragraph (a) of this section, the Assistant Secretary may require an agency or a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as he considers appropriate to effectuate the policies of this Order.

(c) In performing the duties imposed on him by this section, the Assistant Secretary may request and use the services and assistance of employees of other agencies in accordance with section 1 of the Act of March 4, 1915, (38 Stat. 1084, as amended; 31 U.S.C. § 686).

(d) The Assistant Secretary shall prescribe regulations needed to administer his functions under this Order.

(e) If any matters arising under paragraph (a) of this section involve the Department of Labor, the duties of the Assistant Secretary described in paragraphs (a) and (b) of this section shall be performed by a member of the Civil Service Commission designated by the Chairman of the Commission.

RECOGNITION

SEC. 7. Recognition in general. (a) An agency shall accord exclusive recognition or national consultation rights at the request of a labor organization which meets the requirements for the recognition or consultation rights under this Order.

(b) A labor organization seeking recognition shall submit to the agency a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives.

(c) When recognition of a labor organization has been accorded, the recognition continues as long as the organization continues to meet the requirements of this Order applicable to that recognition, except that this section does not require an election to determine whether an organization should become, or continue to be recognized as, exclusive

representative of the employees in any unit or subdivision thereof within 12 months after a prior valid election with respect to such unit.

(d) Recognition, in whatever form accorded, does not—

(1) preclude an employee, regardless of whether he is a member of a labor organization, from bringing matters of personal concern to the attention of appropriate officials under applicable law, rule, regulation, or established agency policy; or from choosing his own representative in a grievance or appellate action;

(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude an agency from consulting or dealing with a religious, social, fraternal, or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members. Consultations and dealings under subparagraph (3) of this paragraph shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy, except as provided in paragraph (e) of this section, or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.

(e) An agency shall establish a system for intra-management communication and consultation with its supervisors or associations of supervisors. These communications and consultations shall have as their purposes the improvement of agency operations, the improvement of working conditions of supervisors, the exchange of information, the improvement of managerial effectiveness, and the establishment of policies that best serve the public interest in accomplishing the mission of the agency.

(f) Informal recognition shall not be accorded after the date of this Order.

SEC. 8. Formal Recognition. (a) Formal recognition, including formal recognition at the national level, shall not be accorded after the date of this Order.

(b) An agency shall continue any formal recognition, including formal recognition at the national level, accorded a labor organization before the date of this Order until—

(1) the labor organization ceases to be eligible under this Order for formal recognition so accorded;

(2) a labor organization is accorded exclusive recognition as representative of employees in the unit to which the formal recognition applies; or

(3) the formal recognition is terminated under regulations prescribed by the Federal Labor Relations Council.

(c) When a labor organization holds formal recognition, it is the representative of its members in a unit as defined by the agency when recognition was accorded. The agency, through appropriate officials,

shall consult with representatives of the organization from time to time in the formulation and implementation of personnel policies and practices, and matters affecting working conditions that affect members of the organization in the unit to which the formal recognition applies. The organization is entitled from time to time to raise such matters for discussion with appropriate officials and at all times to present its views thereon in writing. The agency is not required to consult with the labor organization on any matter on which it would not be required to meet and confer if the labor organization were entitled to exclusive recognition.

SEC. 9. *National consultation rights.* (a) An agency shall accord national consultation rights to a labor organization which qualifies under criteria established by the Federal Labor Relations Council as the representative of a substantial number of employees of the agency. National consultation rights shall not be accorded for any unit where a labor organization already holds exclusive recognition at the national level for that unit. The granting of national consultation rights does not preclude an agency from appropriate dealings at the national level with other organizations on matters affecting their members. An agency shall terminate national consultation rights when the labor organization ceases to qualify under the established criteria.

(b) When a labor organization has been accorded national consultation rights, the agency, through appropriate officials, shall notify representatives of the organization of proposed substantive changes in personnel policies that affect employees it represents and provide an opportunity for the organization to comment on the proposed changes. The labor organization may suggest changes in the agency's personnel policies and have its views carefully considered. It may confer in person at reasonable times, on request, with appropriate officials on personnel policy matters, and at all times present its views thereon in writing. An agency is not required to consult with a labor organization on any matter on which it would not be required to meet and confer if the organization were entitled to exclusive recognition.

(c) Questions as to the eligibility of labor organizations for national consultation rights may be referred to the Assistant Secretary for decision.

SEC. 10. *Exclusive recognition.* (a) An agency shall accord exclusive recognition to a labor organization when the organization has been selected, in a secret ballot election, by a majority of the employees in an appropriate unit as their representative.

(b) A unit may be established on a plant or installation, craft, functional, or other basis which will ensure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations. A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be established if it includes—

(1) any management official or supervisor, except as provided in section 24;

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

(3) any guard together with other employees; or

(4) both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit.

Questions as to the appropriate unit and related issues may be referred to the Assistant Secretary for decision.

(c) An agency shall not accord exclusive recognition to a labor organization as the representative of employees in a unit of guards if the organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(d) All elections shall be conducted under the supervision of the Assistant Secretary, or persons designated by him, and shall be by secret ballot. Each employee eligible to vote shall be provided the opportunity to choose the labor organization he wishes to represent him, from among those on the ballot, or "no union." Elections may be held to determine whether—

(1) a labor organization should be recognized as the exclusive representative of employees in a unit;

(2) a labor organization should replace another labor organization as the exclusive representative; or

(3) a labor organization should cease to be the exclusive representative.

(e) When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and to negotiate agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership. The labor organization 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.

AGREEMENTS

SEC. 11. *Negotiation of agreements.* (a) An agency and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable laws and regulations, including policies set forth in the Federal Personnel Manual, published agency policies and regulations, a national or other controlling agreement at a higher level in the agency, and this Order. They may negotiate an agreement, or any question arising thereunder; determine appropriate techniques, consistent with section 17 of this Order, to assist in such negotiation; and execute a written agreement or memorandum of understanding.

(b) In prescribing regulations relating to personnel policies and

practices and working conditions, an agency shall have due regard for the obligation imposed by paragraph (a) of this section. However, the obligation to meet and confer does not include matters with respect to the mission of an agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

(c) If, in connection with negotiations, an issue develops as to whether a proposal is contrary to law, regulation, controlling agreement, or this Order and therefore not negotiable, it shall be resolved as follows:

(1) An issue which involves interpretation of a controlling agreement at a higher agency level is resolved under the procedures of the controlling agreement, or, if none, under agency regulations;

(2) An issue other than as described in subparagraph (1) of this paragraph which arises at a local level may be referred by either party to the head of the agency for determination;

(3) An agency head's determination as to the interpretation of the agency's regulations with respect to a proposal is final;

(4) A labor organization may appeal to the Council for a decision when—

(i) it disagrees with an agency head's determination that a proposal would violate applicable law, regulation of appropriate authority outside the agency, or this Order, or

(ii) it believes that an agency's regulations, as interpreted by the agency head, violate applicable law, regulation of appropriate authority outside the agency, or this Order.

SEC. 12. *Basic provisions of agreements.* Each agreement between an agency and a labor organization is subject to the following requirements—

(a) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level;

(b) management officials of the agency retain the right, in accordance with applicable laws and regulations—

(1) to direct employees of the agency;

(2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;

(3) to relieve employees from duties because of lack of work or for other legitimate reasons;

(4) to maintain the efficiency of the Government operations entrusted to them;

(5) to determine the methods, means, and personnel by which such operations are to be conducted; and

(6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency; and

(c) nothing in the agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.

The requirements of this section shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization.

SEC. 13. *Grievance procedures.* An agreement with a labor organization which is the exclusive representative of employees in an appropriate unit may provide procedures, applicable only to employees in the unit, for the consideration of employee grievances and of disputes over the interpretation and application of agreements. The procedure for consideration of employee grievances shall meet the requirements for negotiated grievance procedures established by the Civil Service Commission. A negotiated employee grievance procedure which conforms to this section, to applicable laws, and to regulations of the Civil Service Commission and the agency is the exclusive procedure available to employees in the unit when the agreement so provides.

SEC. 14. *Arbitration of grievances.* (a) Negotiated procedures may provide for the arbitration of employee grievances and of disputes over the interpretation or application of existing agreements. Negotiated procedures may not extend arbitration to changes or proposed changes in agreements or agency policy. Such procedures shall provide for the invoking of arbitration only with the approval of the labor organization that has exclusive recognition and, in the case of an employee grievance, only with the approval of the employee. The costs of the arbitrator shall be shared equally by the parties.

(b) Either party may file exceptions to an arbitrator's award with the Council, under regulations prescribed by the Council.

SEC. 15. *Approval of agreements.* An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or an official designated by him. An agreement shall be approved if it conforms to applicable laws, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation) and regulations of other appropriate authorities. 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 agency regulations.

NEGOTIATION DISPUTES AND IMPASSES

SEC. 16. *Negotiation disputes.* The Federal Mediation and Conciliation Service shall provide services and assistance to Federal agencies and labor organizations in the resolution of negotiation disputes. The Service shall determine under what circumstances and in what manner it shall proffer its services.

SEC. 17. *Negotiation impasses.* When voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third-party mediation, fail to resolve a negotiation impasse, either party may request the Federal Service Impasses Panel to consider the matter. The Panel, in its discretion and under the regulations it prescribes, may consider the matter and may recommend procedures to the parties for the resolution of the impasse or may settle the impasse by appropriate action. Arbitration or third-party fact finding with recommendations to assist in the resolution of an impasse may be used by the parties only when authorized or directed by the Panel.

CONDUCT OF LABOR ORGANIZATIONS AND MANAGEMENT

SEC. 18. *Standards of conduct for labor organizations.*

(a) An agency shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in paragraph (b) of this section, an organization is not required to prove that it has the required freedom when 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 participation in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to 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 provision 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 paragraph (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles when 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 paragraph (a) of this section; or

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

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

(d) The Assistant Secretary shall prescribe the regulations needed to effectuate this section. These regulations shall conform generally to the principles applied to unions in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary.

SEC. 19. *Unfair labor practices.* (a) Agency management shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Order;

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

(3) sponsor, control, or otherwise assist a labor organization, except that an agency may furnish customary and routine services and facilities under section 23 of this Order when consistent with the best interests of the agency, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

(4) discipline or otherwise discriminate against an employee because he has filed a complaint or given testimony under this Order;

(5) refuse to accord appropriate recognition to a labor organization qualified for such recognition; or

(6) refuse to consult, confer, or negotiate with a labor organization as required by this Order.

(b) A labor organization shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of his rights assured by this Order;

(2) attempt to induce agency management to coerce an employee in the exercise of his rights under this Order;

(3) coerce, attempt to coerce, or discipline, fine, or take other economic sanction against a member of the organization as punishment or reprisal for, or for the purpose of hindering or impeding his work performance, his productivity, or the discharge of his duties owed as an officer or employee of the United States;

(4) call or engage in a strike, work stoppage, or slowdown; picket an agency in a labor-management dispute; or condone any such activity by failing to take affirmative action to prevent or stop it;

(5) discriminate against an employee with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin; or

(6) refuse to consult, confer, or negotiate with an agency as required by this Order.

(c) A labor organization which is accorded exclusive recognition shall not deny membership to any employee in the appropriate unit except for failure to meet reasonable occupational standards uniformly required for admission, or for failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. This paragraph does not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or by-laws which conform to the requirements of this Order.

(d) When the issue in a complaint of an alleged violation of paragraph (a) (1), (2), or (4) of this section is subject to an established grievance or appeals procedure, that procedure is the exclusive procedure for resolving the complaint. All other complaints of alleged violations of this section initiated by an employee, an agency, or a labor organization, that cannot be resolved by the parties, shall be filed with the Assistant Secretary.

MISCELLANEOUS PROVISIONS

SEC. 20. *Use of official time.* Solicitation of membership or dues, and other internal business of a labor organization, shall be conducted during the non-duty hours of the employees concerned. Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management.

SEC. 21. *Allotment of dues.* (a) When a labor organization holds formal or exclusive recognition, and the agency and the organization agree in writing to this course of action, an agency may deduct the regular and periodic dues of the organization from the pay of members of the organization in the unit of recognition who make a voluntary allotment for that purpose, and shall recover the costs of making the deductions. Such an allotment is subject to the regulations of the Civil Service Commission, which shall include provision for the employee to revoke his authorization at stated six-month intervals. Such an allotment terminates when—

(1) the dues withholding agreement between the agency and the labor organization is terminated or ceases to be applicable to the employee; or

(2) the employee has been suspended or expelled from the labor organization.

(b) An agency may deduct the regular and periodic dues of an association of management officials or supervisors from the pay of members of the association who make a voluntary allotment for that purpose, and shall recover the costs of making the deductions, when the agency and the association agree in writing to this course of action. Such an allotment is subject to the regulations of the Civil Service Commission.

SEC. 22. *Adverse action appeals.* The head of each agency, in accordance with the provisions of this Order and regulations prescribed by the Civil Service Commission, shall extend to all employees in the competitive civil service rights identical in adverse action cases to those provided preference eligibles under sections 7511-7512 of title 5 of the United States Code. Each employee in the competitive service shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be processed in an identical manner to that provided for appeals under section 7701 of title 5 of the United States Code. Any recommendation by the Civil Service Commission submitted to the head of an agency on the basis of an appeal by an employee in the competitive service shall be complied with by the head of the agency.

SEC. 23. *Agency implementation.* No later than April 1, 1970, each agency shall issue appropriate policies and regulations consistent with this Order for its implementation. This includes but is not limited to a clear statement of the rights of its employees under this Order; procedures with respect to recognition of labor organizations, determination of appropriate units, consultation and negotiation with labor organizations, approval of agreements, mediation, and impasse resolution; policies with respect to the use of agency facilities by labor organizations; and policies and practices regarding consultation with other organizations and associations and individual employees. Insofar as practicable, agencies shall consult with representatives of labor organizations in the formulation of these policies and regulations, other than those for the implementation of section 7(e) of this Order.

SEC. 24. *Savings clauses.* (a) This Order does not preclude—

(1) the renewal or continuation of a lawful agreement between an agency and a representative of its employees entered into before the effective date of Executive Order No. 10988 (January 17, 1962); 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 the management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the date of this Order.

(b) All grants of informal recognition under Executive Order No. 10988 terminate on July 1, 1970.

(c) All grants of formal recognition under Executive Order No. 10988 terminate under regulations which the Federal Labor Relations Council shall issue before October 1, 1970.

(d) By not later than December 31, 1970, all supervisors shall be excluded from units of formal and exclusive recognition and from coverage by negotiated agreements, except as provided in paragraph (a) of this section.

SEC. 25. *Guidance, training, review and information.*

(a) The Civil Service Commission shall establish and maintain a program for the guidance of agencies on labor-management relations in the Federal service; provide technical advice and information to

agencies; assist in the development of programs for training agency personnel and management officials in labor-management relations; continuously review the operation of the Federal labor-management relations program to assist in assuring adherence to its provisions and merit system requirements; and, from time to time, report to the Council on the state of the program with any recommendations for its improvement.

(b) The Department of Labor and the Civil Service Commission shall develop programs for the collection and dissemination of information appropriate to the needs of agencies, organizations and the public.

SEC. 26. *Effective date.* This Order is effective on January 1, 1970 except sections 7(f) and 8 which are effective immediately. Effective January 1, 1970, Executive Order No. 10988 and the President's Memorandum of May 21, 1963, entitled Standards of Conduct for Employee Organizations and Code of Fair Labor Practices, are revoked.



THE WHITE HOUSE,
October 29, 1969.

Report and Recommendations on the Amendment of Executive Order 11491 INTRODUCTION

When President Nixon signed Executive Order 11491, *Labor-Management Relations in the Federal Service*, on October 29, 1969, he directed that a review and assessment of operations under the Order be made after one year. This is the Council's assessment and report of review.

The review was initiated with public hearings held in October 1970. Federal employees, representatives of labor organizations and other associations, department and agency officials, and other interested groups and individuals were invited to present views on their experience under the Order and their suggestions for its improvement. Sixty-five persons, including several Members of Congress, top union officials, and key Government officials testified at the hearings or submitted written remarks for the record. An opportunity was provided for all interested parties to present their views regarding Executive Order 11491.

While most of the testimony was addressed to proposals for change, it was clear throughout

Federal Labor Relations Council June 1971

adding "professional" to the types of lawful associations, not qualified as labor organizations, with which an agency may have limited dealings not inconsistent with the rights of recognized labor organizations.

(2) Section 2(e)(2) should be revised by deleting the provision which precludes recognition of an organization that "asserts the right to strike."

In some instances, agencies may be overly fearful of violating the rights of recognized labor organizations and unnecessarily refrain from proper dealings with professional associations on purely professional matters. To maintain such communications and to avoid further misunderstandings, we recommend that "professional" be explicitly included among the types of associations listed in section 7(d)(3) with which an agency may have limited dealings not inconsistent with the rights of recognized labor organizations.

The provision of section 2(e)(2) of the Order which precludes the recognition of an organization that "asserts the right to strike against the Government of the United States or

the proceedings, that, in general, the Order has greatly enhanced the climate for collective bargaining in the Federal service.

Some proposals made at the hearings related to administration of the Order or to adjustments which could be made within existing authority; the Council has initiated necessary action in these areas, such as expedited processing of unfair labor practice complaints in certain situations. Other proposals were determined to be outside the scope of the current review or not appropriate for consideration at this time in view of the limited experience under Executive Order 11491.

The Council conducted an intensive study and held 18 executive sessions to discuss major policy issues directly related to the Order. There were several of these issues on which, after due consideration, the Council concluded that revision of the Order is necessary at this time. Our recommendations on these matters are discussed below. A number of other issues studied in depth, which the Council determined did not warrant action during this review, are listed in the final section of the report.

A. REPRESENTATION

(1) *Section 7(d)(3) should be amended by*

any agency thereof" parallels portions of section 7311 of title 5 of the United States Code. Subsequent to the issuance of the Order, a Federal District Court decided that this portion of the Code violated the First Amendment. Testimony at the Council's hearing raised questions as to the effect of the Court's decision on section 2(e) (2) of the Order. After careful review and consideration of this issue, the Council recommends that "assert the right to strike" be deleted from section 2(e) (2). This does not alter the basic prohibition against strikes in the Federal Government.

B. GRIEVANCE PROCEDURES AND ARBITRATION

Section 13 should be revised to provide that—

(1) the negotiated agreement for an exclusive unit must include a grievance procedure. That procedure will be the exclusive procedure available to the parties and the employees in the unit for differences over the interpretation and application of the agreement, except that an employee or group of employees may present such a grievance to the agency and have it adjusted without the intervention of the exclusive representative under certain conditions which are set forth below.

(2) *an employee's grievance on a matter not covered in the agreement may be presented under any procedure available for the purpose, but not under the negotiated procedure.*

(3) *the requirement that the negotiated procedure must conform to CSC regulations should be eliminated; however, matters for which statutory appeals procedures exist should continue to be excluded from negotiated grievance procedures.*

(4) *Section 7(d)(1) and section 13 should be revised so as to specify who may represent an employee when presenting a grievance under the negotiated procedure.*

(5) *Section 14 should be changed to provide that the negotiated procedure may include arbitration, limited to interpretation or application of the agreement, which may be invoked only by the agency or the exclusive representative.*

(6) *Section 6 should be amended to authorize the Assistant Secretary to resolve disagreements between the parties on questions whether a grievance is subject to the negotiated grievance procedure, or whether a grievance under the procedure is subject to arbitration.*

As the above six items indicate, a number of

including arbitration, for consideration of "employee grievances" and of "disputes over the interpretation and application of agreements." Under the Order and Civil Service Commission regulations, "employee grievances" may be filed only by an employee or group of employees. Such grievances may relate to matters involving application of law, regulation, or agency policy as well as to the provisions of the labor agreement. The Order and regulations reserve to the employee rights to choose his own representative (which may be a rival union), to disapprove the use of arbitration, and, unless otherwise provided in the labor agreement, to choose the unilaterally established agency grievance procedure rather than the negotiated procedure for processing the grievance. In contrast, union-initiated "disputes," including arbitration, are limited to the interpretation or application of the labor agreement. Where negotiated procedures include arbitration, the Order provides that the costs of the arbitrator shall be shared equally by the parties.

Under these conditions employees are faced with complicated choices in seeking relief, the role of the exclusive union is diminished and distorted by permitting a rival union to represent a

issues were raised concerning the nature and scope of grievance procedures and arbitration. In view of the importance of this matter, the Council made an intensive review of this whole subject. We conclude that substantial changes in present arrangements are warranted. The root of the persistent dissatisfaction with grievance and arbitration procedures in the Federal program appears to be the confusing intermixture of individual employee rights established by law and regulation with the collective rights of employees established by negotiated agreement. This intermixture has resulted in overlap and duplication of rights and remedies, and in requirements with respect to negotiated grievance procedures which are less in some respects and greater in others than are suitable for effective grievance handling in a labor relations system.

Following a thorough examination of the issue, the Council concluded that there should be no change in the existing requirement that matters on which employees have appeal rights established by law should not be included in negotiated grievance procedures.

Turning to matters not subject to appeal procedures, the Order presently authorizes the exclusive representative to negotiate procedures,

grievant with respect to the interpretation and application of the agreement negotiated by the exclusive representative, and the scope of negotiations for agencies and unions is unnecessarily limited.

In order to remedy these faults, we recommend that the Order be amended to provide for negotiated grievance procedures and arbitration involving only the interpretation or application of the negotiated agreement and not involving matters outside the agreement, including matters for which statutory appeals procedures exist. This should be the only procedure for consideration of grievances over the interpretation or application of the provisions of the agreement. The nature and scope of the procedure, including cost-sharing arrangements for arbitration, should be negotiated by the parties. The negotiated grievance procedure and arbitration should not be subject to Commission regulations. An employee or group of employees in the unit, or the exclusive union, should be permitted to file a grievance under the procedure, but only with representation by the exclusive union or a representative approved by the union. If an employee or group of employees wishes to present grievances on matters arising under the agreement without the in-

tervention of the exclusive representative, they should be permitted to present such grievances to agency management and have them adjusted so long as the adjustment is not inconsistent with the terms of the agreement and the exclusive representative is given opportunity to be present at the time of adjustment. Arbitration of a grievance should not require the approval of the employee or employees involved. Any grievance by an employee on a matter other than the interpretation or application of an existing agreement may be presented under any procedure available for the purpose, but not under the negotiated procedure.

By thus delineating the scope of the negotiated grievance procedure, the confusion and anomalies in present arrangements can effectively be eliminated. In addition, an incentive will be created for unions to negotiate substantive agreements within the full scope of negotiations authorized by the Order. The exclusive representative will be clothed with full authority and responsibility for grievance processing on the bilaterally determined conditions of employment. Artificial distinctions between "employee grievances" and union "disputes" will be eliminated,

should not be construed as unfair labor practice decisions under the Order nor as precedents for such decisions. When a grievance includes an alleged unfair labor practice, it should be optional with the aggrieved party whether he will seek redress under the grievance procedure or the unfair labor practice procedure; however, he may not use both procedures, either simultaneously or sequentially. The existing requirement that when an issue can be raised under an established appeals procedure, that procedure is the exclusive procedure for resolving the issue is not affected by this recommendation.

Section 19(d) presently requires that complaints under sections 19(a) (1), (2) and (4), i.e. alleged management unfair labor practices against employees, be processed under established grievance or appeals procedures, where applicable, while other unfair labor practice complaints are resolved under machinery established by the Order. This requirement inhibits the development of a single body of unfair labor practice precedents and a single, uniform procedure for processing and resolving unfair labor practice complaints under the Order, since such complaints are today processed under grievance, ap-

and only the term "grievance" will be used.

This recommended revision of policy will require that all negotiated agreements provide a grievance procedure. Accordingly, the policy should be made applicable to all new agreements entered into after the effective date of the Order's revision and to all agreements renewed or extended after that date. Further, to provide for the resolution of disagreements that may arise between the parties as to whether a matter is grievable or arbitrable under the negotiated procedure, we recommend that such questions be referred to the Assistant Secretary of Labor for Labor-Management Relations. Provision of machinery under the Order for resolving such disagreements is appropriate in order to insure consistent application of the recommended revisions with respect to negotiated grievance procedures.

C. UNFAIR LABOR PRACTICES

Section 19(d) should be revised to place the processing of unfair labor practice complaints within the exclusive jurisdiction of the Assistant Secretary of Labor for Labor-Management Relations and the Federal Labor Relations Council. Decisions under grievance or appeals procedures

peals, and unfair labor practice procedures. The decision as to whether an unfair labor practice has been committed should not be made under grievance and appeals systems which are not under the control of the Assistant Secretary, nor should decisions under grievance and appeals systems have precedential effect in the area of unfair labor practices. Therefore, we recommend that all unfair labor practice complaints be processed and decided only under the procedures provided by the Assistant Secretary and the Council.

Further under section 19(d) when an alleged unfair labor practice is subject to an agency grievance procedure, agency management is the final judge of its own conduct. We believe there should be an opportunity to seek third-party adjudication of any issue involving an alleged unfair labor practice. To provide this opportunity we recommend elimination of the requirement that when the issue in certain unfair labor practice complaints is subject to a grievance procedure, that procedure is the exclusive procedure for resolving the complaint. We propose, instead, that when an issue may be processed under either a grievance procedure or the unfair labor practice procedure, it be made op-

tional with the aggrieved party whether to seek redress under the grievance procedure or under the unfair labor practice procedure. The selection of one procedure would be binding; the aggrieved party would not be permitted, simultaneously or sequentially, to pursue the issue under the other procedure.

The existing rule that issues which can properly be raised under established appeals procedures may not be raised under unfair labor practice complaint procedures should be retained. Employees currently have the opportunity to seek third-party review of agency action under appeals procedures established by statute.

D. OFFICIAL TIME

Section 20 should be modified to eliminate the prohibition of official time for employees when engaged as labor organization representatives in negotiations with agency management. The parties may negotiate on the issue within specified limits.

The present Order provides that employees who represent a labor organization shall not be on official time when negotiating an agreement with agency management. This policy has been among the most controversial of the provisions

In order to promote flexibility in the negotiation of agreements for the use of official time, we recommend that the limitations established by the Order on negotiations of such official time be in alternative forms, either: (1) a maximum of 40 hours; or (2) a maximum of one-half the total time spent in negotiations during regular working hours. These limitations refer to the amount of official time during normal working hours of the activity which may be authorized each employee representative in connection with the negotiation of an agreement, from preliminary meetings on ground rules, if any, through all aspects of negotiations, including mediation and impasse resolution processes when needed. Overtime, premium pay, or travel expenditures are not authorized. The number of union representatives on official time during such negotiations normally should not exceed the number of management representatives.

E. DUES WITHHOLDING

Section 21 should be revised to eliminate the requirement that the costs of dues deductions must be charged to the labor organization. This matter should be left to negotiation by the parties.

in Executive Order 11491.

The Council's review indicated that the present policy has had some unfavorable effects on the negotiation process; for example, difficulties in scheduling negotiation sessions, and delays in completing negotiations because of a union's inability to provide representation. The policy has also had some beneficial effects: better advance planning and preparation for negotiation meetings, and more efficient use of meeting time.

Upon consideration of all factors, we have concluded that the program will benefit by modifying present policy so as to permit the negotiating parties, when circumstances warrant, to agree to a reasonable amount of official time for employees who represent the union in negotiations during regular working hours. This change will enlarge the scope of negotiations and promote responsible collective bargaining. However, we believe it is essential that the amount of such official time authorized, while adequate to avoid undue hardship or delay in negotiations, should be expressly limited so as to maintain a reasonable policy with respect to union self-support and an incentive to economical and business-like bargaining practices.

We believe that the uniform requirement that the costs of making dues deductions must be recovered is no longer desirable. In our opinion, removal of this requirement will improve the collective bargaining process by enlarging the scope of negotiable matters. The question of a service charge for payroll deductions is a meaningful economic item suitable for bargaining between the parties in the same way as other matters governing the labor-management relationship. If the agency agrees to no service charge or a reduced charge below actual costs of the dues withholding service, presumably it would be done on the basis that offsetting benefits of commensurate value will be obtained from the labor agreement. Accordingly, the Council recommends that the Order be revised to delete the present requirement that the costs of making dues deductions be recovered from labor organizations.

F. POLICY GUIDANCE AND REVIEW OF AGENCY PROGRAMS

Section 25 should be revised to provide that the Civil Service Commission in conjunction with

the Office of Management and Budget shall establish and maintain a program of policy guidance to agencies on Federal labor-management relations and periodically review the implementation of these policies.

Reorganization Plan No. 2 of 1970 established the Office of Management and Budget with responsibilities in the area of executive management. These include policy guidance and review of the management of labor relations in the Federal departments and agencies. The Office of Management and Budget works closely with the Civil Service Commission in carrying out these functions. These arrangements for policy guidance and review within the executive branch should be reflected in the Order.

We recommend that the Order be revised to provide that the Civil Service Commission in conjunction with the Office of Management and Budget shall establish and maintain a program of policy guidance to agencies in the labor relations area and periodically review the implementation of these policies. The Civil Service Commission should continue its day-to-day review of program operations and the provision of technical advice, information and training assistance to agencies.

These issues are listed below :

1. Relax restrictions against the inclusion of supervisors in units of exclusive recognition and supervisors holding union office.
2. Provide a separate Executive order covering agency relationships with professional organizations.
3. Authorize professional organizations rights similar to those provided for associations of supervisors.
4. Establish a policy concerning the severance of professional employees for decertification purposes.
5. Modify the requirement of a secret ballot election in all cases as a prerequisite for exclusive recognition.
6. Further restrict agency regulatory authority as it affects the scope of negotiations.
7. Redefine the scope of negotiation with respect to assignment of personnel.
8. Include job classification within the scope of negotiation and grievance procedures.
9. Authorize voluntary arbitration of negotiation impasses without reference to the Federal Service Impasses Panel.
10. Process negotiability issues as refusals to bargain under unfair labor practice pro-

G. OTHER MATTERS CONSIDERED

There were a number of policy issues raised by interested parties which, after careful study and consideration, the Council determined were not appropriate for action as part of this review, either because the Executive order appeared to be working effectively in the particular area, experience was insufficient to establish any sound basis for change, or the change proposed would conflict with existing statutory requirements.

- cedures.
11. Establish independent office for prosecution of unfair labor practice complaints.
 12. Require use of arbitration in agency adverse action appeal systems.
 13. Prescribe uniform policy regarding official time for employees representing labor organizations in third-party proceedings.
 14. Authorize dues withholding without regard to recognition or on the basis of national consultation rights.

Executive Order 11616

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August 26, 1971

Amending Executive Order No. 11491, Relating to Labor-Management Relations in the Federal Service

By virtue of the authority vested in me by the Constitution and statutes of the United States, including sections 3301 and 7301 of title 5 of the United States Code, and as President of the United States, Executive Order No. 11491 of October 29, 1969, relating to labor-management relations in the Federal service, is amended as follows:

1. Section 2(b) is amended by deleting the words "formal or".
2. Paragraph (2) of section 2(e) is amended to read as follows:

"(2) assists or participates in a strike against the Government of the United States or any agency thereof, or imposes a duty or obligation to conduct, assist, or participate in such a strike;"
3. Section 4(a) is amended to read as follows:

"(a) There is hereby established the Federal Labor Relations Council, which consists of the Chairman of the Civil Service Commission, who shall be chairman of the Council, the Secretary of Labor, the Director of the Office of Management and Budget, and such other officials of the executive branch as the President may designate from time to time. The Civil Service Commission shall provide administrative support and services to the Council to the extent authorized by law."
4. Section 6(a) is amended—
 - (a) by deleting the word "and" at the end of paragraph (3).
 - (b) by substituting for paragraph (4) the following:

"(4) decide unfair labor practice complaints and alleged violations of the standards of conduct for labor organizations; and"
 - (c) by adding at the end thereof the following:

"(5) decide questions as to whether a grievance is subject to a negotiated grievance procedure or subject to arbitration under an agreement."
5. Section 7(d) is amended to read as follows:

"(d) Recognition of a labor organization does not—

 - "(1) preclude an employee, regardless of whether he is in a unit of exclusive recognition, from exercising grievance or appellate rights established by law or regulations; or from choosing his own representative in a grievance or appellate action, except when presenting a grievance under a negotiated procedure as provided in section 13;

“(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees with veterans preference; or

“(3) preclude an agency from consulting or dealing with a religious, social, fraternal, professional or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members.

“Consultations and dealings under subparagraph (3) of this paragraph shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy, except as provided in paragraph (e) of this section, or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.”

6. Section 7 (f) is amended to read as follows:

“(f) Informal recognition or formal recognition shall not be accorded.”

7. Section 8 is revoked.

8. Section 13 is amended to read as follows:

“*SEC. 13. Grievance and arbitration procedures.*

“(a) An agreement between an agency and a labor organization shall provide a procedure, applicable only to the unit, for the consideration of grievances over the interpretation or application of the agreement. A negotiated grievance procedure may not cover any other matters, including matters for which statutory appeals procedures exist, and shall be the exclusive procedure available to the parties and the employees in the unit for resolving such grievances. However, any employee or group of employees in the unit may present such grievances to the agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given opportunity to be present at the adjustment.

“(b) A negotiated procedure may provide for the arbitration of grievances over the interpretation or application of the agreement, but not over any other matters. Arbitration may be invoked only by the agency or the exclusive representative. Either party may file exceptions to an arbitrator’s award with the Council, under regulations prescribed by the Council.

“(c) Grievances initiated by an employee or group of employees in the unit on matters other than the interpretation or application of an exist-

ing agreement may be presented under any procedure available for the purpose.

“(d) Questions that cannot be resolved by the parties as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, may be referred to the Assistant Secretary for decision.

“(e) No agreement may be established, extended, or renewed after the effective date of this Order which does not conform to this section. However, this section is not applicable to agreements entered into before the effective date of this Order.”

9. Section 14 is revoked.

10. Section 19(d) is amended to read as follows:

“(d) Issues which can properly be raised under an appeals procedure may not be raised under this section. Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures. Appeals or grievance decisions shall not be construed as unfair labor practice decisions under this Order nor as precedent for such decisions. All complaints under this section that cannot be resolved by the parties shall be filed with the Assistant Secretary.”

11. Section 20 is amended to read as follows:

“SEC. 20. *Use of official time.* Solicitation of membership or dues, and other internal business of a labor organization, shall be conducted during the non-duty hours of the employees concerned. Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management, except to the extent that the negotiating parties agree to other arrangements which may provide that the agency will either authorize official time for up to 40 hours or authorize up to one-half the time spent in negotiations during regular working hours, for a reasonable number of employees, which number normally shall not exceed the number of management representatives.”

12. Section 21 is amended to read as follows:

“SEC. 21. *Allotment of dues.* (a) When a labor organization holds exclusive recognition, and the agency and the organization agree in writing to this course of action, an agency may deduct the regular and periodic dues of the organization from the pay of members of the organization in the unit of recognition who make a voluntary allotment

for that purpose. Such an allotment is subject to the regulations of the Civil Service Commission, which shall include provision for the employee to revoke his authorization at stated six-month intervals. Such an allotment terminates when—

“(1) the dues withholding agreement between the agency and the labor organization is terminated or ceases to be applicable to the employee; or

“(2) the employee has been suspended or expelled from the labor organization.

“(b) An agency may deduct the regular and periodic dues of an association of management officials or supervisors from the pay of members of the association who make a voluntary allotment for that purpose, when the agency and the association agree in writing to this course of action. Such an allotment is subject to the regulations of the Civil Service Commission.”

13. Section 24 is amended by deleting “(a)” after the section heading; and by deleting subsections (b), (c), and (d).

14. Section 25(a) is amended to read as follows:

“(a) The Civil Service Commission, in conjunction with the Office of Management and Budget, shall establish and maintain a program for the policy guidance of agencies on labor-management relations in the Federal service and periodically review the implementation of these policies. The Civil Service Commission shall continuously review the operation of the Federal labor-management relations program to assist in assuring adherence to its provisions and merit system requirements; implement technical advice and information programs for the agencies; assist in the development of programs for training agency personnel and management officials in labor-management relations; and, from time to time, report to the Council on the state of the program with any recommendations for its improvement.”

The amendments made by this Order shall become effective ninety days from this date. Each agency shall issue appropriate policies and regulations consistent with this Order for its implementation.

RICHARD NIXON

THE WHITE HOUSE,
August 26, 1971.

Executive Order 11636

December 17, 1971

Employee-Management Relations in the Foreign Service of the United States

WHEREAS, the public interest requires high standards of performance by the members of the Foreign Service of the United States and the continuous development and implementation of modern and progressive work practices to facilitate their improved performance and efficiency; and

WHEREAS, the effective participation by the men and women of the Foreign Service in the formulation of personnel policies and procedures affecting the conditions of their employment is essential to the efficient administration of the Foreign Service and to the well-being of its members; and

WHEREAS, the unique conditions of Foreign Service employment require a distinct framework for the development and implementation of modern, constructive and cooperative relationships between management officials in the foreign affairs agencies and organizations representing Foreign Service employees; and

WHEREAS, subject to law and the paramount requirements of public service, effective employee-management relations within the Foreign Service require a clear statement of the respective rights and obligations of organizations and agency management; and

WHEREAS, the effectiveness of the foreign affairs agencies is well served by measures which stress their essential unity of purpose:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including sections 3301 and 7301 of title 5, United States Code, and section 202 of the Revised Statutes (22 U.S.C. 2656), and as President of the United States, I hereby direct that the following policies shall govern the foreign affairs agencies in all dealings with Foreign Service employees and organizations representing them.

GENERAL PROVISIONS

SECTION 1. *Policy.* (a) Each employee has the right, freely and without fear of penalty or reprisal, to form, join, and assist any organization as defined herein or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in this Order, the right to assist an organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including

presentation of its views to officials of the executive branch, the Congress, or other appropriate authority. The head of each foreign affairs agency shall take the action required to assure that employees in the agency are apprised of their rights under this section, and that no interference, restraint, coercion, or discrimination is practiced within his agency to encourage or discourage membership in an organization.

(b) Paragraph (a) of this section does not authorize participation in the management of an organization or acting as a representative of an organization by a management official or a confidential employee, or by an employee when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

SEC. 2. *Definitions.* When used in this Order, the term—

(a) “Foreign affairs agency” means the Department of State, the United States Information Agency, the Agency for International Development and its successor agency or agencies;

(b) “Employee” means an officer or employee of the Foreign Service, wherever serving, other than an alien clerk or employee or consular agent, appointed in or assigned to a foreign affairs agency under authority of the Foreign Service Act of 1946, as amended; the Foreign Assistance Act of 1961, as amended; or Public Law 90-494;

(c) “Management official” means an individual who:

(1) is a chief of mission or principal officer;

(2) is serving in a position in a foreign affairs agency to which he has been appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

(3) occupies a position which in the sole judgment of the head of his foreign affairs agency is of comparable importance;

(4) is serving as a deputy to any of the above; or

(5) is engaged in the administration of this Order or in the formulation of the personnel policies and programs of his agency;

(d) “Confidential employee” means an individual who assists and acts in a confidential capacity to a management official who formulates, determines or effectuates management policies in the field of employee-management relations;

(e) “Agency management” means management officials and confidential employees in a foreign affairs agency;

(f) "Organization" means a lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their members, but does not include an organization which—

(1) consists solely of management officials;

(2) assists or participates in a strike against the Government of the United States or any agency thereof, or imposes a duty or obligation to conduct, assist or participate in such a strike;

(3) advocates the overthrow of the constitutional form of government in the United States; or

(4) discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin.

(g) "Secretary" means the Secretary of State;

(h) "Board" means the Board of the Foreign Service;

(i) "Commission" means the Employee-Management Relations Commission established under section 5 of this Order; and

(j) "Public member" means an individual who is not an employee of the United States Government (other than as a special Government employee) and who is selected to serve on a disputes panel or a grievance panel established under this Order.

SEC. 3. Application. (a) This Order applies to all employees except as provided in subsection (b) below.

(b) The head of a foreign affairs agency may, in his sole judgment, suspend temporarily any provision of this Order with respect to any post, bureau, office, or activity, in the United States or abroad, when he determines in writing in emergency situations that this is necessary in the national interest, subject to the conditions he prescribes. Such suspension shall not operate to deny access by an employee to the grievance procedures established under section 10 of this Order.

ADMINISTRATION

SEC. 4. Board of the Foreign Service. (a) The Board shall, in accordance with the regulations prescribed by the Secretary under section 16 of this Order:

(1) consider major policy issues arising in the administration of this Order, appeals on substantive aspects of personnel policy or procedure, proposed amendments to this Order and such other matters as it deems appropriate to assure the effectuation of the purposes of this Order;

(2) make recommendations on regulations for the implementation of this Order;

(3) interpret this Order and the regulations of the Secretary, except as provided in section 5; and

(4) perform such additional functions relating to the administration of this Order as the Secretary may from time to time prescribe.

(b) In the performance of its functions under this Order, the Board (including committees and panels thereof) may:

(1) obtain views from interested agencies, organizations and other parties, orally or in writing, as it may deem necessary and appropriate;

(2) receive staff assistance from a secretariat which shall be responsible directly to the Chairman of the Board and otherwise independent of foreign affairs agency management; and

(3) request and use the services and assistance of other agencies in accordance with the Secretary's regulations.

SEC. 5. Employee-Management Relations Commission.

(a) There is hereby established, as a committee of the Board, an Employee-Management Relations Commission composed of those Board members or participants representing the Department of Labor, the Civil Service Commission, and the Office of Management and Budget. The representative of the Office of Management and Budget shall be the Chairman of the Commission.

(b) The Commission shall:

(1) decide questions relating to the eligibility of organizations for recognition under this Order;

(2) supervise elections to determine whether an organization should be recognized as the exclusive representative of the employees in a foreign affairs agency, and certify the results;

(3) decide complaints of alleged unfair practices and alleged violations of the standards of conduct for organizations; and,

(4) decide questions of whether an obligation to consult exists under section 8 of this Order with respect to particular issues.

(c) In any matter arising under paragraph (b) of this section, the Commission shall have final authority and may require an agency or an organization to cease and desist from a violation of this Order and require it to take such affirmative action as the Commission considers appropriate to effectuate the policies of this Order.

(d) The Commission shall prescribe regulations needed to administer its functions under this section. Substantive regulations of the Commission shall be subject to review by the Board.

SEC. 6. *Disputes Panel.* (a) The Chairman of the Board shall designate a panel which shall assist in resolving disputes arising in the course of consultation under section 8. The panel shall consist of two members of the Foreign Service, neither of whom shall be a management official, a confidential employee or an organization official; one representative of the Department of Labor; one member of the Federal Service Impasses Panel; and one public member. The Chairman of the Board shall designate the Chairman of the panel.

(b) In any case where an appeal is made under section 9, the panel shall make findings of fact and recommendations to the Board for its consideration in deciding the appeal. In the performance of this function, the panel may, in cases it deems appropriate, attempt to mediate disputes and to promote agreements between representatives of foreign affairs agencies and recognized organizations.

RECOGNITION

SEC. 7. *Recognition in General.* (a) An organization seeking recognition shall:

(1) submit to the Commission and to the foreign affairs agency concerned copies of its constitution and by-laws, a statement of its objectives and a roster of its officers; and

(2) establish to the satisfaction of the Commission, in its sole discretion, that the organization functions under acceptable democratic and ethical standards and that it meets the other requirements of this Order.

(b) Elections may be held to determine whether—

(1) an organization should be recognized as the exclusive representative of employees in a foreign affairs agency, other than management officials and confidential employees;

(2) an organization should replace another organization as the exclusive representative; or

(3) an organization should cease to be the exclusive representative.

All elections shall be conducted under the supervision of the Commission, or persons designated by the Commission, and shall be by secret ballot. Each employee eligible to vote shall be provided the opportunity

to choose the organization he wishes to represent him from among those on the ballot, or to vote not to have a representative. The results of the election shall be determined on the basis of the majority of valid ballots cast.

(c) A foreign affairs agency shall accord recognition to an organization certified by the Commission following an election as the exclusive representative of the employees in the foreign affairs agency.

(d) An organization which is the exclusive representative of the employees in a foreign affairs agency is entitled to act for all employees in the agency, other than management officials and confidential employees, in collective dealings with agency management as provided for in this Order. It is responsible for representing the interests of all such employees without discrimination and without regard to organization membership.

(e) Nothing in this Order shall:

(1) preclude an employee, regardless of whether he is a member of an organization, from bringing matters of personal concern to the attention of appropriate officials under applicable law, rule, regulations, or established foreign affairs agency policy; or from choosing his own representative in a grievance or other administrative adjudication;

(2) preclude or restrict consultations and dealings between a foreign affairs agency and a veterans' organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude a foreign affairs agency from consulting or dealing with a religious, social, fraternal, professional or other lawful association, not qualified for recognition, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members. Consultations and dealings under this subparagraph shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy, or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.

CONSULTATION AND APPEALS

SEC. 8. Consultation. (a) A foreign affairs agency and a recognized organization, through appropriate representatives, shall, to the extent consistent with applicable law and regulations, consult in good faith regularly and prior to the adoption of proposed or revised personnel policies and procedures, including grievance procedures, which affect working

conditions of employees. When a personnel policy or procedure is for application jointly to employees in more than one foreign affairs agency, the consultations shall be held jointly between representatives of the foreign affairs agencies involved and representatives of the recognized organizations in those agencies. The results of consultations shall be reduced to writing and signed by the parties.

(b) Foreign affairs agency management shall reserve the right in accordance with applicable law and regulations:

- (1) to direct employees of the agencies;
- (2) to hire, promote, transfer, assign, and to retain employees in positions within the foreign affairs agencies and to suspend, demote, discharge or take other disciplinary action against employees;
- (3) to relieve employees from duties because of lack of work or for other legitimate reasons;
- (4) to maintain the efficiency of the Government operations entrusted to them;
- (5) to determine the methods, means, and personnel by which such operations are to be conducted; and
- (6) to take whatever actions may be necessary to carry out the missions of the agencies in situations of emergency.

The foregoing rights reserved to foreign affairs agency management shall also be applicable in the administration of agreements reached under paragraph (a) of this section.

(c) The obligation to consult does not include matters with respect to the mission of a foreign affairs agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. Consultations will not extend to foreign policy matters or other substantive responsibilities of the foreign affairs agencies. This paragraph shall not preclude consultation with respect to providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

SEC. 9. *Appeals.* (a) When consultation under section 8 of this Order does not result in agreement with respect to substantive aspects of a personnel policy or procedure, a recognized organization may appeal the management decision on the matter to the Board in writing. The Board will consider on appeal any matter that it determines is substantive in nature. A substantive matter for purposes of this section is a

matter that creates, defines or changes rights of employees or organizations or the conditions relating to such rights. In the consideration of such an appeal, the Board will utilize a disputes panel as provided in section 6 of this Order. The decision of the Board shall be final, unless overruled by the head of the foreign affairs agency concerned.

(b) No member of the Board who is directly responsible for personnel operations in a foreign affairs agency shall be eligible to participate in the consideration of an appeal under this section.

(c) Foreign affairs agency management shall defer or suspend the implementation of a management decision which is appealed under this section during the pendency of the appeal, except to the extent that the head of the foreign affairs agency determines that immediate implementation of a decision being appealed is required in the national interest.

SEC. 10. *Grievances.* The foreign affairs agencies, after consultation under section 8 with representatives of recognized organizations, shall establish procedures for the fair and impartial resolution of employee grievances. Employee grievances shall include, but shall not be limited to complaints in which an employee has alleged that it is necessary to correct his record in order to remove or prevent an injustice. Such procedures shall include provision for informal steps to resolve grievances directly with management officials as well as formal steps within the agency when grievances are not resolved through informal means. Formal grievances shall be considered and decided by a panel which shall include public membership and which shall be independent of foreign affairs agency management other than the Secretary in the performance of its functions.

SEC. 11. *Periodic Conferral and Review.* (a) In addition to the consultation described in section 8, the Secretary shall, by regulation, establish procedures for reasonable access to the management of foreign affairs agencies by recognized organizations for the purpose of:

(1) exchanging information and offering suggestions relating to the improvement of agency operations and effectiveness and the establishment of administrative policies that will serve the public interest;

(2) discussing the operation of this Order and procedures established thereunder;

(3) considering ways in which relationships between foreign affairs agencies and recognized organizations may be improved and strengthened; and

(4) reviewing together with foreign affairs agencies and recognized organizations annually the relationships established pursuant to this Order in order to assure that their evolution takes into account develop-

ments elsewhere in the Federal Government as well as the special needs of the Foreign Service.

Conferral under this section shall not extend to matters excluded from the obligation to consult under section 8(c) of this Order, in the absence of agreement by the parties.

(b) Recommendations by management or organizations following conferral under this section, including recommendations for amendments to this Order, shall be submitted to the Board for its consideration. Based upon the findings of the Board, the Secretary shall, from time to time, make reports and recommendations to the President.

CONDUCT OF ORGANIZATIONS AND MANAGEMENT

SEC. 12. Standards of Conduct for Organizations.

(a) In order to be eligible for recognition an organization must be free from corrupt influences and practices and influences opposed to democratic principles. In addition, it must maintain democratic procedures and practices, including provisions for periodic elections to be conducted subject to recognized safeguards as well as provisions defining and securing the rights of individual members to participation in the affairs of the organization, to fair and equal treatment under the governing rules of the organization and to fair process in disciplinary proceedings.

(b) A recognized organization shall file with the Commission financial and other reports, provide for bonding of officials and employees of the organization and comply with trusteeship and election standards, in accordance with regulations prescribed by the Commission. These regulations shall conform generally to those applicable to unions in the private sector and to labor organizations in the Federal service.

SEC. 13. Unfair Practices. (a) Agency management shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Order;

(2) encourage or discourage membership in an organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment;

(3) sponsor, control, or otherwise assist an organization, except that a foreign affairs agency may furnish customary and routine services and facilities when consistent with the best interests of the foreign affairs agency, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

(4) discipline or otherwise discriminate against an employee because he has filed a complaint or given testimony under this Order;

(5) refuse to accord recognition to an organization qualified for such recognition; or

(6) refuse to consult, or confer, with a recognized organization as required by this Order.

(b) An organization shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of his rights assured by this Order;

(2) attempt to induce foreign affairs agency management to coerce an employee in the exercise of his rights under this Order;

(3) coerce, attempt to coerce, or discipline, fine, or take other economic sanction against a member of the organization as punishment or reprisal for, or for the purpose of hindering or impeding his work performance, his productivity, or the discharge of his duties owed as an officer or employee of the United States;

(4) call or engage in a strike, work stoppage, or slowdown; picket an agency in an employee-management dispute; or condone any such activity by failing to take affirmative action to prevent or stop it;

(5) discriminate against an employee with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin; or

(6) refuse to consult, or confer, with a foreign affairs agency as required by this Order.

MISCELLANEOUS PROVISIONS

SEC. 14. *Use of Official Time.* Solicitation of membership or dues, and other internal business of an organization, shall be conducted during the non-duty hours of the employees concerned. The Secretary shall establish by regulation reasonable limitations upon the use of official time for consultation and conferral under this Order.

SEC. 15. *Allotment of Dues.* When a foreign affairs agency and the organization agree in writing, a foreign affairs agency may deduct the regular and periodic dues of an organization recognized under this Order from the pay of members of the organization who make a voluntary allotment for that purpose. Such an allotment is subject to the regulations of the Civil Service Commission, which shall include provision for the employee to revoke his authorization at stated six-month intervals. Such an allotment terminates when the dues withholding agreement between a foreign affairs agency and the organization is terminated or ceases to be applicable to the employee.

SEC. 16. *Regulations.* The Secretary, after consultation with the heads of other foreign affairs agencies and with representatives of organizations and with the advice of the Board, is authorized to prescribe regulations for the implementation of this Order. The Secretary's regulations shall become effective no later than 120 days after the effective date of this Order.

SEC. 17. *Agency Implementation.* No later than 90 days after the effective date of the regulations prescribed under section 16, each foreign affairs agency shall issue appropriate implementing policies and regulations consistent with this Order and the regulations prescribed by the Secretary. Such foreign affairs agency regulations shall include but shall not be limited to a clear statement of the rights of the foreign affairs agency's employees under this Order; procedures with respect to consultation and conferral with organizations; policies with respect to the use of foreign affairs agency facilities by organizations; and policies and practices regarding consultation with other associations and individual employees. The foreign affairs agencies shall consult with representatives of organizations in the formulation of these policies and regulations.

SEC. 18. *Amendments to Executive Orders.* (a) Section 3(b) of Executive Order No. 11491 of October 29, 1969 (34 F.R. 17605), as amended, is hereby further amended by adding a new item (5) as follows:

“(5) The Foreign Service of the United States: Department of State, United States Information Agency and Agency for International Development and its successor agency or agencies.”

(b) Section 21 of Executive Order No. 11264 of December 31, 1965 (31 F.R. 2), as amended, is hereby further amended as follows:

(1) by revising subsection (d) to read as follows:

“(d) Each member designated pursuant to subsection (b)(1), (b)(2) or (b)(3) above, and each representative designated pursuant to subsection (c) above, shall be chosen from among the officials of the department or agency concerned who are not below the rank of an Assistant Secretary or who are occupying positions of comparable responsibility, except that alternate members and representatives may be designated who do not hold such rank or occupy such positions.”;

(2) by adding a new subsection (f) as follows:

“(f) Designation of members pursuant to subsections (b)(1) and (b)(3) shall be made after consultation with organizations recognized as the representatives of Foreign Service employees so that the Secretary and the Director may take into account their views.”

SEC. 19. *Effective Date.* This Order shall become effective upon publication in the FEDERAL REGISTER.

RICHARD NIXON

Report and Recommendations of the
Federal Labor Relations Council
on the
Amendment of Executive Order 11491,
as Amended

Labor-Management Relations
in the Federal Service
January 1975

AREAS FOCUSED UPON DURING THE COUNCIL'S GENERAL REVIEW OF THE FEDERAL LABOR-MANAGEMENT RELATIONS PROGRAM

I. Specific Categories of People Under the Order

1. Should section 3 of the Order be amended to provide for additional exclusions?
2. Should the Order be amended to include any additional definitions pertaining to inclusions and exclusions (e.g., management official, confidential employee, professional employee)?
3. What should be the Executive Order policy with respect to guards? (See sections 2(d) and 10(b) (3).)
4. What special policy, if any, should be established concerning the status of attorneys under the Executive Order?

II. Supervisors

1. Should the definition of supervisor be modified? (See section 2(c).) If so, how?

V. Scope of Negotiation

1. Should the Order be amended to delineate a recognized union's rights concerning agency regulations and the impact of such regulations on the scope of bargaining? If so, what changes should be made for this purpose?
2. Should section 11(a), 11(b), and 12(b) be modified or revised or clarified? How?
3. Do the agency's obligations to negotiate, to consult and to meet and confer, especially with respect to mid-contract changes in personnel policies and procedures, require clarification?

VI. Grievance and Arbitration Procedures

1. Does the meaning and scope of section 13 need amplification?
2. Should section 13 be revised to:
 - a. Exclude from the negotiated grievance procedure grievances over agency regulations—even if regulations are referenced or cited in the agreement?—or
 - b. Provide that the negotiated griev-

2. What provisions, if any, should the Order contain concerning associations of supervisors and management officials? (See sections 7(e) and 21(b).)
3. What policy should pertain to the representation of supervisors by unions in proceedings under agency grievance and appeals procedures?

III. Recognition Procedures

1. Should requirements in section 10(a) for a secret ballot election as a prerequisite to exclusive recognition in all cases be modified or retained?
2. Should unions and agencies be permitted to consolidate bilaterally their existing units without meeting the requirement of a secret ballot election if the resulting unit is otherwise in conformity with the provisions of the Order?

IV. Consolidation of Existing Units

1. What should be the Executive Order policy with respect to the consolidation of bargaining units?
2. What changes in the Order or its implementation should be made for this purpose?

ance procedure is the sole procedure available for all grievances filed by or on behalf of unit employees thereby including grievances over agency regulations and policies not contained in the agreement and excluding only those issues subject to statutory appeal procedures?—or

- c. Permit negotiation on scope of grievance procedure, with statutory appeal procedures as the sole mandatory exclusion?
3. Should parties be permitted to take jointly to an arbitrator questions as to whether a grievance is subject to a negotiated grievance procedure or subject to arbitration under an agreement?—or should such questions be resolved only by the A/SLMR? (See sections 6(a)(5) and 13(d).)

VII. Approval of Agreements

Should section 15 be revised to include additional limitations upon the authority of an agency head to disapprove negotiated agreements (e.g., by requiring the review to be exercised on a “post-audit” basis; by limiting disapproval to specific agreement provi-

sions, permitting the remainder to go into effect; by setting time limits for agency action; by precluding intermediate level review of agreements prior to agency head review)?

VIII. Operation of Third-Party Procedures

1. Should the Assistant Secretary of Labor hear and rule on the negotiability disputes that arise in the context of unfair labor practice proceedings under the Order?
2. Should the Order be amended to provide for the investigation and prosecution of unfair labor practice charges by the Assistant Secretary of Labor?

IX. Impact of the Expiration of an Agreement on Dues Withholding

Should a uniform policy be established that so long as the parties are negotiating or seeking to negotiate a renewal agreement dues deduction should continue until (1) a new contract is negotiated, (2) the union loses representation rights, or (3) procedures for the resolution of a bargaining impasse have been exhausted.

Executive Order 11616. More than 12 years have passed since the program was inaugurated with the issuance of Executive Order 10988 in January 1962.

The Federal sector labor-management relations program has continued to evolve and develop since 1962. The number of Federal employees represented by labor organizations has continued to increase. Nearly 1,100,000 employees or 56 percent of the total nonpostal Federal work force is included in exclusive bargaining units. Approximately half of the white-collar employees and very nearly all of the eligible employees in the Federal blue-collar work force are included in bargaining units. Also, there has been a great increase in negotiating activity with the result that as of June 30, 1974, agreements had been negotiated covering 86 percent of the employees in bargaining units. In 1971, 68 percent were covered by agreements, 70 percent in 1972, and 77 percent in 1973.

Furthermore, a survey conducted by the Civil Service Commission in late 1973 indicated that negotiations were underway for initial agreements in many additional units which, when completed, would increase the number of employees covered by agreements to 94 percent of those in exclusive units. More importantly, analysis of agreements

X. Status of Negotiated Agreements during Reorganization

What special policies, if any, should be established concerning the status of exclusive bargaining units (together with existing negotiated agreements and dues withholding arrangements) which are affected by agency reorganizations?

XI. Official Time

Should the policy regarding the use of official time (section 20) be eliminated, modified or retained?

INTRODUCTION

This is a report of the Council's conclusions and recommendations following a general review of operations under Executive Order 11491, as amended, *Labor-Management Relations in the Federal Service*. This is the second such review by the Council since it was established in 1970 and was conducted pursuant to section 4(b) of the Order. It has been 3 years since the Council's first general review of the policies and procedures governing labor-management relations in the Federal sector, which resulted in the issuance of

through the Commission's automated Labor Agreement Information Retrieval System (LAIRS) shows considerable increase in the substantive content of their provisions.

Federal employers and labor organizations are reaching agreement in most instances in 3 to 4 months, and the vast majority are doing so without third-party intervention.

In 16 percent of the cases, third-party assistance was required, but in most of these, assistance was limited to mediation. The Federal Mediation and Conciliation Service mediated 536 cases under the program during the period from January 1, 1970, through June 30, 1974. This is in addition to the Service's technical assistance or training activity which was provided to 166 labor-management relationships in the last fiscal year. Agreements were reached in 85 percent of the negotiations which the Service mediated during the last fiscal year.

As of June 30, 1974, the Federal Service Impasses Panel had closed 96 of the 112 requests for assistance in negotiations received since the Panel's establishment. Most of these cases were settled informally. Only 18 impasses required the issuance of formal recommendations to the parties following factfinding.

The machinery established for dispute resolution under the Order appears to be operating effectively. From January 1, 1970, through June 30, 1974, 399 grievance arbitration awards had been rendered under the Executive order program in a wide variety of cases, with many more grievances settled without need for arbitration.

The Assistant Secretary of Labor had closed 4,676 of the 5,349 cases filed from January 1, 1970, through June 30, 1974, in the areas of representation, unfair labor practices, standards of labor organization conduct, and grievability and arbitrability disputes. He had supervised 2,149 representation elections.

Similarly, as of the end of June 1974, the Federal Labor Relations Council had closed 187 of the 237 cases which had been brought before it, including negotiability disputes, appeals from Assistant Secretary decisions, and exceptions to arbitration awards. The Council has shortened the average time required to process a case, while simultaneously handling an increasing workload. Three times as many cases were closed in the last calendar year as in the previous year. From January 1, 1973, through June 30, 1974, the Council took 145 case actions, which included the issuance of 48 substantive decisions. Through such substantive decisions, the Council has pro-

days of public hearings were held at which representatives of selected agencies and labor organizations gave further testimony on their views. Many of the witnesses submitted additional written statements following the hearings to supplement their previous written and oral testimony.

Following the hearings, the Council made an intensive review and analysis of the material it had received and, on that basis, has decided to recommend changes in the Order as set forth below. The Council's conclusion with respect to each of the areas of the general review is discussed in the remarks which follow.

I. SPECIFIC CATEGORIES OF PEOPLE UNDER THE ORDER

1. *Exclusions.*

Section 3 should not be amended to provide for additional exclusions.

The general review included an invitation to interested parties to offer necessary refinements in the scope of the program by recommending additional exclusions from the coverage of the Order.

Generally, the additional exclusions recommended by various agencies related to categories of employees who could be (or have been) ex-

vided overall direction on major policy issues and negotiability issues that have arisen under the program.

Thus, progress can be seen in operations under the Order and in many ways the Order is functioning smoothly. However, as with any human institution, there is always room for improvement. This brings us to the question of whether basic changes are needed in the structure of the Order, which was the purpose of this review.

The procedures which the Council adopted for this review were different from those used in earlier reviews of the program in order to permit participants to share in determining its coverage, to assure that comments would be received on the areas determined to be most important, and to allow the hearings to concentrate on amplifying and clarifying testimony on the key issues.

The Council invited all concerned to propose subject matter areas for the review. Forty-two responses were received from unions, other employee organizations, private associations, executive departments and agencies, and individuals. After careful examination of the issues proposed, the Council invited interested parties to submit detailed position papers on the areas selected for the central focus of the review. Thereafter, 3

cluded under section 3 of the Order. As no persuasive reasons for specifying additional exclusions have been advanced, we have concluded that the existing framework provided by section 3 meets the present needs of the program.

In connection with the matter of additional exclusions, certain labor organizations offered recommendations aimed at eliminating some or all of the current exclusions. These recommendations also were considered carefully but we have concluded that the reasons given for change in this direction were also unpersuasive.

2. Definitions Pertaining to Inclusions and Exclusions.

The Order should not be amended to include any additional definitions pertaining to inclusions and exclusions.

Section 10(b) (1) excludes management officials from units of exclusive recognition to avoid real or apparent conflict of interest situations between participation in the management of an agency and in the activities of a labor organization.

Confidential employees are not expressly excluded from units of exclusive recognition by any specific provision of the Order. Nonetheless, the

Assistant Secretary, in case decisions, has determined that it would best effectuate the policies of the Order if employees who assist and act in confidential capacities to persons who formulate and effectuate management policies in the field of labor relations are excluded from bargaining units.

Section 10(b) (4) prohibits the inclusion of professional employees in units with nonprofessional employees unless a majority of professional employees votes for inclusion in the unit.

Each of these categories of employees plays an important role in the functioning of the program. However, none of them has been defined in the Order itself. As a consequence, early in the administration of the Order it became necessary for the Assistant Secretary to define them in connection with carrying out his responsibilities to decide questions regarding the appropriateness of units pursuant to section 6(a) (1) of the Order. There was little comment in the oral and written submissions to the Council concerning these definitions. While they appear to be working satisfactorily, we believe that more experience should be acquired with them before giving further consideration to including them in the Order. Accordingly, we do not recommend that a defini-

has demonstrated no need for the special treatment of guards. Mixed units of guards and other employees, which were recognized prior to 1970, have continued to provide effective representation for all members. Guards have demonstrated no conflicts of interest in performing their duties. So long as the existing prohibition on strikes by Federal employees is continued, such conflicts as might exist in the private sector need not be anticipated. Furthermore, the current policy has not contributed to stability; on the contrary, it has encouraged fragmentation in units and rivalries among labor organizations. For these reasons, we recommend that the special representation policy for guards be abandoned. Guards should be treated for representation purposes the same as other employees.

4. Attorneys.

No special policy should be established concerning the status of attorneys under the Order. Attorneys should continue to be treated the same as other professional employees.

The question of whether a special policy should be established concerning the status of attorneys under the Order is not one of first impression before the Council. In an earlier repre-

tion of management official, confidential employee, or professional employee be included in the Order at this time.

3. *Guards.*

Sections 2(d), 10(b)(3), and 10(c) should be deleted to eliminate the separate representation policy governing guards.

Since 1970, the Order has required separate units for guards and has permitted new units of guards to be represented only by labor organizations which represent guards exclusively. The policy requiring separate representation of guards was one of several representation policies formulated in 1969 following 7 years of experience under Executive Order 10988. During this period, the number of employees represented in bargaining units grew dramatically and was attended by a significant number of representation problems. The 1969 policies governing guards were modeled after private sector practices in the belief that labor-management relations in the Federal service had developed to a point warranting concern for the special rule-enforcement functions of guards and possible conflicts of interest in the event of job actions.

Experience acquired under the present Order

sentation case¹ which was appealed to the Council, the agency had sought Council review of the Assistant Secretary's determination that a proposed bargaining unit consisting of attorneys and nonattorneys was an appropriate unit under the Order. Among its contentions, the agency asserted that the Assistant Secretary's determination that attorneys may be represented by a labor organization that represents nonattorneys presented a major policy issue because American Bar Association ethical requirements which are applicable to a segment of the agency's attorneys proscribe such representation. Moreover, the agency disagreed with the Assistant Secretary's determination that there is no conflict of interest in such representation.

In denying review of the Assistant Secretary's decision, the Council determined that there is no requirement that proscriptions of the American Bar Association concerning the conduct of its members control unit determinations and qualifications of a labor organization for exclusive recognition. As to the contention that representation of both attorneys and nonattorneys by the same labor organization would create a

¹ *United States Department of the Treasury, Office of Regional Counsel, Western Region, A/SLMR No. 161, FLRC No. 72A-32 (February 22, 1973), Report No. 33.*

conflict of interest, the Council noted that (1) the attorneys were essentially involved in nonpersonnel matters related to the mission of the agency; (2) the attorneys were not engaged in Federal personnel work; (3) the attorneys did not administer a labor-management relations law or the Order; (4) the attorneys did not serve in a confidential capacity advising those who develop and administer management policies in the field of labor-management relations or personnel management matters; and (5) the attorneys were not supervisors or management officials.

The general question of labor organization representation of attorneys was raised again in the general review by certain individuals and agencies. Two proposals were advanced for providing a special policy for attorneys. One recommendation was that attorneys who are in an attorney-client relationship with agency management be accorded treatment similar to that which has been accorded to guards since 1970—that is, be placed in separate units consisting only of attorneys and be represented by labor organizations whose memberships are limited to attorneys. The second recommendation was that all attorneys be granted a self-determination election, separate from other professionals, to ascertain

attorney's obligations to management and those to a labor organization are also more theoretical than real. The Order in its present form and the manner in which it has been interpreted contains ample provision for avoiding conflicts of interest. Thus, for example, section 1(b) prohibits participation in the management of or acting as representative of a labor organization when the participation or activity would result in a conflict or apparent conflict of interest; section 10(b) (1) excludes management officials and supervisors from units of exclusive recognition. Moreover, confidential employees are, through the adjudicatory processes under the Order, excluded from bargaining units. Thus, we have concluded that the current framework is adequate for dealing with any conflict of interest problems, and no amendments to the Order are recommended.

II. SUPERVISORS

1. *Definition.*

The definition of "supervisor" in section 2(c) should be modified to delete performance evaluation as a sole determinant of supervisory status.

A variety of proposals was received to alter

whether they wish to be represented in a unit with nonattorneys or a unit limited to attorneys.

Two basic arguments were advanced in support of these recommendations. First, it was contended that a conflict of interest existed between the attorney's role as an advisor to agency management and his role as a member, participant or representative of a labor organization which admits to membership and represents nonattorneys. Second, it was contended that the ethical standards of the American Bar Association require that labor organizations which attorneys join be composed solely of attorneys.

With respect to the ethical standards of the American Bar Association, we have not been referred to a single instance where an attorney employed by a Federal agency has been disciplined for joining, participating in, or being represented by a labor organization which admits to membership or which represents nonattorneys. Thus, a conflict with ethical standards is of theoretical concern only. Actual experience has not established that a real problem exists. In any event, there is no requirement that proscriptions of the American Bar Association be determinative under the Order.

The concern that the Order requires amendment to avoid conflicts of interest between an

the definition of "supervisor" to narrow the scope of its applicability, with the assertion that its application is resulting in the exclusion from bargaining units of employees who exercise only "work leader" or equivalent responsibility. Most often these criticisms centered around the determination of supervisory status on the basis of performance evaluation where this has been assigned to employees who perform no other supervisory functions.

The Council recognizes that the function of evaluating the performance of other employees may be an important part of supervisory responsibility where the evaluation is made in conjunction with one of the other supervisory functions listed in the definition. Therefore, evidence that an employee evaluates the performance of other employees can be of great assistance in the identification of supervisory positions. However, the result of the inclusion of evaluation among the indicia of supervisory authority has been that the possession of this authority alone is sufficient to establish that a person is a supervisor within the meaning of the Order. As a result, persons who perform an evaluation function which has only minimum effect on the employee being evaluated, but who have no other supervisory authority, may be determined to be supervisors within the mean-

ing of the Order. The Council does not believe that such persons should be deemed supervisors. Rather, persons who evaluate the performance of other employees will not be considered supervisors unless they otherwise qualify as supervisors under the definition. This can be accomplished by deleting from the definition of "supervisor" the criterion of evaluating performance.

The sporadic performance of supervisory duties was also cited as a possible cause of inappropriate designation of supervisory positions. The Council notes, however, that in applying the definition the Assistant Secretary has held, in effect, that mere intermittent and infrequent possession or assignment of supervisory functions is not a sufficient basis for a supervisory determination. Thus, the frequency and regularity with which supervisory authority is exercised has been made an element in the application of the definition.

The Council agrees with the view expressed in the review that only genuine supervisory positions should be excluded from bargaining units. The Council wishes to note that the definition in the Order was designed to do this and contains a number of qualifications to this end. For example—"in the interest of an agency",

expert determinations made for the special purposes of the labor relations program under a definition which has been painstakingly developed over a period of time to meet those purposes.

2. Relationships With Supervisors' Associations.

Sections 7(e) and 21(b) should be deleted.

Section 7(e) requires agencies to establish systems for intramanagement communication and consultation with supervisors and supervisors' associations, and section 21(b) provides for dues allotments for associations of management officials and supervisors, subject to the regulations of the Civil Service Commission.

These provisions were incorporated in the Order together with provisions prohibiting the inclusion, with minor exceptions, of supervisors in bargaining units, and prohibiting supervisors from participating in the management of labor organizations or from acting as representatives of such organizations.

The purpose of these provisions was to assure that supervisors were recognized as a part of management. As expressed by the 1969 Study Committee in its Report accompanying Executive

“responsibly to direct [employees]”, “effectively to recommend”, and “exercise of authority . . . not of a merely routine or clerical nature, but [requiring] the use of independent judgment”—are limitations which were designed to assure that persons determined to be supervisors would possess actual authority, as distinct from work leaders, and would be found to be in bona fide conflict of interest situations if not excluded from bargaining units. The Council believes that the continued careful application by the Assistant Secretary of these qualifications in the making of supervisory determinations will aid in identifying genuine supervisory positions.

Finally, the Council considered proposals that the definition be made uniform with definitions of the term used for other purposes in the Government, such as position classification. The definition of “supervisor” in the Order reflects the special purposes which the term serves. For example, it has special significance in determining community of interest and conflict of interest in establishing appropriate units and in determining interference with the rights of employees and labor organizations in unfair labor practice proceedings. The Council concluded that any advantages to be gained through uniformity were clearly outweighed by the importance of having

Order 11491, “In short, [supervisors] should be and are part of agency management and should be integrated fully into that management.” Agencies were directed to take steps to assure that supervisors and associations of supervisors were afforded the opportunity to participate in a meaningful way in the management process and have their problems carefully considered.

The Civil Service Commission, in fulfilling its responsibilities, has subsequently published guidance for establishing intramanagement communication and consultation systems required by section 7(e) of the Order.² The Commission indicated that, in conjunction with its evaluation program, it would gather information about the establishment and operation of these systems. The Commission has also provided in its regulations for allotments of dues to associations of management officials and supervisors.³

The 1969 Study Committee Report which led to the issuance of Executive Order 11491 recommended that the Federal Labor Relations Council, within 2 years, provide for a review of the arrangements established by agencies for dealing with supervisors and associations of supervisors

² Federal Personnel Manual, Ch. 251.

³ FPM Supplement 990-1, Civil Service Regulations, Part 550, Subpart C.

on their problems and, upon the basis of such review, make such further recommendations to the President as it deems appropriate. In its first general review of the program conducted in 1970-71, the Council found it was too soon to review the arrangements which agencies had made. In the interim between the conclusion of the first general review and the initiation of this review, the Council was advised by the Civil Service Commission that agencies generally were taking appropriate steps to discharge their responsibilities under sections 7(e) and 21(b) of the Order.

The Council decided that this matter should be among the issues in its second general review of the program. The Council has now concluded that the implementation of agency systems for intramanagement communication and consultation with supervisors and associations of supervisors has reached the stage where they would be dealt with more appropriately outside the Executive order on Labor-Management Relations in the Federal Service. Agencies have accomplished and are continuing to accomplish their responsibilities under agency regulations and the Federal Personnel Manual.

The Council's review has found general agreement on the part of agencies and labor

The Council has recommended the modification of the definition of "supervisor" to assure that only persons actually possessing supervisory authority are excluded from bargaining units and are prohibited from representing labor organizations.

To be consistent with the policy that supervisors should not represent labor organizations or be represented for the purposes of negotiation by labor organizations, the Council believes that supervisors likewise should not be represented by such organizations in proceedings under agency grievance and appeal procedures.

However, because this question deals with the administration of agency grievance and appeal systems established outside the Order and with the representation rights of supervisory employees under such systems, which likewise are established by the Civil Service Commission and by agencies outside the Order, the Council has concluded that this question is not appropriate for resolution by amendment of the Order but is rather a question of management policy for determination by the Civil Service Commission working with agencies concerned.

The Council will, therefore, refer this issue to the Civil Service Commission, upon issuance

organizations that sections 7(e) and 21(b) should be deleted from the Order. Of course, the Civil Service Commission should and will continue to provide guidance on intramanagement communication and consultation through the Federal Personnel Manual system and to provide in its regulations for the deduction of dues of associations of management officials or supervisors from the pay of members of those associations who make voluntary allotments for that purpose. Thus, supervisors and associations of supervisors may be assured that the deletion of sections 7(e) and 21(b) from the Order will have no detrimental effect on them.

3. Representation of Supervisors Under Agency Grievance and Appeal Procedures.

No change should be made in the Order on the subject of labor organization representation of supervisors in proceedings under agency grievance and appeal procedures.

As indicated above, the Council seeks to continue the process by which supervisors are excluded from collective bargaining representation by labor organizations, are made a part of agency management, and are integrated fully into that management.

of the amendments to the Order.

III. RECOGNITION PROCEDURES

The existing requirements for a secret ballot election as a prerequisite to exclusive recognition should be retained.

The requirements for a secret ballot election were among those areas which received the most comment during the general review. Recommendations varied widely, with both agencies and labor organizations displaying a broad variety of opinions on the matter. Clearly, agencies and labor organizations have yet to develop a consensus on this issue.

The Council has examined the question of secret ballot elections against the background of the program's assumptions and experience. From its beginnings, the Federal program has assumed that the positive participation of all unit employees in the formulation and implementation of personnel policies and practices will contribute to more effective conduct of public business. The secret ballot election is a valuable feature of this participation. Elections invite direct participation by every unit employee and remind each employee of the personal responsibilities which are the basis of the program. In our view, we should be slow to discard such a fundamental

element of the process whereby employees, through their free choice, express the will of the majority.

The use of other techniques for determining representation rights has been less than satisfactory. Under Executive Order 10988, agencies and labor organizations were free to experiment with various forms of written authorizations and petitions to determine whether a majority of the employees in a unit desired a labor organization to represent them. These techniques were not regarded as reliable and were abandoned with the issuance of Executive Order 11491.

Our experience of the last 4 years, as reflected in submissions and testimony by interested parties, indicates that while many agencies and labor organizations recommend that the secret ballot requirement be modified, no significant program difficulties arising from the requirement are reported. Given these facts, the Council has determined to recommend no change in the requirement for a secret ballot election as a prerequisite to the granting of exclusive recognition. The Council is recommending later in this Report, however, a change in section 10(a) to provide for bilateral consolidation of existing units without an additional mandatory election.

Section 10(a) should be amended to permit an agency and a labor organization to agree bilaterally to consolidate, without an election, those bargaining units represented by the labor organization within the agency.

Affected employees should be given adequate notice of a proposed bilateral consolidation, with the right to petition the Assistant Secretary to hold an election on the issue of the proposed consolidation.

A proposed bilateral consolidation of existing units should be submitted to the Assistant Secretary for a determination as to whether the unit conforms to the appropriate unit criteria contained in the Order and, where appropriate, the Assistant Secretary should certify the labor organization as the exclusive representative of the employees in the newly established consolidated unit.

Where there is no bilateral agreement on a proposed consolidation, either party should be permitted to petition the Assistant Secretary to hold an election on the consolidation issue.

Section 10(d) should be amended to permit elections to determine whether a labor organization should be recognized as the exclusive representative of employees in a unit composed of

Turning to a related matter, it was recommended during the general review that the Order be amended to require that a certain percentage of eligible voters cast ballots in an election before that election is viewed as representative of the views of a majority of the employees in the unit and therefore valid. While it appears that there have been elections where a relatively small percentage of the eligible voters cast ballots, there was no evidence that such circumstances are a recurring problem and the Council has no desire to return to the 60 percent rule developed under Executive Order 10988. However, pursuant to his section 6(a)(2) responsibility to supervise elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit, the Assistant Secretary already has the authority to find invalid an election where the number of employees casting ballots is insufficient to be representative of the wishes of the entire unit. Accordingly, the Council sees no need for changes in the Order regarding this matter.

IV. CONSOLIDATION OF EXISTING UNITS

Federal sector labor-management relations policy should facilitate the consolidation of existing bargaining units.

employees in units currently represented by that labor organization or continue to be recognized in the existing separate units.

A labor organization seeking an election on a proposed consolidation of existing units should not lose its status as the exclusive representative in the existing units should the employees reject the consolidation.

In every case where a consolidation of units would mix both professional and nonprofessional employees, all of the professionals represented in such units, including those already in mixed units, should be given a separate self-determination election on the issue of being included in the proposed consolidated unit with nonprofessionals.

Election bars, certification bars, and agreement bars should not apply when parties seek bilaterally to consolidate existing units or when a labor organization or agency petitions the Assistant Secretary for an election on a proposed consolidation among units represented by a particular labor organization.

The special procedure for consolidating a labor organization's existing exclusively recognized units should have application only to situations where there is no question concerning representation.

Almost all agencies and labor organizations which participated in the general review expressed strong support for a policy which would facilitate the consolidation of existing exclusive recognitions. Moreover, we are convinced from our experience and analysis that the Federal labor-management relations program will be improved by a reduction in the unit fragmentation which has developed over the 12 years of labor-management relations under Executive orders.

The consolidation of units will substantially expand the scope of negotiations as exclusive representatives negotiate at higher authority levels in Federal agencies. The impact of Council decisions holding proposals negotiable will be expanded. In our view, the creation of more comprehensive units is a necessary evolutionary step in the development of a program which best meets the needs of the parties in the Federal labor-management relations program and best serves the public interest.

Currently, agencies and labor organizations mutually desiring to consolidate the labor organization's existing exclusive units must go through the election procedures called for in section 10(a) of the Order. This requirement must be met even though the employees involved have

petition the Assistant Secretary to hold such elections as are necessary to determine whether the employees in the proposed consolidated unit wish to be represented in that unit or existing units. In such circumstances, the labor organization should not be required to risk its existing certifications because no question would have been raised concerning the desire of the employees to be represented by the exclusive representative. Should the employees in the proposed consolidated unit who cast ballots oppose the consolidation, the existing unit structure should continue.

A consolidated unit established by bilateral agreement must still conform to the appropriate unit criteria contained in the Order. To assure such conformity, the parties' agreement on a proposed consolidation of existing units should be submitted for review through processes to be established by the Assistant Secretary. If it is determined that the unit conforms to the appropriate unit criteria contained in the Order, and there has not been a question raised as to whether the labor organization represents a majority of the employees in the proposed unit, the Assistant Secretary, pursuant to his section 6(a)(1) au-

already voted in a secret ballot election to have the labor organization as their exclusive representative, and there appears to be no question that a majority of the employees desire to retain the labor organization as their representative. We see no need to require that an election be held before such recognized units can be consolidated into a broader unit. In such circumstances, the agency and the labor organization should be free to agree bilaterally to consolidation without an election. Accordingly, we recommend that section 10(a) be amended to provide for such consolidation without an election.

In recommending this change, we are mindful of the fact that the employees who will be affected by the proposed bilateral consolidation may wish an opportunity to express their views on such a change in the structure of their unit for representation. Therefore, in recognition of a need to afford some protection to the rights of the employees, we recommend that they should have adequate notice of a proposed consolidation and should have a right to vote on the proposal if a sufficient number in the proposed consolidated unit have indicated opposition to the consolidation.

Accordingly, we recommend that the Order be amended to provide that such employees could

thority to decide questions as to appropriate units, should certify that organization as the exclusive representative of the employees in the newly established consolidated appropriate unit. In making his determination on the appropriateness of the proposed consolidated unit, the Assistant Secretary should be mindful of the policy of facilitating the consolidation of existing bargaining units.

A proposal to consolidate existing units may not always be agreeable to the other party. Where there is no bilateral agreement on the consolidation a party should be permitted to petition the Assistant Secretary to hold an election on the consolidation issue. Pursuant to such a petition, the Assistant Secretary could hold such elections as are necessary to determine whether the employees in the proposed consolidated unit wish to be represented in that unit or to continue to be represented in their existing units. As in the circumstances where affected employees raise issue with a proposed consolidation, but there is no doubt that the labor organization has majority support in the existing units, we do not feel it appropriate that the labor organization risk losing its status as the recognized bargaining representative in its existing exclusive units.

In order to provide for the type of consolidation elections which we feel the Assistant Secretary should conduct, we recommend that section 10(d) of the Order be amended to permit elections to determine whether a labor organization should be recognized as the exclusive representative of employees in a unit composed of employees in units currently represented by that labor organization or continue to be recognized in the existing separate units.

We believe that the principles and procedures described herein should apply only where a labor organization or where two or more labor organizations jointly seek to consolidate existing units within a single agency.

Section 10(b) of the Executive order prohibits the establishment of a unit if it includes both professional and nonprofessional employees, unless a majority of the professional employees votes for inclusion in the unit. We believe this requirement should likewise apply where consolidation of existing bargaining units is proposed. That is, in every case where a consolidation of units would mix both professional and nonprofessional employees, all of the involved professionals, including those already in mixed units, should be given a separate self-determination

tative of employees in an appropriate unit, commonly referred to as an "election bar" and a "certification bar" respectively. Further, when there is a signed agreement having a term not to exceed 3 years, a petition for an election among covered employees is untimely unless filed between the 90th and 60th day preceding the expiration of the agreement, commonly called an "agreement bar."

In our view, such bars foster desired stability in labor-management relations in that parties to an existing bargaining relationship have a reasonable opportunity to deal with matters of mutual concern without the disruption which accompanies the resolution of a question of representation. Where no labor organization is certified, the employees and agency management know for a fixed period of time the status of any exclusive representation issues. However, where parties to such a relationship bilaterally seek to consolidate existing exclusive units to establish what they feel is a more stable relationship, we do not feel that they should be impeded by the same restrictions which apply to an attempt to raise a question concerning representation. Accordingly, we feel that parties should be free to consolidate units bilaterally notwithstanding

election on the issue of being included in the proposed consolidated unit with nonprofessionals. While professional employees already in mixed units would have voted once for inclusion with nonprofessionals, they would have made that selection in the context of a unit structure which differs from that of the proposed consolidated unit.

We are mindful that providing professional employees with a self-determination election might detract from our recommended policy of facilitating the consolidation of existing bargaining units in that it might result in separate consolidated professional and nonprofessional units. We believe, however, that this requirement would strike a balance between the proposed policy on consolidation of units and the existing policy concerning the inclusion of professional employees in a unit with nonprofessional employees.

The processing of petitions for exclusive recognition by the Assistant Secretary is affected by certain "bars to elections," either specifically provided for in the Order or fashioned by the Assistant Secretary in his regulations or case decisions. More particularly, a petition is untimely if filed within 12 months of a valid election or within 12 months after the certification of a labor organization as the exclusive represen-

when a valid election might have been held or when a certification might have last issued or the existence of an agreement between those parties. That is, "election bar," "certification bar," and "agreement bar" rules should not apply to the parties when they seek bilaterally to consolidate existing units.

When a labor organization or agency seeks to consolidate units by petitioning the Assistant Secretary to hold an election to determine whether the employees wish to be represented in the proposed unit or in their existing units, it should also be able to do so notwithstanding election bars, the involved labor organization's certifications or its valid agreements. While it is true that an agreement is reached bilaterally and one party may object to the other's seeking to waive the agreement as a bar, we view the furtherance of the policy favoring consolidation of units to outweigh a legitimate concern for the viability of an agreement. In this regard, consolidation permits parties to arrive at a new agreement broader in coverage and scope than the agreements which covered smaller fragmented units. However, a proposed consolidation, either through bilateral agreement between the parties or through a petition to the Assistant Secretary, should not constitute a waiver of the existing

labor organization's certification and agreement bars insofar as they preclude the raising of a question concerning representation. That is, such bars should be applicable to an attempt by a rival labor organization to replace the existing exclusive representative or a petition by employees for a vote on whether the labor organization should cease to be the exclusive representative.

The procedure for consolidating a labor organization's existing exclusively recognized units should have application only to situations where there is no question concerning the representation desires of the employees who would be included in a proposed consolidation. Where a labor organization seeks a unit which includes its existing units together with employees who are currently unrepresented, the unrepresented employees should have the option of being represented in the consolidated unit, remaining unrepresented, or, if they constitute a separate appropriate unit, being represented in that unit by any intervening labor organization. Similarly, where a labor organization seeks a unit which includes its existing units together with employees represented by a different labor organization, the currently fashioned election, certification

V. SCOPE OF NEGOTIATIONS

1. *The Role of Agency Regulations.*

Section 11(a) should be amended to provide that only those internal agency regulations for which a "compelling need" exists—under criteria to be established by the Council—may bar negotiations with respect to a conflicting proposal. Section 11(c) should also be amended to authorize the Council to resolve disputes concerning an agency head's determination, in connection with negotiations, that an agency's regulations meet the "compelling need" standard.

Section 11(a) should be amended to provide that, as to those internal agency regulations for which a "compelling need" exists, only those issued at the agency headquarters level or at the level of a primary national subdivision may bar negotiations. Section 11(c) should also be amended to authorize the Council to resolve disputes concerning an agency head's determination, in connection with negotiations, as to the level of issuance of the regulations involved.

The Council, by rule, should consider an appeal from a labor organization challenging an agency head's determination that an internal agency regulation bars negotiation only if the

and agreement bars enjoyed by the incumbent organization would be applicable. If an election is held in such a situation, the employees would have the option of being represented in the consolidated unit, being unrepresented, or, if they constitute a separate appropriate unit, being represented by the incumbent labor organization or any intervening organization.

We believe that the policy of promoting more comprehensive bargaining units and hence of reducing fragmentation in the bargaining unit structure will foster the development of a sound Federal labor-management relations program. We believe that the proposed modifications of the Order and subsequent actions of the Assistant Secretary will facilitate the consolidation of existing units, which will do much to accomplish the policy of creating more comprehensive units. We further feel that the Assistant Secretary can do much to foster this policy in carrying out his functions of deciding other representation questions including the appropriateness of newly sought units. Accordingly, in all representation questions, equal weight must be given to each of the three criteria in section 10(b) of the Order. By doing so, the result should be broader, more comprehensive bargaining units.

labor organization has first requested an exception to the regulation from the agency head and that request has been denied.

The Council, by rule, should consider an appeal from a labor organization challenging an agency head's determination that an internal agency regulation bars negotiation only if such appeal is filed by the national president of a labor organization (or his designee) or the president of a labor organization not affiliated with a national organization (or his designee).

These amendments to the Order concerning internal agency regulations which may bar negotiations should become effective 90 days after issuance by the Council of the criteria for determining "compelling need" and should apply alike to those regulations existing on, or adopted after, the effective date of these amendments.

Section 11(a) of the present Order provides in relevant part that the scope of negotiations on personnel policies and practices and matters affecting working conditions is limited by applicable regulations issued at higher levels within the agency.

The appropriate interface between internal agency regulations and conflicting bargaining proposals, as reflected in the provisions of section

11(a), has been a matter of continuing concern under the Federal labor-management relations program since its inception. In this regard, the 1969 Study Committee Report which accompanied the present Order emphasized that agency regulatory authority must be retained. However, the Study Committee sought to minimize the preemption by internal agency regulations of matters otherwise negotiable under the Order by urging agencies to avoid the issuance of overprescriptive regulations; to increase delegations of authority over personnel policies to local managers so as to permit a wider scope for negotiation; and to grant exceptions from higher level regulations on specific items where jointly requested and feasible.

Experience under the Order, as well as testimony during the current review, establishes that, while considerable progress toward a wider scope of negotiation at the local level has been effected, the exhortations by the Study Committee (which were supplemented by information activities under the Order by the Council and its constituent members) have fallen short of their objectives. As a result, meaningful negotiations at the local level on personnel policies and practices and matters affecting working conditions have been

of the degree of necessity for the regulation. To the extent that such regulations are asserted as a bar to negotiations, the goal of providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment is not fully achieved.

Some labor organizations and agencies suggested the concept of permitting internal agency regulations at a higher level, covering personnel policies and practices and matters affecting working conditions, to bar negotiations at the local level only if a "compelling need" for such regulations exists. Regulations, the need for which is not compelling, would not be available as a bar to negotiations although they would retain their full force and effect in all other respects. The Council finds merit in this suggestion and recommends that it be adopted.

Illustrative criteria for determining "compelling need" would be established in rules to be published by the Council after the views of interested persons have been fully considered in the rule-issuing process. A similar process was employed by the Council in the adoption of rules terminating formal recognition and establishing criteria for granting national consultation rights

unnecessarily constricted in a significant number of instances by higher level agency regulations not critical to effective agency management or the public interest. Likewise, the parties have not fully explored the opportunities for exceptions from agency regulations asserted as bars to negotiations.

The Council remains firm in its belief that agency regulatory authority must be retained. Nevertheless, modifications in the present role of internal agency regulations as a bar to negotiations should be adopted, consistent with essential agency requirements, to implement the purposes of an evolving and dynamic Federal labor-management relations program. (Such modifications would complement the Council's recommendations with respect to the consolidation of bargaining units which, it is believed, would likewise result in a broader scope of negotiations.) To these ends, changes in the Order and the Council's practices thereunder are recommended as set forth below.

(a) *Agency regulations for which a "compelling need" exists.*

Under section 11(a) of the present Order, a higher level agency regulation bars negotiation on any conflicting bargaining proposal regardless

under Executive Order 11491. Such participation by interested persons in the process will facilitate the development and understanding of effective criteria which will take into account the particular needs of agencies and labor organizations and enable the Council to strike a proper balance between negotiations and the exercise of agency regulatory authority.

Further, disputes as to whether an agency regulation, as interpreted by the agency head, meets the standard of "compelling need" should be resolved by the Council on a case-by-case basis in negotiability appeals filed under section 11(c) of the Order. (A decision by the Council as to the "compelling need" for a regulation in one agency or one primary national subdivision of an agency would not, of course, be dispositive as to the "compelling need" for the same or similar regulation in another agency or another primary national subdivision in the same agency.)

Section 11 of the Order and the Council's rules should be amended to reflect these changes.

It must be emphasized in connection with the foregoing recommendations, that we are here concerned only with the question of whether a higher level internal agency regulation covering personnel policies and practices or matters affecting working conditions should serve as a bar to

negotiations on a conflicting proposal submitted at the local level.

As previously indicated, even a regulation which does not satisfy the "compelling need" standard would remain completely operative as a viable agency regulation in full force and effect throughout the agency or the primary national subdivision involved, including those organizational elements wherein exclusive bargaining units exist. The effect of a determination that the regulation does not meet the "compelling need" standard would simply mean that the regulation would not serve to bar negotiation on a conflicting proposal. Such a regulation, if otherwise valid, would thus continue to apply in a given exclusive bargaining unit except to the extent that the local agreement contains different provisions. Moreover, while a higher level agency regulation for which no "compelling need" exists would not serve to bar negotiation on a conflicting proposal, that proposal would remain subject to the additional negotiability limitations in sections 11 (a), 11 (b), and 12 (b) of the Order, which limitations, as discussed under V.2. below, would continue unchanged. Finally, these recommendations would have no effect on section 11 (c) (3) of the Order which now provides that an agency head's

actions at the local level. By thus delineating the levels of internal agency regulations which may bar negotiation, the confusion and anomalies previously encountered can be effectively eliminated without unreasonably circumscribing the respective agencies.

It should be understood in connection with the foregoing recommendation that we are here concerned only with the question of whether a higher level internal agency regulation issued below the headquarters level or the level of a primary national subdivision, and covering personnel policies and practices and matters affecting working conditions, should serve as a bar to *negotiations* on a conflicting proposal submitted at the local level. Such regulations would remain completely operative as viable agency regulations, if otherwise valid, and would continue to apply in a given exclusive bargaining unit except to the extent that the local agreement contains different provisions. Moreover, while a higher level internal agency regulation issued below the headquarters level or the level of a primary national subdivision would not serve to bar negotiation on a conflicting proposal, that proposal would remain subject to the additional negotiability limitation in sections 11 (a), 11 (b), and 12 (b) of

determination as to the interpretation of an agency's regulations with respect to a proposal is final.

(b) *Level of issuance.*

Under the present Order, negotiation at the local level is limited by any internal agency regulations issued above the local level. In some instances, this results in local negotiations being limited by a superstructure of regulations issued by agency headquarters and by each subdivision of the agency to which authority has been delegated, above the local level. These multiple levels of regulations have unduly constricted negotiations by reason of the complexity of issuances as well as by the diverse exercise of authority and discretion with regard to the issuance and implementation of regulations dealing with otherwise negotiable matters within subordinate levels of the same agency.

We do not question the statutory authority of agency heads to delegate regulation-issuing authority within their agencies. Moreover, as already mentioned, we believe that agency regulatory authority must be retained. However, we recommend that only those regulations issued at the agency headquarters level or at the level of a primary national subdivision serve to bar negoti-

the Order, which limitations, as discussed under V.2. below, would continue unchanged.

Disputes as to the level of issuance of an internal agency regulation asserted as a bar to negotiation should be resolved by the Council in negotiability appeals filed under section 11(c) of the Order.

Finally, in determining whether regulations are issued at the level of a "primary national subdivision," the meaning of that phrase should be consistent with that provided in Part 2412 of the Council's Rules and Regulations pertaining to National Consultation Rights and Termination of Formal Recognition: "Primary national subdivision of an agency means a first-level organizational segment which has functions national in scope that are implemented in field activities."

Section 11 of the Order, and the Council's rules, should be amended to reflect these changes.

(c) *Requests for exceptions to agency regulations.*

The 1969 Study Committee, as previously indicated, encouraged agencies to grant exceptions to higher level agency regulations where jointly requested and feasible. Further, the Council publicly noted, under the present Order, that parties have not taken full advantage of the op-

portunity to seek exceptions to agency policies and regulations; and that some negotiability disputes involving the validity of agency regulations have been brought to the Council without an attempt first to seek exceptions to the agency regulations.

The Council is of the opinion that the failure of the parties to explore the opportunity of an exception to a higher level agency regulation determined by the agency head to bar negotiations, before recourse to the Council, reflects a disservice to the purposes of the Federal labor-management relations program.

Accordingly, if the foregoing amendments to the Order are adopted, the Council intends to revise its rules to provide that the Council will not consider a negotiability appeal by a labor organization challenging an internal agency regulation determined to bar negotiation unless the labor organization first requests (unilaterally or jointly) an exception to the regulation from the agency head and such exception is denied or not acted upon within time limits to be established by the Council.

(d) Filing of appeals challenging agency regulations as bars to negotiations.

pretation of the Order or a statement on a major policy issue.

(e) Effective date of amendments; impact on existing regulations.

The Council has fully considered the issues of whether the recommended changes in the Order with respect to higher level agency regulations should be deferred beyond the effective date of other amendments to the Order, i.e., 90 days after the effective date of the Order; and whether the presently recommended changes should apply to current agency regulations or be limited or deferred in their application to such regulations.

As to the effective date of the recommended changes regarding higher level agency regulations which may bar negotiations, the Council is of the view that an orderly transition will best be accomplished by deferring the application of such changes to 90 days after regulations establishing illustrative criteria for determining "compelling need" have been issued by the Council.

As to the impact of such changes on existing regulations, the Council is of the opinion that the purposes of the Federal labor-management relations program would best be served if the changes here proposed apply alike to those higher level

The Council believes that if an agency head determines that a proposal is nonnegotiable by reason of a higher level agency regulation, and the labor organization disputes the "compelling need" for such regulation or its level of issuance, such dispute should be subject to the same right of appeal to the Council by the labor organization immediately concerned, as now provided with respect to analogous disputes under section 11(c) of the Order.

However, the Council is aware that an unnecessary multiplication of challenges could derive from the recommended changes in the Order which would unreasonably burden and impede the effective operation of the program. To minimize this possibility, the Council, if its recommendations are adopted, intends to adopt a rule providing that negotiability appeals challenging the "compelling need" for or level of issuance of higher level agency regulations determined to bar negotiation may be filed only by the national president of a labor organization (or his designee) or the president of a labor organization not affiliated with a national organization (or his designee). Such a provision would be consistent with the limitations now provided in Part 2410 of the Council's rules concerning requests for inter-

agency regulations existing on, or adopted after, the effective date of these recommended changes in the Order.

2. *Retention of Sections 11(b) and 12(b).*

Section 11(b) and 12(b) should be retained without change.

A prevailing objective of the general review was to assess ways in which the scope of negotiations could be expanded to enable the negotiating process to function in a more productive fashion. As indicated in the preceding sections of this Report, the Council is making significant recommendations to facilitate the consolidation of units and to modify section 11(a). These proposals are expected to result in a broader scope of negotiations. There remains for discussion the question, raised in the general review, as to whether sections 11(b) and 12(b) of the Order should be revised or clarified.

The program review produced many recommendations from interested parties regarding the substance and form of these sections. Recommendations ranged from proposals to eliminate specific matters on which agencies possess discretion to negotiate under section 11(b), to proposals for deleting the management rights provisions altogether. The Council has carefully

examined all recommendations and has reviewed its decisions and issuances which interpret sections 11(b) and 12(b). We have decided that the substantive limits on negotiation, as currently expressed in these sections, should remain unchanged.

It was the view of the 1961 President's Task Force on Employee-Management Relations in the Federal Service that the uniform retention and protection of certain basic management rights was of sufficient importance to the Government and to the public interest that these rights should be embodied in the Order and not left to determination through the process of negotiations. The management rights provisions originally framed in the Task Force Report and in Executive Order 10988 remain essentially unchanged in the present Order. The Council continues to believe it is essential to the public interest to preserve basic management rights in the Order itself.

Included in the Council's concern is the need for careful, consistent delineation of the distinction between the areas of management rights and of negotiations. A significant number of negotiability questions recently brought to the Council have resulted in the issuance of case decisions which have been studied and applied throughout the Government. The Council believes that further

tion, that a party must meet its obligation to negotiate prior to making changes in established personnel policies and practices and matters affecting working conditions during the term of an agreement.

The Assistant Secretary, when faced with this issue in a case, concluded that the Order does require adequate notice and an opportunity to negotiate prior to changing established personnel policies and practices and matters affecting working conditions during the term of an existing agreement unless the issues thus raised are controlled by current contractual commitments, or a clear and unmistakable waiver is present. We believe that the Assistant Secretary's conclusion on this matter is correct and, therefore, no change in the Order is warranted in this regard.

Certain agency spokesmen have suggested that such a requirement could unreasonably delay agency management in instituting necessary changes during the term of the agreement, and thus restrict management's flexibility in the conduct of the Government's business. The Order is predicated on an assumption that "the well-being of employees and efficient administration of the Government are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies

delineation of the boundary between management rights and negotiation will be better handled through the continuation of this evolutionary process of case decisions than through an attempt to codify decisions and redraft these provisions.

For these reasons the Council recommends no change in sections 11(b) and 12(b).

3. *The Obligation to Negotiate.*

Section 11(a) comprehends an obligation to "negotiate" with respect to midcontract changes in established personnel policies and practices and matters affecting working conditions. "Consultation" is required only with respect to those labor organizations accorded "national consultation rights" under section 9. The term "meet and confer," as used in the Order, is intended to be construed as a synonym for "negotiate."

Section 11(a) of the Order requires that the parties "shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions . . ." The term "reasonable times" is not further defined in the Order. It is evident that at the very least the duty thus described requires that the parties avoid unnecessary delays in the process of negotiation. However, the question is raised as to whether the Order requires, in addi-

and practices affecting the conditions of their employment . . ." We have found no reason during the course of the current review to doubt the wisdom of this assumption, nor have we found any basis to conclude that employee participation in these matters is any less critical to their well-being, or the efficient administration of Government during the term of an agreement, than it is during the relatively brief period of formal contract negotiations. On the contrary, the fact that changes in established personnel policies and practices and matters affecting working conditions during the term of an agreement are often the result of changes in circumstances which were not foreseen by either party during the period of contract negotiations makes it appear likely that employee participation at such junctures may be even more important than during the regular negotiation period. It should be noted, however, that such participation must necessarily be "subject to law and the paramount requirements of public service . . .", particularly in regard to possible delays which would in effect negate the exercise of those rights expressed in sections 11(b) and 12(b) of the Order.

Finally, we believe that the confusion which has developed over the apparent interchangeable use of the terms "consult," "meet and confer,"

and "negotiate" with respect to relationships between agencies and labor organizations in the Order should be eliminated. The parties to exclusive recognition have an obligation to "negotiate" rather than to "consult" on negotiable issues unless they mutually have agreed to limit this obligation in any way. In the Federal labor-management relations program, "consultation" is required only as it pertains to the duty owed by agencies to labor organizations which have been accorded national consultation rights under section 9 of the Order. The term "meet and confer," as used in the Order, is intended to be construed as a synonym for "negotiate."

VI. GRIEVANCE AND ARBITRATION PROCEDURES

Section 13(a) should be amended to provide that the coverage and scope of the negotiated grievance procedure be negotiated by the parties, with matters for which statutory appeal procedures exist as the only mandatory exclusion from its coverage.

The requirement of section 13(a) that the scope of the negotiated grievance procedure be limited to grievances over the interpretation or application of the agreement should be eliminated.

dures. (3) Revise section 13 to *permit* negotiation on the scope of the grievance procedure with statutory appeal procedures as the sole mandatory exclusion. We concluded that the first proposal would be a reversal of the basic policy reflected in the current provisions of the Order that the scope of the grievance procedure was to be negotiated rather than prescribed by law, regulation, or the Order. While the second proposal has desirable goals, we considered that it would interfere with the freedom and voluntariness of the bilateral process. We found merit in the third proposal.

The Council has concluded that the coverage and scope of the negotiated grievance procedure should be determined by the parties themselves, excluding only matters subject to statutory appeal procedures. This would permit the parties to negotiate a grievance procedure with coverage and scope as narrow as that which would be required by the first proposal, or as broad as that which would be required by the second proposal, to revise section 13. The parties could agree that the negotiated grievance procedure would be the only procedure available for all grievances, including grievances over agency policies and regulations not contained in the agreement, subject only to the explicit limitations of the Order. The parties

Section 13(d) should be amended to provide that disagreements between the parties on questions of whether a grievance is on a matter subject to a statutory appeal procedure be referred to the Assistant Secretary for decision. Where disagreements on questions of whether a grievance is subject to the negotiated grievance procedure or whether a grievance is subject to arbitration do not involve the applicability of statutory appeal procedures, they may by agreement of the parties be submitted to arbitration or may be referred to the Assistant Secretary for decision.

Section 7(d)(1) should be revised consistent with these recommended changes in section 13.

The Council considered three major proposals regarding the nature and scope of negotiated grievance procedures: (1) Revise section 13 to exclude from the negotiated grievance procedure grievances over agency regulations even if those regulations are referenced or cited in the agreement. (2) Revise section 13 to *require* the negotiated grievance procedure to be the sole procedure available for all grievances, including grievances over agency policies and regulations not contained in the agreement, and excluding only those issues subject to statutory appeal proce-

would be free to expand the negotiated grievance procedure to cover any matters except those which are subject to resolution under statutory appeal procedures.

The evolution of the concept of the negotiated grievance procedure in the Federal sector has been somewhat erratic. Executive Order 10988 authorized the parties to negotiate procedures for the consideration of grievances. However, there were limitations on this authority. First, such procedures had to conform to standards issued by the Civil Service Commission. Second, while the negotiated grievance procedure could include provisions for arbitration, such arbitration was strictly *advisory* in nature and awards were subject to the approval of the agency head. Such advisory arbitration could extend to the interpretation or application of negotiated agreements or agency policy. Finally, such advisory arbitration could be invoked only with the approval of the employee(s) concerned.

Executive Order 11491 likewise authorized the parties to negotiate grievance procedures. The negotiated procedure covered employee grievances and disputes over the interpretation and application of agreements and where the agreement so provided it was the *exclusive* grievance procedure available to all employees in the unit.

Thus, the Order permitted the elimination of the dual systems of "negotiated" and "agency" grievance procedures. Moreover, arbitration was no longer limited to advisory arbitration; the negotiated procedure could provide for the arbitration of both employee grievances and disputes over the interpretation and application of negotiated agreements. However, either party could file exceptions to arbitration awards with the Council on grounds similar to those applied by the courts in private sector labor-management relations. The requirement that all negotiated grievance procedures conform to requirements established by the Civil Service Commission was retained. Finally, arbitration of employee grievances could be invoked only with the approval of the employee while arbitration of disputes over the interpretation or application of the agreement could be invoked only by the labor organization.

As a result of its first review of the Order, the Council concluded that employees were faced with complicated choices in seeking relief, the role of the exclusive labor organization was diminished and distorted by permitting a rival organization to represent a grievant with respect to the interpretation and application of the agreement negotiated by the exclusive representative, and the scope of negotiation for agencies and labor

including matters for which statutory appeals procedures exist . . ." has created some problems in the implementation of section 13. Those matters for which statutory appeal procedures exist, while complex, are susceptible to identification and description.

The major problems which have arisen concerning the implementation of section 13 have centered on the meaning of the phrase "any other matters." Some agencies and labor organizations have sought a precise delineation of such "matters." This has not been possible. Once matters covered by statutory appeal procedures have been excluded from the coverage of all negotiated grievance procedures, those remaining "other matters" which are also excluded vary from unit to unit depending upon the scope of the grievance procedure negotiated in each unit and by the nature and scope of the remaining provisions in the negotiated agreement itself. Therefore, a general definition of "any other matters" which would be uniformly applicable throughout the program is not possible.

The Council has carefully considered whether the Order should contain any specific limitations upon the scope and coverage of negotiated grievance procedures other than the exclusion of matters covered by statutory appeal procedures. It

organizations was unnecessarily limited. In order to remedy those faults, the Order was amended to require that the negotiated agreement for an exclusive unit must include a grievance procedure and to provide that the scope of the negotiated grievance procedure and arbitration would be restricted to grievances over the interpretation or application of the agreement. The amendments to section 13 produced some significant benefits. The artificial distinctions between "employee grievances" and labor organization "disputes" were eliminated, and only the term "grievance" is used. The provision permitting the Civil Service Commission to establish requirements for negotiated grievance procedures was deleted, leaving the parties free to negotiate the scope and coverage of the negotiated grievance procedure subject only to the constraints contained within the Order itself. Moreover, limiting the scope of the negotiated grievance procedure to grievances over the interpretation or application of the agreement lessened the confusion and anomalies in the then existing arrangements.

However, that provision in section 13 of the Order which establishes limitations upon the scope and coverage of the negotiated grievance procedure by providing that a "negotiated grievance procedure may not cover any other matters,

has concluded that the Order should not contain any other specific limitations. Instead, the coverage and scope of the negotiated grievance procedure should be negotiated by the parties, so long as it does not otherwise conflict with statute or the Order, and matters for which statutory appeal procedures exist should be the sole mandatory exclusion prescribed by the Order. This will give the parties greater flexibility at the negotiating table to fashion a negotiated grievance procedure which suits their particular needs. For example, it will permit them to include grievances over agency regulations and policies, whether or not the regulations and policies are contained in the agreement, provided the grievances are not over matters otherwise excluded from the negotiations by sections 11(b) and 12(b) of the Order or subject to statutory appeal procedures. Moreover, it will eliminate the problems which have arisen concerning the meaning of the term "any other matters."

Thus, with this recommended change in section 13 of the Order, the parties may, through provisions in their negotiated agreement, agree to resolve grievances over matters covered by agency regulations and within the discretion of agency management through their negotiated grievance procedure. In fact, with this change,

the parties may make their negotiated grievance procedure the exclusive procedure for resolving grievances of employees in the bargaining unit over agency policies and regulations not contained in the agreement. If the parties should agree to make the negotiated procedure the exclusive procedure, grievances over agency policy and regulation, to the extent covered thereby, would no longer be subject to grievance procedures established by agency regulations. In this connection, we also recommend that section 7(d) (1) of the Order be amended to reflect the possibility that the negotiated grievance procedure may replace the agency grievance procedure to the extent agreed upon by the parties.

In the course of the review some question was raised by agencies concerning the interpretation and application of regulations by arbitrators in the resolution of grievances through negotiated grievance procedures. Under the present section 13 arbitrators of necessity now consider the meaning of laws and regulations, including agency regulations, in resolving grievances arising under negotiated agreements because provisions in such agreements often deal with substantive matters which are also dealt with in law or regulation and because section 12(a) of the

States Code, or that an award violates the regulations of the Civil Service Commission, or that an award violates section 12(b) of the Order, the Council would modify or set aside that award.

In order to insure consistent application of the 1971 revisions with respect to negotiated grievance procedures, and especially the consistent application and interpretation of those revisions with respect to the coverage of statutory appeal procedures, provision was made in the present section 13(d) for the referral to the Assistant Secretary of questions as to whether a grievance is on a matter subject to the grievance procedure in an existing agreement or is subject to arbitration under that agreement. The need for consistency existed primarily because of the distinction made in section 13(a) between grievances preempted by statutory appeal procedures and grievances within the coverage of negotiated grievance procedures. Section 13(d) did not reflect this distinction, however. Our review indicates that such a distinction is in order.

Of the various proposals concerning the present section 13(d) a number requested clarification as to whether the Order requires all questions as to whether a matter is grievable or

Order requires that the administration of each negotiated agreement be subject to such law and regulation. Under the proposed amendments, the scope and coverage of the negotiated grievance procedure would be fully negotiable so long as it does not otherwise conflict with statute or the Order, and matters for which statutory appeal procedures exist should be the sole mandatory exclusion prescribed by the Order. However, nothing in the proposed amendments of section 13 would prevent the parties from agreeing that the agency's interpretation of its regulations would be binding.

Of course, final decisions under negotiated grievance procedures, including final and binding awards by arbitrators where the negotiated procedure makes provision for such arbitration, must be consistent with applicable law, appropriate regulation or the Order. Thus, where it appears, based upon the facts and circumstances described in a petition before the Council, that there is support for a contention that an arbitrator has issued an award which violates applicable law, appropriate regulation or the Order, the Council, under its rules, will grant review of the award. For example, should the Council find that an award violates the provisions of title 5, United

arbitrable under the negotiated procedure to be determined exclusively by the Assistant Secretary. Several proposals were made to revise section 13(d) to permit the parties to agree to submit such questions to the arbitrator under negotiated grievance procedures.

The Council concluded that the proposals to permit the parties to agree to refer such questions to the arbitrator, in lieu of referring them to the Assistant Secretary, have merit. However, since some questions will arise because it is asserted that a grievance is over a matter subject to statutory appeal procedures, we foresee a continuing need for a single uniform body of case precedent in the decisions relating to the coverage of statutory appeal procedures. This need can be met best by continuing to refer such questions to the Assistant Secretary. We therefore recommend that section 13(d) be revised to provide for the resolution of those questions by referral to the Assistant Secretary for decision. However, we recommend that the parties be permitted bilaterally to agree to refer all other questions as to whether a matter is grievable or arbitrable under the terms of a negotiated grievance procedure to the arbitrator in lieu of referral to the Assistant Secretary.

VII. APPROVAL OF AGREEMENTS

Section 15 should be revised to add a requirement that action must be taken by an agency or his designated representative to approve or disapprove a negotiated agreement within 45 days from the date of its execution by the parties.

The 1969 Study Committee considered the objections raised by labor organization representatives to the requirement in section 7 of Executive Order 10988 that a negotiated agreement must be approved by the agency head or any official designated by him and the suggestions that the requirement be eliminated completely or that limitations be placed on the scope of review and on the length of time allowed for accomplishment of the review. The Study Committee concluded that: (1) the requirement itself should be continued; (2) the authority of the agency head in the review process should be limited in such a way that approval or disapproval be based solely upon an agreement's conformity with laws, existing published agency policies and regulations, unless the agency had granted an exception to a policy or regulation, and with the regulations of other appropriate authorities; and, concomitantly, that the authority of the agency head to dis-

approval process is generally working effectively, the problem of delay in agency action is sufficient in scope to have had an unfavorable effect on the labor-management relations program and to warrant remedial action.

Available statistical information revealed that the agreement approval process tended to consume as much or more time than the parties used at the negotiating table. Research data compiled in one comprehensive survey conducted by the Civil Service Commission in conjunction with the Office of Management and Budget indicated that after agreement was reached at the negotiating level, in only 27 percent of the agreement review situations was agency approval completed in less than 1 month. Even though the time figures reported in the survey included time consumed in resolving negotiability issues and in renegotiating provisions rejected by higher authorities, the problem of protracted delays in the agreement approval process is still readily apparent. This observation was confirmed by information gathered in another study sponsored by the Civil Service Commission which indicated that final agency approval of an agreement is obtained in 6 weeks or less in only slightly more than half of all agreement review situations.

approve an agreement based on disagreement with the language or substance of what had been negotiated should be eliminated; (3) that the problem of unwarranted delays in the review of negotiated agreements might disappear entirely in the future with the development of greater sophistication in administering the program.

In the opinion of the Council, the hope of the 1969 Study Committee with regard to the problem of unwarranted delays in the review of negotiated agreements by agency authorities has not been totally realized.

Accordingly, the Council determined that the approval of agreements should be one of the areas to be focused upon in the 1973-74 general review. The central issue identified with regard to this problem area was: Should section 15 be revised to include additional limitations upon the authority of an agency head to disapprove negotiated agreements (e.g., by requiring the review to be exercised on a "post-audit" basis; by limiting disapproval to specific agreement provisions, permitting the remainder to go into effect; by setting time limits for agency action; by precluding intermediate level review of agreements prior to agency head review)?

The Council found that while the agreement

We have concluded, therefore, that the program will benefit by modification of the present policy to impose a reasonable time limit on agency action. Furthermore, we have concluded that 45 days from the date of an agreement being signed by the negotiating parties is a reasonable period of time for agencies to fulfill their review responsibilities. If an agency fails to act within 45 days of an agreement's execution by the negotiating parties, the agreement would become effective automatically on the 46th day, subject only to the requirements of law, the Order, or regulations of appropriate authorities outside the agency. Where an agency fails to act within 45 days from the date of execution of an agreement, with the agreement then going into effect automatically, and a particular provision of the agreement is subsequently found to be violative of law, the Order, or regulation of appropriate authority outside the agency, the provision would be deemed void and unenforceable. Where a provision in such an agreement is found to be contrary to published agency policy or regulation (such as would otherwise bar negotiations under section 11(a)), however, and it is not otherwise violative of law, the Order, or regulation of appropriate authority outside the agency, that provision would continue valid and enforce-

able until it is renegotiated. Since an agency may waive its own regulations, failure by the agency to act within the 45-day time limit to approve or disapprove the agreement would be deemed a constructive waiver of the published agency policy or regulation.

Although the issue under review was whether section 15 of the Order should be revised, a number of labor organizations suggested that the requirement be eliminated entirely. Some suggested that if the requirement were retained, the scope of agency review should be limited to insure conformity of the agreement with applicable laws. Based on our experience with adjudication of disputes involving agency head determinations, however, we believe that the requirement that a negotiated agreement be approved by the agency head or a designated representative to insure conformity with applicable laws, as well as with the Order, and existing published agency policies and regulations, and regulations of other appropriate authorities, is still justified and should be continued.

It was suggested by other interested parties during the course of the general review that the solution to the problem of delay in the effectuation of negotiated agreements was to amend the

of agreements. We believe that this limit will serve effectively to expedite the review process in the almost half of all review situations now taking 6 weeks or more. Moreover, we believe that 45 days affords ample time for any agency to review a negotiated agreement without sacrificing the quality of its deliberations. We are confident that most agencies will continue to accomplish their review of agreements in less than 45 days and will not utilize the time limit to justify expanding or delaying the review process.

In this regard, agencies should accelerate the approval process to the maximum extent possible. Many agencies are already moving in that direction by eliminating intermediate levels of review, delegating approval authority as close as possible to the level of negotiations, exercising review on a post-audit basis, and streamlining their internal procedures. We encourage all agencies to follow those examples.

The goal of the negotiating parties and reviewing officials should be to see that negotiated agreements are put into effect as soon as reasonably possible after execution. That is the policy goal of the Council. The negotiating parties themselves can and should minimize the time between agreement on the terms of their contract and its effectuation by reducing their agreement

Order to incorporate a restriction to the effect that where an agency head determines that a particular provision of an agreement under review is contrary to law, the Order, or regulation, the approved portion of the agreement would go into effect immediately upon completion of the agency head's review, with renegotiation by the parties expressly confined to the disapproved provision. The Council rejected this approach as inappropriate since it would establish an absolute requirement applicable to every agreement review situation and would govern a matter best left to determination by the parties. Since the provisions of a collective bargaining agreement are often interrelated, the parties might well wish to renegotiate provisions in addition to the one disapproved by an agency head or even, perhaps, renegotiate the entire agreement. We believe that the question of severability of agreement provisions which have been disapproved by an agency head should be decided by the parties in the context of the particular circumstances facing them, including any applicable provisions of the agreement.

A 45-day time limit on agency action appears to the Council as the most appropriate solution to the problem of excessive delays in the approval

to writing without delay, and executing and forwarding it to the designated approving authority as quickly as possible.

VIII. OPERATION OF THIRD-PARTY PROCEDURES

1. Negotiability Disputes in Unfair Labor Practice Proceedings.

Sections 6(a) and 11 should be amended to assign to the Assistant Secretary express authority to resolve those negotiability issues which have arisen not in connection with negotiations, but rather in the context of unfair labor practice proceedings resulting from unilateral changes in established personnel policies and practices and matters affecting working conditions. In addition, sections 4(c) and 11 should be amended to permit a party adversely affected by such a determination to exercise a right to have the negotiability determination reviewed on appeal by the Council.

Executive Order 11491 established special procedures to resolve disputes over negotiability questions. Section 4(c) (2) gives the Council authority to consider "appeals on negotiability issues as provided in section 11(c) of [the] Order;"

which section stipulates that “[i]f, in connection with negotiations, an issue develops as to whether a proposal is contrary to law, regulation, controlling agreement, or this Order and therefore not negotiable, it shall be resolved as follows: . . . (4) A labor organization may appeal to the Council for a decision when—(i) it disagrees with an agency head’s determination that a proposal would violate applicable law, regulation of appropriate authority outside the agency, or this Order, or (ii) it believes that an agency’s regulations, as interpreted by the agency head, violate applicable law, regulation of appropriate authority outside the agency, or this Order.”

Thus, if in connection with negotiations, a dispute arises over the negotiability of a proposal and that dispute meets the conditions prescribed in section 11(c) of the Order, it shall be resolved by the Council. The Study Committee Report and Recommendations of August 1969 which led to the issuance of Executive Order 11491 stated that a “labor organization should be permitted to file an unfair labor practice complaint when it believes that a management official has been arbitrary or in error in excluding a matter from negotiation which has already been determined to be negotiable through the processes described . . . [in section 11(c) of the Order].”

and posing negotiability issues *unless* there exists applicable Council precedent on which he can rely to resolve the negotiability issues.

We support the Assistant Secretary’s position on this matter. Thus, the changes which we here propose would not affect the existing authority of the Council to resolve, under the section 11(c) procedures, negotiability disputes which arise in connection with negotiations nor would these changes affect the existing responsibility of the Assistant Secretary to rely upon Council precedent to resolve negotiability issues that arise in unfair labor practice cases.

The amendments which we propose would affirm the authority of the Assistant Secretary, in the context of certain unfair labor practice cases, to resolve negotiability issues, even though there is no existing Council precedent to guide him, so long as these issues do not arise in connection with negotiations between the parties but rather as a result of a respondent’s alleged refusal to negotiate by unilaterally changing an established personnel policy or practice, or matter affecting working conditions.

The principal argument set forth during the review by those opposed to the Assistant Secretary’s exercise of such authority was that it would result in a bifurcation in the jurisdiction to make

Section 6(a)(4) of the Order, as currently formulated, gives the Assistant Secretary authority to "decide unfair labor practice complaints," including complaints under sections 19(a)(6) or 19(b)(6) that a party has "refused to . . . negotiate. . . ." The Assistant Secretary has consistently ruled that a party may not utilize the unfair labor practice provisions set forth in section 19(a) of the Order as a means for resolving negotiability disputes which arise in connection with negotiations⁴ Consistent with the Study Committee Report, the Assistant Secretary has held that section 19 provides a party in such circumstances the opportunity to file an unfair labor practice complaint alleging a refusal to negotiate only where the matter excluded from negotiation has already been determined to be negotiable through the procedures set forth in section 11(c) of the Order. In other words, the Assistant Secretary has declined to consider "refusal-to-negotiate" unfair labor practice complaints arising in connection with negotiations

⁴ *U.S. Department of Defense, Department of the Army, Army Materiel Command, Automated Logistics Management Systems Agency, A/SLMR No. 211 (October 30, 1972); Army and Air Force Exchange Service, Keesler Consolidated Exchange, A/SLMR No. 144 (March 28, 1972); Report on a Decision of the Assistant Secretary, Report No. 26 (March 18, 1971).*

negotiability determinations (with the Council retaining the authority to determine negotiability questions raised in connection with negotiations); it was contended that this would lead to conflicting lines of precedential case authority. Furthermore, it was argued that in the absence of an aggrieved party's ability to have such determinations reviewed by the Council as a matter of right, these conflicts would tend to persist.

While this argument is not without merit, we are of the opinion that the purposes of the Order would be better served, on balance, by permitting the Assistant Secretary to exercise the authority to hear and rule on negotiability questions which arise in the context of an unfair labor practice proceeding, resulting from a unilateral change in established personnel policies and practices and matters affecting working conditions rather than requiring such cases to come first to the Council.

Unnecessary additional steps in the adjudicatory process would be required if such negotiability issues were brought to the Council for initial adjudication. In those cases which involved alleged unfair labor practices, the Council, following its decision on the negotiability issue, would have to remand the matter to the Assistant Sec-

retary for further action because section 6 of the Order charges the Assistant Secretary with responsibility for issuing decisions in unfair labor practice cases.

Moreover, as experience under the Order continues to grow, an increasing number of Council negotiability decisions will provide the Assistant Secretary with an ever-expanding body of authority upon which to draw in resolving cases where a unilateral action by one of the parties has given rise to an unfair labor practice complaint involving negotiability issues. As a result, instances in which he will be called upon to pass judgment on such issues on a first impression basis will tend to decline, thus reducing the opportunities for decisions to be made which would produce divergent precedents.

The Council also considered and rejected the alternative of requiring the Assistant Secretary to forward negotiability issues to the Council for determination when they appeared in the course of an unfair labor practice proceeding thus deferring his decision in the interim until the Council could resolve the issues concerned. Where negotiability issues arise in the context of such unfair labor practice proceedings they are often inextricably intertwined with disputed issues of

be revised to provide that a party adversely affected by an Assistant Secretary negotiability determination will have a right to have such a determination reviewed on appeal by the Council. In such an appeal, the parties would be permitted to raise any pertinent issues and arguments with respect to the negotiability dispute and the Council would revise its rules so to provide. Further, the Council would revise its rules so that appeals of this type will receive priority consideration.

2. Investigation and Prosecution of Unfair Labor Practice Complaints.

The Assistant Secretary should exercise his authority to prescribe regulations by modifying his procedures to permit him to conduct such independent investigation as he deems necessary in order to determine whether there is a reasonable basis for a complaint in such cases.

The results of the investigation should be made available to the parties, which will facilitate the litigation process for those matters which go to formal hearing.

The Order should not be amended to provide for the prosecution of all unfair labor practice complaints by the Assistant Secretary.

fact which must be resolved in order to arrive at a conclusion concerning the motivation of the parties. Such disputed issues of fact are best resolved through the adversary process of a formal hearing. For this reason, and because of the delays attendant in such a referral procedure, the Council does not believe that such an alternative is feasible or appropriate.

As a result of the foregoing considerations, we recommend that the Order be amended to provide the Assistant Secretary with express authority to resolve those negotiability issues which arise in the context of certain unfair labor practice proceedings—that is, those where a unilateral change in an established personnel policy or practice, or matter affecting working conditions, leads to a complaint that the acting party has refused, thereby, to negotiate. The Council recognizes that negotiability issues decided by the Assistant Secretary under such circumstances may involve matters of critical importance to one of the parties concerned where an expeditious resolution of the negotiability issue is particularly desirable. Equally important is the need to reduce any divergence between Assistant Secretary decisions and Council determinations of negotiability to the absolute minimum. Thus, the Council recommends, in addition, that the Order

Section 6(a)(4) of the Order assigns to the Assistant Secretary the responsibility of deciding unfair labor practice complaints. Section 6(d) authorizes him to prescribe regulations needed to administer his functions under the Order, and pursuant to that authority the Assistant Secretary has established procedures for carrying out these responsibilities. Consistent with the direction contained in the Study Committee Report and Recommendations which led to the issuance of Executive Order 11491, these procedures provide that alleged unfair labor practices should be investigated by the parties involved and informal attempts made to resolve the charges prior to the filing of a complaint with the Assistant Secretary. In the absence of resolution, a complaint may be filed with the Assistant Secretary requesting a decision on the matter. Based on the allegation and the report of investigation which the parties have prepared and submitted to the Assistant Secretary, he may dispose of the complaint by dismissal, approval of a withdrawal request or approval of a settlement agreement executed by the parties. If the Assistant Secretary finds that there is a reasonable basis for the complaint, he may direct that a hearing be held before an administrative law judge and, after considering the administrative law judge's find-

ings of fact, recommendations, and any exceptions filed, he issues a decision.

We have concluded that the process by which the Assistant Secretary decides unfair labor practice complaints is impaired because the parties may lack the ability to conduct the required investigation and report that investigation to the Assistant Secretary. This lack of ability stems from a multitude of factors, including lack of access to pertinent data, reluctance of witnesses to provide information to a party to a case, and geographic dispersion of witnesses and data, particularly when the complainant is an individual Federal employee.

As a result of this problem, the Assistant Secretary may be required to make his determination on the action to be taken with respect to the complaint on the basis of incomplete information. Moreover, when a complaint goes to hearing, the parties, the administrative law judge, and the Assistant Secretary must work with imprecise information.

We believe that the processing of unfair labor practice cases can be improved greatly if the Assistant Secretary, pursuant to his authority to prescribe regulations needed to administer his functions under the Order, modifies his procedure

possible and the matter in dispute goes to a formal hearing, such independent investigation will facilitate the adjudicatory process because the parties will have an investigatory file which has been developed independently by a professional investigator.

The Council considered proposals that the Assistant Secretary be authorized to prosecute all unfair labor practice complaints which are determined to warrant formal hearings. On the basis of the material submitted to the Council during the general review, we are not convinced that such a significant change in the authority and role of the Assistant Secretary would be appropriate at this time. While it appears that the lack of access to pertinent facts might impair the ability of a complainant to establish a reasonable basis for the complaint, there is no evidence that, once armed with an independently developed investigatory file, the complainant could not prosecute the case effectively. We have concluded that it would be preferable to develop and evaluate the investigatory system which we have outlined before giving further consideration to a system of third-party prosecution of all unfair labor practice cases.

to permit members of his staff to conduct such independent investigation in these cases as he deems necessary in order to determine whether there is a reasonable basis for the complaint. This investigation would include taking signed statements of witnesses. Agencies and labor organizations under the Federal labor-management relations program should be required to cooperate fully with such investigations. The requirements that the parties investigate a charge and informally attempt to resolve it prior to the filing of a complaint with the Assistant Secretary, which facilitate informal resolution of complaints, should be retained. Further, a complainant must be required to come forward with sufficient information to warrant further processing of the complaint before the Assistant Secretary's staff conducts its independent investigation, and the complainant must be prepared to cooperate fully in the investigation.

The results of any independent investigation by the agents of the Assistant Secretary should be available to the parties to the case to the extent legally permissible and consistent with the Assistant Secretary's authority to prescribe regulations needed to administer his functions under the Order. This procedure will, in our view, facilitate the informal resolution of unfair labor practice issues. Where informal resolution is not

IX. IMPACT OF THE EXPIRATION OF AN AGREEMENT ON DUES WITHHOLDING

A uniform policy governing dues withholding during contract renegotiation is not needed.

The importance of dues deductions was recognized early in the history of the current Federal labor-management relations program. The 1961 Report of the President's Task Force on Employee-Management Relations in the Federal Service identified dues withholding as ". . . an agreement to be negotiated for in the case of organizations with exclusive representation." Since that time, the practice of withholding dues has become a widespread and stabilizing element of the program. However, as the program has matured and as negotiations have expanded, the area of dues withholding has become increasingly subject to the dynamics of negotiations.

This development has caused some parties concern that labor organizations are at a significant disadvantage in negotiating renewal agreements. In the absence of a dues continuation policy, it is alleged that a labor organization is without adequate recourse against a threat to end dues withholding in situations where the agreement is about to terminate and negotiations have not yet resulted in a renewal agreement. The

Council included this area in the general review so that the need for a uniform policy could be assessed.

Upon review, available evidence has failed to support the need for any change to the Order. Council guidance has established the principle that the form and substance of dues withholding arrangements are to be left to the parties at the negotiating table,⁵ without unnecessary agency prescriptions. Generally, the parties have negotiated responsibly on this matter. In only one case has the question of dues withholding *vis-a-vis* contract termination required a recommendation from the Federal Service Impasses Panel.⁶ In our view, parties to negotiations have acquired sufficient experience and guidance to deal with such matters without express language in the Order.

X. STATUS OF NEGOTIATED AGREEMENTS DURING REORGANIZATION

Each reorganization-related problem should be dealt with on a case-by-case basis within the particular factual context in which it has arisen. Any policies, principles or standards deemed necessary in this area of the program should be formulated and declared in the context of a case

Each reorganization presents distinct labor-management relations problems when it affects employees in units of exclusive recognition and the problems are compounded when the affected units are covered by negotiated agreements or dues withholding arrangements. Reorganization situations can give rise to a number of appropriate unit, recognition and agreement status questions. Additionally, those questions can involve myriad combinations of variable factors.

The Council examined essentially two alternative courses of action. One course of action was to amend the Order to include a special policy or policies to govern the resolution of problems arising from agency reorganizations. The other possible course was to continue to develop policies, principles and standards for application in this area on a case-by-case basis.

The Council has concluded that in view of the wide variety of representation questions that can emerge from the diverse factual configurations of the agency reorganization situations that have been experienced, or that can be envisioned, a contextual approach to resolution of those problems is required. The need to ensure an equitable balancing of the legitimate interests of the agencies, labor organizations and employees involved in reorganizations, as well as the paramount

decision on the basis of the policies contained in the existing provisions of the Order rather than through amendment of the Order.

The dynamics of accomplishing national policies and goals in the most efficient and effective manner have historically resulted in numerous agency reorganizations and will inevitably result in other structural changes in the executive branch of the Federal Government in the future. Agency organizational changes, which can be brought about as a result of agency, Presidential or Congressional initiative, have taken, or can take, a number of different forms. For example, an entire agency, or organizational entity thereof, can be transferred intact to a new or different agency or eliminated entirely; an organizational entity of a particular agency can be transferred intact within the agency; a number of organizational entities within an agency can be merged or combined; or certain functions or operations of an organizational entity of a particular agency can be eliminated or transferred within or outside the agency.

⁵ *NFFE Local 476 and Joint Tactical Communications Office, Ft. Monmouth, N.J.*, FLRC No. 72A-42 (August 8, 1973), Report No. 43.

⁶ *GSA, Region II, New York, N.Y. and AFGE Local 2041*, 73 FSIP 1 (June 8, 1973), Release No. 33.

need to ensure the protection of the public interest in all instances, counseled this course of action.

During the general review, several specific recommendations were received. First, it was suggested that a special policy be established whereby all exclusive units, together with their accompanying negotiated agreements and dues withholding arrangements, would be maintained intact after any agency reorganization, pending final action on the matter by the Assistant Secretary or the Council. Second, it was recommended that an absolute policy be established to require an agency which acquired a unit of exclusive recognition from another agency as a result of reorganization to accept and honor all the terms of any existing agreement covering that unit which was negotiated with the previous employing agency. Finally, it was suggested that a special policy be established whereby a reorganization would not result in any loss of negotiated benefits to employees covered by a negotiated agreement during the life of that agreement.

While such policies might be susceptible to equitable application in particular reorganization situations, they do not appear to be sufficiently comprehensive or flexible to provide the needed balancing and protection of the interests of all

who might be involved in the various reorganization situations that can be envisioned based on previous experience in the program.

For example, the special policies suggested would not appear to be susceptible to equitable application to all situations where reorganizations result in changes in the assignment of personnel and affect existing bargaining relationships. Indeed, the Council believes that the inadequacies noted with regard to the special policies suggested during the review also would be present in any special policy established through amendment to the Order specifically to govern resolution of reorganization-related representation problems.

The Council therefore concluded that the case-by-case approach, whereby each reorganization problem is dealt with as it arises from the facts of a particular case, will better facilitate the appropriate resolution of such problems than any special policy amendment to the Order, and that this approach will result in the continued development and refinement of any policies, principles, and standards deemed necessary for programwide application.

Moreover, the resolution of reorganization-related representation problems is already governed by a policy requirement in section 10(b) of the Order that units of exclusive recognition

required to resolve problems arising out of reorganizations.

Accordingly, the Council does not believe that present circumstances warrant amendment to the Order to include any additional policy related to agency reorganizations.

XI. OFFICIAL TIME

The present policy regarding the use of official time should be retained.

The use of official time for negotiations, and for other aspects of labor-management relations, has been the subject of wide disagreement and of diverse policies as the program has developed.

Executive Order 10988 was permissive concerning official time for negotiations. This led to a wide divergence of practices among agencies in granting, prohibiting, or limiting official time for this purpose. In addition, it was reported that grants of extended official time had led in some instances to protracting negotiations over unreasonable periods.

In 1969, Executive Order 11491 reversed the previous policy and prohibited official time for negotiations. This provision was among the most controversial of the new Order and was based on the belief that an employee who negotiates an

must ensure a clear and identifiable community of interest among the employees involved and must promote effective dealings and efficiency of agency operations. This policy requirement, in the Council's view, is sufficiently comprehensive and flexible to achieve the desirable equitable balance between the sometimes divergent and conflicting interests of agencies, labor organizations, and employees involved in any reorganization. This policy must be applied so that controlling weight is not given to any one of the criteria; equal weight must be given to each criterion in any representation case arising out of a reorganization just as it is in any other case involving a question as to the appropriateness of a unit. For example, to give controlling weight to a desire, however otherwise commendable, of maintaining the stability of an existing unit would not meet the policy requirements in section 10 (b). On the other hand, existing recognitions, agreements, and dues withholding arrangements should be honored to the maximum extent possible consistent with the rights of the parties involved pending final decisions on issues raised by reorganizations. The Council believes that the adjudicatory processes established under the Order will result in a body of case law which will provide any additional policies, principles, or standards which may be

agreement on behalf of a labor organization is working for that organization and should not be in a pay status when so engaged.

The prohibition against authorizing official time for negotiations was modified in 1971 as a result of amendments to the Order. This policy permits the negotiating parties to agree to a maximum of 40 hours of official time or to a maximum of one-half the total time spent in negotiations. This approach represents an attempt to strike a reasonable balance between the interests of employees and those of the public. The policy also aims to provide incentives to efficient negotiations.

The new policy was the subject of a Council Information Announcement issued last year. The announcement, dated September 17, 1973, noted that while mutual agreement on the use of official time had been achieved by agency and labor organization representatives in the overwhelming majority of cases, the matter of official time had been the most frequent issue in cases requiring the assistance of both the Federal Mediation and Conciliation Service and the Federal Service Impasses Panel. The Council's Information Announcement expressed concern that, in these cases, the official time provisions of section 20 had not produced benefits for the program nor

had they promoted responsible negotiations as the Council had intended.

Accordingly, the announcement advised agencies and labor organizations that they should not permit negotiations over official time to interfere with the consideration of more substantial issues nor with the negotiation of an overall agreement and that the relative significance of the official time issue should be kept in proper perspective. The announcement further advised that, unless there are very persuasive reasons for not doing so, the parties should be able to agree to either 40 hours or one-half of the total time spent in negotiations.

The policy governing official time for employee witnesses appearing at hearings convened by the Assistant Secretary is of more recent date. In cases⁷ arising out of appeals from Assistant Secretary decisions, the Council established that it would be consistent with the Order for the Assistant Secretary to promulgate regulations requiring official time for employee witnesses at formal hearings on matters for which he is responsible under the Order. Such regulations were developed and became effective on November 8, 1973,⁸ and govern official time for representation election observers and for employee witnesses at

During the general review, many agencies and labor organizations expressed differing recommendations for again modifying section 20 of the Order, and the matter of official time for negotiations evoked particular attention. Generally, however, recommendations from the parties for changes to official time policies offered little by way of evidence which would support changes in the Order.

On the other hand, the Federal Service Impasses Panel reports that the parties to recent negotiations have required little or no Panel assistance on official time issues and that the Panel has issued no recommendations on such issues since October of 1972. Also, a joint Civil Service Commission and Office of Management and Budget study of Federal sector negotiations, which was issued in March of 1974, shows that the actual amount of official time used by most employee representatives in negotiations has been substantially less than the maximum obtainable under section 20.

Action by the Assistant Secretary to require official time for employee witnesses and election observers has eliminated the financial losses which such persons may previously have experienced in participating in hearings and elections.

hearings held in connection with representation matters, unfair labor practice complaints, standards of conduct and grievability and arbitrability proceedings.

⁷ *Department of the Navy and the U.S. Naval Weapons Station, Yorktown, Virginia, A/SLMR No. 139; and Department of the Army, Reserve Command Headquarters, Camp McCoy, Sparta, Wisconsin, 102nd Reserve Command, St. Louis, Missouri, A/SLMR No. 256, FLRC Nos. 72A-20 and 73A-18 (August 8, 1973), Report No. 43.*

⁸ 29 C.F.R. § 206.7(g) (1974).

Since it appears that both agencies and labor organizations are satisfied with these arrangements, no changes are recommended.

It is our conclusion that the existing policies on official time have, on balance, stimulated the businesslike conduct of labor relations while minimizing financial hardships on individual employees and should be retained without modification.

Executive Order 11838

February 6, 1975

Amending Executive Order No. 11491,¹ as Amended by Executive Orders 11616² and 11636,³ Relating to Labor-Management Relations in the Federal Service

By virtue of the authority vested in me by the Constitution and statutes of the United States, including sections 3301 and 7301 of title 5 of the United States Code, and as President of the United States, Executive Order No. 11491 of October 29, 1969, as amended by Executive Orders 11616 and 11636, relating to labor-management relations in the Federal service, is further amended as follows:

1. Section 2(c) is amended by deleting the words "or to evaluate their performance,".

2. Section 2(d) is revoked.

3. Paragraph (1) of section 4(c) is amended to read as follows:

"(1) appeals from decisions of the Assistant Secretary issued pursuant to section 6 of this order, except where, in carrying out his authority under section 11(d), he makes a negotiability determination, in which instance the party adversely affected shall have a right of appeal;"

4. Paragraphs (4) and (5) of section 6(a) are amended to read as follows:

"(4) decide unfair labor practice complaints (including those where an alleged unilateral act by one of the parties requires an initial negotiability determination) and alleged violations of the standards of conduct for labor organizations; and

"(5) decide questions as to whether a grievance is subject to a nego-

¹ 34 FR 17605; 3 CFR, 1966-1970 Comp., p. 861.

² *Supra.*

³ *Supra.*

tiated grievance procedure or subject to arbitration under an agreement as provided in section 13(d) of this order.”

5. Section 7(d) is amended to read as follows:

“(d) Recognition of a labor organization does not—

(1) preclude an employee, regardless of whether he is in a unit of exclusive recognition, from exercising grievance or appellate rights established by law or regulation, or from choosing his own representative in a grievance or appellate action, except when the grievance is covered under a negotiated procedure as provided in section 13;

(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude an agency from consulting or dealing with a religious, social, fraternal, professional or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members. Consultations and dealings under subparagraph (3) of this paragraph shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy covering employees in that unit or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.”

6. Section 7(e) is revoked.

7. Section 9(b) is amended by substituting the word “consult” for the word “confer” in the third sentence thereof.

8. Section 10(a) is amended to read as follows:

“(a) An agency shall accord exclusive recognition to a labor organization when the organization has been selected, in a secret ballot election, by a majority of the employees in an appropriate unit as their representative; provided that this section shall not preclude an agency from according exclusive recognition to a labor organization, without an election, where the appropriate unit is established through the consolidation of existing exclusively recognized units represented by that organization.”

9. Paragraph (2) of section 10(b) is amended by adding at the end thereof the word “or”.

10. Paragraph (3) of section 10(b) is revoked.

11. Section 10(c) is revoked.

12. Section 10(d) is amended to read as follows:

“(d) All elections shall be conducted under the supervision of the Assistant Secretary, or persons designated by him, and shall be by secret ballot. Each employee eligible to vote shall be provided the opportunity to choose the labor organization he wishes to represent him, from among those on the ballot, or ‘no union’, except as provided in subparagraph (4) of this paragraph. Elections may be held to determine whether—

(1) a labor organization should be recognized as the exclusive representative of employees in a unit;

(2) a labor organization should replace another labor organization as the exclusive representative;

(3) a labor organization should cease to be the exclusive representative; or

(4) a labor organization should be recognized as the exclusive representative of employees in a unit composed of employees in units currently represented by that labor organization or continue to be recognized in the existing separate units.”

13. Section 11 is amended to read as follows:

“SEC. 11. *Negotiation of agreements.* (a) An agency and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable laws and regulations, including policies set forth in the Federal Personnel Manual; published agency policies and regulations for which a compelling need exists under criteria established by the Federal Labor Relations Council and which are issued at the agency headquarters level or at the level of a primary national subdivision; a national or other controlling agreement at a higher level in the agency; and this order. They may negotiate an agreement, or any question arising thereunder; determine appropriate techniques, consistent with section 17 of this order, to assist in such negotiation; and execute a written agreement or memorandum of understanding.

“(b) In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall have due regard for the obligation imposed by paragraph (a) of this section. However, the obligation to meet and confer does not include matters with respect to the mission of an agency; its budget; its organization; the number of

employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

“(c) If, in connection with negotiations, an issue develops as to whether a proposal is contrary to law, regulation, controlling agreement, or this order and therefore not negotiable, it shall be resolved as follows:

(1) An issue which involves interpretation of a controlling agreement at a higher agency level is resolved under the procedures of the controlling agreement, or, if none, under agency regulations;

(2) An issue other than as described in subparagraph (1) of this paragraph which arises at a local level may be referred by either party to the head of the agency for determination;

(3) An agency head’s determination as to the interpretation of the agency’s regulations with respect to a proposal is final;

(4) A labor organization may appeal to the Council for a decision when—

(i) it disagrees with an agency head’s determination that a proposal would violate applicable law, regulation of appropriate authority outside the agency, or this order, or

(ii) it believes that an agency’s regulations, as interpreted by the agency head, violate applicable law, regulation of appropriate authority outside the agency, or this order, or are not otherwise applicable to bar negotiations under paragraph (a) of this section.

“(d) If, as the result of an alleged unilateral change in, or addition to, personnel policies and practices or matters affecting working conditions, the acting party is charged with a refusal to consult, confer or negotiate as required under this order, the Assistant Secretary may, in the exercise of his authority under section 6(a)(4) of the order, make those determinations of negotiability as may be necessary to resolve the merits of the alleged unfair labor practice. In such cases the party subject to an adverse ruling may appeal the Assistant Secretary’s negotiability determination to the Council.”

14. Section 13 is amended to read as follows:

“SEC. 13. *Grievance and arbitration procedures.* (a) An agreement between an agency and a labor organization shall provide a procedure, applicable only to the unit, for the consideration of grievances. The cov-

erage and scope of the procedure shall be negotiated by the parties to the agreement with the exception that it may not cover matters for which a statutory appeal procedure exists and so long as it does not otherwise conflict with statute or this order. It shall be the exclusive procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage. However, any employee or group of employees in the unit may present such grievances to the agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given opportunity to be present at the adjustment.

“(b) A negotiated procedure may provide for arbitration of grievances. Arbitration may be invoked only by the agency or the exclusive representative. Either party may file exceptions to an arbitrator’s award with the Council, under regulations prescribed by the Council.

(c) [Revoked.]

“(d) Questions that cannot be resolved by the parties as to whether or not a grievance is on a matter for which a statutory appeal procedure exists, shall be referred to the Assistant Secretary for decision. Other questions as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, may by agreement of the parties be submitted to arbitration or may be referred to the Assistant Secretary for decision.”

(e) [Revoked.]

15. Section 15 is amended to read as follows:

“*SEC. 15. Approval of agreements.* An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or an official designated by him. An agreement shall be approved within forty-five days from the date of its execution if it conforms to applicable laws, the order, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation) and regulations of other appropriate authorities. An agreement which has not been approved or disapproved within forty-five days from the date of its execution shall go into effect without the required approval of the agency head and shall be binding on the parties subject to the provisions of law, the order and the regulations of appropriate authorities outside the agency. 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 agency regulations.”

16. Section 21(b) is revoked.

17. Section 23 is amended by deleting at the end thereof the following:

“other than those for the implementation of section 7(e) of this order”.

The amendments made by this order shall become effective ninety days from this date except that the amendments to sections 11(a) and 11(c) shall not become effective until ninety days after issuance by the Federal Labor Relations Council of the criteria for determining compelling need. Each agency shall issue appropriate policies and regulations consistent with this order for its implementation.

GERALD R. FORD

THE WHITE HOUSE,
February 6, 1975.

Executive Order 11901

January 30, 1976

Amending Executive Order No. 11491,¹ as Amended by Executive Orders 11616,² 11636,³ and 11838,⁴ Relating to Labor-Management Relations in the Federal Service

By virtue of the authority vested in me by the Constitution and statutes of the United States, including Sections 3301 and 7301 of Title 5 of the United States Code, and as President of the United States, Section 3(b) of Executive Order No. 11491 of October 29, 1969, as amended by Executive Orders 11616, 11636, and 11838, relating to labor-management relations in the Federal service, is further amended by adding thereto:

“(6) The Tennessee Valley Authority.”



THE WHITE HOUSE,
January 30, 1976.

[FR Doc.76-3263 Filed 1-30-76;10:16 am]

¹ 34 FR 17605; 3 CFR, 1966-1970 Comp., p. 861.

² 36 FR 17319; 3 CFR, 1971 Comp., p. 202.

³ 36 FR 24901; 3 CFR, 1971 Comp., p. 232.

⁴ 40 FR 5743, 7391.

Executive Order 11491,
 Labor-Management Relations
 in the Federal Service,
 as Amended by
 Executive Orders 11616, 11636 and 11838

WHEREAS the public interest requires high standards of employee performance and the continual development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency; and

WHEREAS the well-being of employees and efficient administration of the Government are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment; and

WHEREAS the participation of employees should be improved through the maintenance of constructive and cooperative relationships between labor organizations and management officials; and

WHEREAS subject to law and the paramount requirements of public service, effective labor-management relations within the Federal service require a clear statement of the respective rights and obligations of labor organizations and agency management:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including sections 3301 and 7301 of title 5 of the United States Code, and as President of the United States, I hereby direct that the following policies shall govern officers and agencies of the executive branch of the Government in all dealings with Federal employees and organizations representing such employees.

GENERAL PROVISIONS

Section 1. *Policy.* (a) Each employee of the executive branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in this Order, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress, or other appropriate authority. The head of each agency shall take the action required to assure that employees in the agency are apprised of their rights under this section, and that no interference, restraint, coercion, or discrimination is practiced within his agency to encourage or discourage membership in a labor organization.

(b) Paragraph (a) of this section does not authorize participation in the management of a labor organization or acting as a representative of such an organization by a supervisor, except as provided in section 24 of this Order, or by an employee when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

Sec. 2. *Definitions.* When used in this Order, the term—

(a) "Agency" means an executive department, a Government corporation, and an independent establishment as defined in section 104 of title 5, United States Code, except the General Accounting Office;

(b) "Employee" means an employee of an agency and an employee of a nonappropriated fund instrumentality of the United States but does not include, for the purpose of exclusive recognition or national consultation rights, a supervisor, except as provided in section 24 of this Order;

(c) "Supervisor" means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(d) [Revoked.]

(e) "Labor organization" means a lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees; but does not include an organization which—

(1) consists of management officials or supervisors, except as provided in section 24 of this Order;

(2) assists or participates in a strike against the Government of the United States or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(3) advocates the overthrow of the constitutional form of government in the United States; or

(4) discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin;

(f) "Agency management" means the agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under this Order;

(g) "Council" means the Federal Labor Relations Council established by this Order;

(h) "Panel" means the Federal Service Impasses Panel established by this Order; and

(i) "Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Relations.

Sec. 3. Application. (a) This Order applies to all employees and agencies in the executive branch, except as provided in paragraphs (b), (c) and (d) of this section.

(b) This Order (except section 22) does not apply to—

(1) the Federal Bureau of Investigation;

(2) the Central Intelligence Agency;

(3) any other agency, or office, bureau, or entity within an agency, which has as a primary function intelligence, investigative, or security work, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with national security requirements and considerations;

(4) any office, bureau or entity within an agency which has as a primary function investigation or audit of the conduct or work of officials or employees of the agency for the purpose of ensuring honesty and integrity in the discharge of their official duties, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with the internal security of the agency; or

(5) The Foreign Service of the United States; Department of State, United States Information Agency and Agency for International Development and its successor agency or agencies.

(c) The head of an agency may, in his sole judgment, suspend any provision of this Order (except section 22) with respect to any agency installation or activity located outside the United States, when he determines that this is necessary in the national interest, subject to the conditions he prescribes.

(d) Employees engaged in administering a labor-management relations law or this Order shall not be represented by a labor organization which also represents other groups of employees under the law or this Order, or which is affiliated directly or indirectly with an organization which represents such a group of employees.

ADMINISTRATION

Sec. 4. Federal Labor Relations Council. (a) There is hereby established the Federal Labor Relations Council, which consists of the Chairman of the Civil Service Commission, who shall be chairman of the Council, the Secretary of Labor, the Director of the Office of Management and Budget, and such other officials of the executive branch as the President may designate from time to time. The Civil Service Commission shall provide administrative support and services to the Council to the extent authorized by law.

(b) The Council shall administer and interpret this Order, decide major policy issues, prescribe regulations, and from time to time, report and make recommendations to the President.

(c) The Council may consider, subject to its regulations—

(1) appeals from decisions of the Assistant Secretary issued pursuant to section 6 of this Order, except where, in carrying out his authority under section 11(d), he makes a negotiability determination, in which instance the party adversely affected shall have a right of appeal;

(2) appeals on negotiability issues as provided in section 11(c) of this Order;

(3) exceptions to arbitration awards; and

(4) other matters it deems appropriate to assure the effectuation of the purposes of this Order.

Sec. 5. Federal Service Impasses Panel. (a) There is hereby established the Federal Service Impasses Panel as an agency within the Council. The Panel consists of at least three members appointed by the President, one of whom he designates as chairman. The Council shall provide the services and staff assistance needed by the Panel.

(b) The Panel may consider negotiation impasses as provided in section 17 of this Order and may take any action it considers necessary to settle an impasse.

(c) The Panel shall prescribe regulations needed to administer its function under this Order.

Sec. 6. Assistant Secretary of Labor for Labor-Management Relations. (a) The Assistant Secretary shall—

(1) decide questions as to the appropriate unit for the purpose of exclusive recognition and related issues submitted for his consideration;

(2) supervise elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit as their exclusive representative, and certify the results;

(3) decide questions as to the eligibility of labor organizations for national consultation rights under criteria prescribed by the Council;

(4) decide unfair labor practice complaints (including those where an alleged unilateral act by one of the parties requires an initial negotiability determination) and alleged violations of the standards of conduct for labor organizations; and

(5) decide questions as to whether a grievance is subject to a negotiated grievance procedure or subject to arbitration under an agreement as provided in section 13(d) of this Order.

(b) In any matters arising under paragraph (a) of this section, the Assistant Secretary may require an agency or a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as he considers appropriate to effectuate the policies of this Order.

(c) In performing the duties imposed on him by this section, the Assistant Secretary may request and use the services and assistance of employees of other agencies in accordance with section 1 of the Act of March 4, 1915, (38 Stat. 1084, as amended; 31 U.S.C. § 886).

(d) The Assistant Secretary shall prescribe regulations needed to administer his functions under this Order.

(e) If any matters arising under paragraph (a) of this section involve the Department of Labor, the duties of the Assistant Secretary described in paragraphs (a) and (b) of this section shall be performed by a member of the Civil Service Commission designated by the Chairman of the Commission.

RECOGNITION

Sec. 7. *Recognition in general.* (a) An agency shall accord exclusive recognition or national consultation rights at the request of a labor organization which meets the requirements for the recognition or consultation rights under this Order.

(b) A labor organization seeking recognition shall submit to the agency a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives.

(c) When recognition of a labor organization has been accorded, the recognition continues as long as the organization continues to meet the requirements of this Order applicable to that recognition, except that this section does not require an election to determine whether an organization should become, or continue to be recognized as, exclusive representative of the employees in any unit or subdivision thereof within 12 months after a prior valid election with respect to such unit.

(d) Recognition of a labor organization does not—

(1) preclude an employee, regardless of whether he is in a unit of exclusive recognition, from exercising grievance or appellate rights established by law or regulation, or from choosing his own representative in a grievance or appellate action, except when the grievance is covered under a negotiated procedure as provided in section 13;

(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude an agency from consulting or dealing with a religious, social, fraternal, professional or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members.

Consultations and dealings under subparagraph (3) of this paragraph shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy covering employees in that unit, or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.

(e) [Revoked.]

(f) Informal recognition or formal recognition shall not be accorded.

Sec. 8. [Revoked.]

Sec. 9. *National consultation rights.* (a) An agency shall accord national consultation rights to a labor organization which qualifies under criteria established by the Federal Labor Relations Council as the representative of a substantial number of employees of the agency. National consultation rights shall not be accorded for any unit where a labor organization already holds exclusive recognition at the national level for that unit. The granting of national consultation rights does not preclude an agency from appropriate dealings at the national level with other organizations on matters affecting their members. An agency shall terminate national consultation rights when the labor organization ceases to qualify under the established criteria.

(b) When a labor organization has been accorded national consultation rights, the agency, through appropriate officials, shall notify representatives of the organization of proposed

substantive changes in personnel policies that affect employees it represents and provide an opportunity for the organization to comment on the proposed changes. The labor organization may suggest changes in the agency's personnel policies and have its views carefully considered. It may consult in person at reasonable times, on request, with appropriate officials on personnel policy matters, and at all times present its views thereon in writing. An agency is not required to consult with a labor organization on any matter on which it would not be required to meet and confer if the organization were entitled to exclusive recognition.

(c) Questions as to the eligibility of labor organizations for national consultation rights may be referred to the Assistant Secretary for decision.

Sec. 10. *Exclusive recognition.* (a) An agency shall accord exclusive recognition to a labor organization when the organization has been selected, in a secret ballot election, by a majority of the employees in an appropriate unit as their representative; provided that this section shall not preclude an agency from according exclusive recognition to a labor organization, without an election, where the appropriate unit is established through the consolidation of existing exclusively recognized units represented by that organization.

(b) A unit may be established on a plant or installation, craft, functional, or other basis which will ensure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations. A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be established if it includes—

- (1) any management official or supervisor, except as provided in section 24;
- (2) an employee engaged in Federal personnel work in other than a purely clerical capacity; or
- (3) [Revoked.]
- (4) both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit.

Questions as to the appropriate unit and related issues may be referred to the Assistant Secretary for decision.

(c) [Revoked.]

(d) All elections shall be conducted under the supervision of the Assistant Secretary, or persons designated by him, and shall be by secret ballot. Each employee eligible to vote shall be provided the opportunity to choose the labor organization he wishes to represent him, from among those on the ballot, or "no union", except as provided in subparagraph (4) of this paragraph. Elections may be held to determine whether—

- (1) a labor organization should be recognized as the exclusive representative of employees in a unit;
- (2) a labor organization should replace another labor organization as the exclusive representative;
- (3) a labor organization should cease to be the exclusive representative; or
- (4) a labor organization should be recognized as the exclusive representative of employees in a unit composed of employees in units currently represented by that labor organization or continue to be recognized in the existing separate units.

(e) When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and negotiate agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership. The labor organization 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.

AGREEMENTS

Sec. 11. *Negotiation of agreements.* (a) An agency and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable laws and regulations, including policies set forth in the Federal Personnel Manual; published agency policies and regulations for which a compelling need exists under criteria established by the Federal Labor Relations Council and which are issued at the agency headquarters level or at the level of a primary national subdivision; a national or other controlling agreement at a higher level in the agency; and this Order. They may negotiate an agreement, or any question arising thereunder; determine appropriate techniques, consistent with section 17 of this Order, to assist in such negotiation; and execute a written agreement or memorandum of understanding.

(b) In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall have due regard for the obligation imposed by paragraph (a) of this section. However, the obligation to meet and confer does not include matters with respect to the mission of an agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

(c) If, in connection with negotiations, an issue develops as to whether a proposal is contrary to law, regulation, controlling agreement, or this Order and therefore not negotiable, it shall be resolved as follows:

(1) An issue which involves interpretation of a controlling agreement at a higher agency level is resolved under the procedures of the controlling agreement, or, if none, under agency regulations;

(2) An issue other than as described in subparagraph (1) of this paragraph which arises at a local level may be referred by either party to the head of the agency for determination;

(3) An agency head's determination as to the interpretation of the agency's regulations with respect to a proposal is final;

(4) A labor organization may appeal to the Council for a decision when—

(i) it disagrees with an agency head's determination that a proposal would violate applicable law, regulation of appropriate authority outside the agency, or this Order, or

(ii) it believes that an agency's regulations, as interpreted by the agency head, violate applicable law, regulation of appropriate authority outside the agency, or this Order, or are not otherwise applicable to bar negotiations under paragraph (a) of this section.

(d) If, as the result of an alleged unilateral change in, or addition to, personnel policies and practices or matters affecting working conditions, the acting party is charged with a refusal to consult, confer or negotiate as required under this Order, the Assistant Secretary may, in the exercise of his authority under section 6(a)(4) of the Order, make those determinations of negotiability as may be necessary to resolve the merits of the alleged unfair labor practice. In such cases the party subject to an adverse ruling may appeal the Assistant Secretary's negotiability determination to the Council.

Sec. 12. *Basic provisions of agreements.* Each agreement between an agency and a labor organization is subject to the following requirements—

(a) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level;

(b) management officials of the agency retain the right, in accordance with applicable laws and regulations—

(1) to direct employees of the agency;

(2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;

(3) to relieve employees from duties because of lack of work or for other legitimate reasons;

(4) to maintain the efficiency of the Government operations entrusted to them;

(5) to determine the methods, means, and personnel by which such operations are to be conducted; and

(6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency; and

(c) nothing in the agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.

The requirements of this section shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization.

Sec. 13. *Grievance and arbitration procedures.* (a) An agreement between an agency and a labor organization shall provide a procedure, applicable only to the unit, for the consideration of grievances. The coverage and scope of the procedure shall be negotiated by the parties to the agreement with the exception that it may not cover matters for which a statutory appeal procedure exists and so long as it does not otherwise conflict with statute or this Order. It shall be the exclusive procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage. However, any employee or group of employees in the unit may present such grievances to the agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given opportunity to be present at the adjustment.

(b) A negotiated procedure may provide for arbitration of grievances. Arbitration may be invoked only by the agency or the exclusive representative. Either party may file exceptions to an arbitrator's award with the Council, under regulations prescribed by the Council.

(c) [Revoked.]

(d) Questions that cannot be resolved by the parties as to whether or not a grievance is on a matter for which a statutory appeal procedure exists, shall be referred to the Assist-

ant Secretary for decision. Other questions as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, may by agreement of the parties be submitted to arbitration or may be referred to the Assistant Secretary for decision.

(e) [Revoked.]

Sec. 14. [Revoked.]

Sec. 15. *Approval of agreements.* An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or an official designated by him. An agreement shall be approved within forty-five days from the date of its execution if it conforms to applicable laws, the Order, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation) and regulations of other appropriate authorities. An agreement which has not been approved or disapproved within forty-five days from the date of its execution shall go into effect without the required approval of the agency head and shall be binding on the parties subject to the provisions of law, the Order and the regulations of appropriate authorities outside the agency. 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 agency regulations.

NEGOTIATION DISPUTES AND IMPASSES

Sec. 16. *Negotiation disputes.* The Federal Mediation and Conciliation Service shall provide services and assistance to Federal agencies and labor organizations in the resolution of negotiation disputes. The Service shall determine under what circumstances and in what manner it shall proffer its services.

Sec. 17. *Negotiation impasses.* When voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third-party mediation, fail to resolve a negotiation impasse, either party may request the Federal Service Impasses Panel to consider the matter. The Panel, in its discretion and under the regulations it prescribes, may consider the matter and may recommend procedures to the parties for the resolution of the impasse or may settle the impasse by appropriate action. Arbitration or third-party fact finding with recommendations to assist in the resolution of an impasse may be used by the parties only when authorized or directed by the Panel.

CONDUCT OF LABOR ORGANIZATIONS AND MANAGEMENT

Sec. 18. *Standards of conduct for labor organizations.* (a) An agency shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in paragraph (b) of this section, an organization is not required to prove that it has the required freedom when 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 participation in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to 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 provision 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 paragraph (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles when 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 paragraph (a) of this section; or

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

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

(d) The Assistant Secretary shall prescribe the regulations needed to effectuate this section. These regulations shall conform generally to the principles applied to unions in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary.

Sec. 19. *Unfair labor practices.* (a) Agency management shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Order;

- (2) encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment;
- (3) sponsor, control, or otherwise assist a labor organization, except that an agency may furnish customary and routine services and facilities under section 23 of this Order when consistent with the best interests of the agency, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;
- (4) discipline or otherwise discriminate against an employee because he has filed a complaint or given testimony under this Order;
- (5) refuse to accord appropriate recognition to a labor organization qualified for such recognition; or
- (6) refuse to consult, confer, or negotiate with a labor organization as required by this Order.

(b) A labor organization shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of his rights assured by this Order;

(2) attempt to induce agency management to coerce an employee in the exercise of his rights under this Order;

(3) coerce, attempt to coerce, or discipline, fine, or take other economic sanction against a member of the organization as punishment or reprisal for, or for the purpose of hindering or impeding his work performance, his productivity, or the discharge of his duties owed as an officer or employee of the United States;

(4) call or engage in a strike, work stoppage, or slowdown; picket an agency in a labor-management dispute; or condone any such activity by failing to take affirmative action to prevent or stop it;

(5) discriminate against an employee with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin; or

(6) refuse to consult, confer, or negotiate with an agency as required by this Order.

(c) A labor organization which is accorded exclusive recognition shall not deny membership to any employee in the appropriate unit except for failure to meet reasonable occupational standards uniformly required for admission, or for failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. This paragraph does not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or by-laws which conform to the requirements of this Order.

(d) Issues which can properly be raised under an appeals procedure may not be raised under this section. Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures. Appeals or grievance decisions shall not be construed as unfair labor practice decisions under this Order nor as precedent for such decisions. All complaints under this section that cannot be resolved by the parties shall be filed with the Assistant Secretary.

MISCELLANEOUS PROVISIONS

Sec. 20. *Use of official time.* Solicitation of membership or dues, and other internal business of a labor organization, shall be conducted during the non-duty hours of the employees concerned. Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management, except to the extent that the negotiating parties agree to other arrangements which may provide that the agency will either authorize official time for up to 40 hours or authorize up to one-half the time spent in negotiations during regular working hours, for a reasonable number of employees, which number normally shall not exceed the number of management representatives.

Sec. 21. *Allotment of dues.* (a) When a labor organization holds exclusive recognition, and the agency and the organization agree in writing to this course of action, an agency may deduct the regular and periodic dues of the organization from the pay of members of the organization in the unit of recognition who make a voluntary allotment for that purpose. Such an allotment is subject to the regulations of the Civil Service Commission, which shall include provision for the employee to revoke his authorization at stated six-month intervals. Such an allotment terminates when—

(1) the dues withholding agreement between the agency and the labor organization is terminated or ceases to be applicable to the employee; or

(2) the employee has been suspended or expelled from the labor organization.

(b) [Revoked.]

Sec. 22. *Adverse action appeals.* The head of each agency, in accordance with the provisions of this Order and regulations prescribed by the Civil Service Commission, shall extend to all employees in the competitive civil service rights identical in adverse action cases to those provided preference eligibles under sections 7511-7512 of title 5 of the United States Code. Each employee in the competitive service shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such

appeal to be processed in an identical manner to that provided for appeals under section 7701 of title 5 of the United States Code. Any recommendation by the Civil Service Commission submitted to the head of an agency on the basis of an appeal by an employee in the competitive service shall be complied with by the head of the agency.

Sec. 23. Agency implementation. No later than April 1, 1970, each agency shall issue appropriate policies and regulations consistent with this Order for its implementation. This includes but is not limited to a clear statement of the rights of its employees under this Order; procedures with respect to recognition of labor organizations, determination of appropriate units, consultation and negotiation with labor organizations, approval of agreements, mediation, and impasse resolution; policies with respect to the use of agency facilities by labor organizations; and policies and practices regarding consultation with other organizations and associations and individual employees. Insofar as practicable, agencies shall consult with representatives of labor organizations in the formulation of these policies and regulations.

Sec. 24. Savings clauses. This Order does not preclude—

(1) the renewal or continuation of a lawful agreement between an agency and a representative of its employees entered into before the effective date of Executive Order No. 10988 (January 17, 1962); 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 the management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the date of this Order.

Sec. 25. Guidance, training, review and information. (a) The Civil Service Commission, in conjunction with the Office of Management and Budget, shall establish and maintain a program for the policy guidance of agencies on labor-management relations in the Federal service and periodically review the implementation of these policies. The Civil Service Commission shall continuously review the operation of the Federal labor-management relations program to assist in assuring adherence to its provisions and merit system requirements; implement technical advice and information programs for the agencies; assist in the development of programs for training agency personnel and management officials in labor-management relations; and, from time to time, report to the Council on the state of the program with any recommendations for its improvement.

(b) The Department of Labor and the Civil Service Commission shall develop programs for the collection and dissemination of information appropriate to the needs of agencies, organizations and the public.

Sec. 26. Effective date. This Order is effective on January 1, 1970, except sections 7 (f) and 8 which are effective immediately. Effective January 1, 1970, Executive Order No. 10988 and the President's Memorandum of May 21, 1963, entitled Standards of Conduct for Employee Organizations and Code of Fair Labor Practices are revoked.

RICHARD NIXON

THE WHITE HOUSE
October 29, 1969



NEW
ODD PAGE

Federal Personnel Management Project

Option Paper Number Four

Federal Government
Labor - Management Relations

September 20, 1977

INTRODUCTION

This Option Paper, prepared by the Labor-Management Relations Task Force, is organized under four major issue areas:

1. Central Organization for Labor-Management Relations and Public Interest Concerns
2. Organization of the Federal Employer for Management Under Labor-Management Relations: Employee/Employer Relationships
3. Scope of Bargaining
4. Impasse Resolution

It is important to distinguish organizational arrangements for central administration of labor-management relations (the sort of functions performed by NLRB for the private sector) from the important management functions of government centrally and at agency levels. That is the reason for treating issues in Parts 1 and 2 separately.

Decisions on Scope of Bargaining necessarily impact on the above organizational arrangements (and vice versa). However, it is clearer conceptually to deal here with organizational issues first.

With respect to the Scope of Bargaining, it is important to note that if decisions should be made to decentralize many personnel matters to the field, that could potentially enlarge the Scope of Bargaining at agency levels without other changes in LMR provisions per se.

With respect to both Scope of Bargaining and the related matters of Organization for Labor-Management Relations, options spelled out in this paper must be related closely to options on other issues dealt with by other Task Force studies--particularly those dealing with general personnel organization and management, pay and benefits, staffing, and appeals.

Finally, it must be noted that this paper includes discussions of the wide range of options most generally considered on each of the four

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major areas of review. Some of the options are not at all compatible with others. Technical implementing dimensions of the options are not spelled out here. In short, this is not a recommendations paper. The options merely state the most common ranges of alternatives. Exceptions from the Federal labor-management relations program, such as the Foreign Service under E.O. 11636, and exclusions, such as security agencies, are not dealt with here. Based on reactions to these papers and other inputs, recommendations memoranda will be prepared.

For the convenience of readers, an executive summary is provided in outline form on all four issue areas covered in this paper.

Executive Summary/Outline

OPTION PAPER NUMBER FOUR FEDERAL GOVERNMENT LABOR-MANAGEMENT RELATIONS

Part 1. CENTRAL ORGANIZATION FOR LABOR-MANAGEMENT RELATIONS AND PUBLIC INTEREST CONCERNS

I. Organization of a Central Authority for administration of the Federal labor-management relations program

PROBLEM: Central administration of the present program is vested by Executive Order in a part-time Federal Labor Relations Council (FLRC), composed of 3 top Government managers, with some important functions delegated to the Assistant Secretary of Labor for Labor-Management Relations (A/SLMR). Traditionally, central administration of other labor-management relations programs has been vested in a full-time "neutral" board or authority. The managerial structure and part-time nature of the FLRC are criticized as principal defects of the labor relations program under E. O. 11491.

OPTIONS:

1. Retain current organizational arrangements, either in law or E.O.
2. Alter composition of Federal Labor Relations Council.
3. Establish an independent authority with integrated functions.
4. Extend NLRB coverage.

IMPLEMENTING ACTION REQUIRED: Option 3 or 4 would require legislation or Congressionally-sanctioned reorganization. Option 2 may require legislation, with some action possible through Executive order.

RELATED ISSUES:

1. Composition of authority: neutral or tripartite.
2. Powers of central authority and judicial review.
3. One or several "central" authorities.
4. Representation of the "public interest."

II. Recognition

PROBLEM: In the Federal program, a labor organization must achieve exclusive recognition in an appropriate unit of employees before it is entitled to negotiate for those employees. Under E.O. 11491, exclusive recognition is won by secret ballot election supervised by the A/SLMR. Other methods for granting recognition are also employed in other labor relations systems. The election requirement of E.O. 11491 has been criticized as unduly restrictive, expensive and time-consuming. Others believe the election process is the best guarantee of employee freedom of choice.

OPTIONS:

1. Voluntary recognition.
2. Card-check certification.
3. Secret ballot.
4. Choice of these options as alternatives.

IMPLEMENTING ACTION REQUIRED: No legislation is necessary. All of the above options are amenable either to administrative action or adjustments in the E.O.

III. Unfair Labor Practices

PROBLEM: The Federal labor-management relations program has adopted, with some adjustments, the basic unfair labor practice (ULP) provisions of the National Labor Relations Act (NLRA). Overall, such provisions are well understood and accepted, both as to substance and enforcement. However, unlike the NLRA procedures, each complainant in a ULP dispute under E.O. 11491 is responsible for prosecuting his/her own case before an administrative law judge. This means that in some cases ULP records may be misleading or incomplete, may not address the issues, may be unnecessarily long, etc. As a result, the cost of litigation, both to the parties and to the Government, may be excessive. Moreover, inconsistencies in the quality of representation may result in poor presentations, making administrative justice in some meritorious cases more difficult to administer. Although the 1975 review of the E.O. authorized independent ULP investigations by the A/SLMR, he is not permitted to prosecute these cases on behalf of the complainant, as is done by the General Counsel of the National Labor Relations Board (NLRB) in the private sector.

OPTIONS -- ENFORCEMENT:

1. Retain current system.
2. Provide for prosecution by A/SLMR or an independent authority.
3. Provide for court enforcement by complainant.

IMPLEMENTING ACTION REQUIRED: The present FLRC could institute Option 2 through a change in the Assistant Secretary's regulations. An independent authority would require legislation, as would court enforcement under Option 3, or sanctioned reorganization.

IV. Standards of Conduct

PROBLEM: In the private sector, union members are guaranteed rights to democratic participation in the internal affairs of their labor organization by the 1959 Labor-Management Reporting and Disclosure Act (LMRDA). Furthermore, that law places certain fiduciary and reporting responsibilities on the officers of labor unions to ensure that they act in the interests of their members. While unions representing Federal employees are subject to standards of conduct generally equivalent to those applied by law in the private sector, the E.O. provision lacks the direct remedies, court enforcement, and judicial review that would be available under the LMRDA.

- OPTIONS:**
1. Retain current provisions.
 2. Provide for LMRDA coverage.

IMPLEMENTING ACTION REQUIRED: Option 2 would require legislation.

V. Organization for handling negotiability questions

PROBLEM: Negotiability questions arise under the E.O. program when one party submits a contract proposal at the bargaining table which the other contends is contrary to law, regulation, or the Order. These questions are resolved first by referring the disputed proposal to the agency head for determination and, if he finds the proposal to be nonnegotiable, by appealing this determination to the FLRC for decision. Where interpretations of the Federal Personnel Manual (FPM), of law, or of government-wide policy are central to the resolution of negotiability issues, the FLRC practice is to go to the authoritative source for its comments -- e.g., CSC, the Comptroller General, etc. This process may be time-consuming and delay agreement negotiations. Where management rights are at issue, negotiability decisions by the FLRC may have an appearance of bias -- warranted or not -- due to its management composition.

- OPTIONS:
1. Retain current system.
 2. Maintain current system with altered FLRC.
 3. Provide for resolution of all such questions through unfair labor practice procedure.
 4. Provide for single, special, expedited procedure by independent administrative authority.

IMPLEMENTING ACTION REQUIRED: Option 3 could be accomplished by Executive Order. Option 2 might be by E.O. or, like Option 4, might require legislation.

VI. Relationship between grievance and appeal systems

PROBLEM: Numerous overlapping, and sometimes conflicting, statutory grievance and appeal systems are now available to Federal employees, depending on the subject matter of their complaints. In addition, E.O. 11491 authorizes bilaterally negotiated grievance and arbitration procedures for represented employees, excluding only matters subject to a statutory appeal system. Thus, Federal employees may face a confusion of forums in processing their complaints, and effectuation of their rights may often depend on their ability to properly classify the nature of their claims. Managers may be deterred from taking necessary and appropriate personnel actions because of the multiplicity of procedural requirements which must be met before such actions may be sustained if and when an appeal process is invoked by an affected employee. Generally, "make-whole" remedies are unavailable to Federal employees unless the requirements of the Back-Pay Act are met -- an issue subject to interpretation by the Comptroller General. Therefore, there is general dissatisfaction with the present grievance and appeals systems.

- OPTIONS:
1. Continue current systems.
 2. Permit negotiation of procedures to cover all but certain specified appeals.
 3. Permit negotiation of full-scope grievance arbitration covering all appeals (ULP procedure available, if applicable).
 4. Permit employee to elect appeal route: grievance procedure, or statutory procedure, or ULP.

IMPLEMENTING ACTION REQUIRED: Legislation would be required to permit negotiated grievance procedures to cover statutory appeal systems matters. Complete "make-whole" remedies would also require legislation.

Part 2. ORGANIZATION OF THE FEDERAL EMPLOYER
FOR MANAGEMENT UNDER LABOR-MANAGEMENT RELATIONS: EMPLOYEE/EMPLOYER
RELATIONSHIPS

I. Organization of the employer for management effectiveness

PROBLEM: Definition of the employer for purposes of collective bargaining is one of the biggest problems in Federal labor-management relations. Authority to make policy is separated between the Executive and Congress, subject to judicial review, and it is further dispersed within the Executive Branch, with the results that (a) management is fragmented and cannot speak with an effective voice in bilateral relations, and (b) most big issues, such as pay and benefits, are beyond the scope of bargaining, resulting in negotiations focusing largely on a narrow range of management discretion and the shifting of union actions to other arenas outside the collective bargaining process. Management leadership within the Executive Branch isn't integrated at the central level and is uneven at agency levels, with labor-management relations sometimes functioning as just another overlay of complicated procedures--an add-on to already complex personnel administration provisions.

- OPTIONS:
1. Retain the present structure.
 2. Establish central Executive Branch management leadership with (a) creation of a central labor relations office to provide general management leadership, and (b) possible changes in pay-setting machinery.
 3. Within agencies, elevate responsibilities for labor relations and related personnel functions to more integral levels of management organization.

IMPLEMENTING ACTION REQUIRED: Option 2 could be achieved through Congressionally-sanctioned reorganization, with legislative action required for substantive changes in pay-setting machinery. Option 3 could be accomplished by Executive Order or possibly administrative action under the present E.O.

II. Mechanisms for dealings

PROBLEM: Depending on the issues to be discussed, several forums are currently available and being utilized by Government management and Federal unions to resolve matters affecting Federal employees. Not all of these discussions, however, constitute "collective bargaining" as that term is used in the Federal labor relations program, since E.O. 11491 excludes bargaining on a range of "bread-and-butter" issues determined pursuant to law or controlling regulations. Such matters of vital concern to Federal employees, including questions of pay and compensation, are dealt with in arenas established by such law or other authority. As the scope of permissible negotiations continues to expand, the present mechanisms for dealing may prove to be inadequate, and different frameworks for union-management dealings may have to be instituted.

- OPTIONS:
1. Bargaining unit negotiations.
 2. Master agreements (government-wide or agency-wide), with local supplements.
 3. Multi-tiered, multi-unit, coalition bargaining.
 4. Unit structures in agencies plus other mechanisms at the central level (i.e., FPRAC, Pay Agent, President, Congress, etc.).

IMPLEMENTING ACTION REQUIRED: Government-wide master agreements under Option 2 might be authorized through Executive Order revision, Congressionally-sanctioned reorganization, or through legislation. Substantial revision or expansion in central-level mechanisms under Option 4 would require legislation.

III. Unit Structure

PROBLEM: Excessive unit fragmentation has been a persistent problem in the Federal labor relations program. In many instances, the unit structure and level of exclusive recognition bear no reasonable relationship to the employer's discretionary authority over bargainable topics under E.O. 11491. Although the present philosophy of the labor-management program favors reduced unit fragmentation, where such unit economies are not possible a need exists to accommodate the unit structure to the appropriate organizational level of the agency to facilitate meaningful bargaining.

- OPTIONS:
1. Retain the present system.
 2. Apply unit criteria and bargaining experience to merge existing units.
 3. Establish units in the program charter (Executive Order/statute).

IMPLEMENTING ACTION REQUIRED: Only Option 3 would require Executive order/or legislation. Option 2 could be by administrative action or may require change in the E.O.

REORGANIZATION PROCESS CONSIDERATIONS: It appears that existing recognitions, agreements and dues-withholding arrangements should be honored to the maximum extent possible pending final resolution of unit

issues in agency reorganizations.

EXCLUSION OF SUPERVISORS: It appears also that supervisors should be fully integrated and identified with agency management and should be excluded from units covering the employees they supervise. Unions argue, however, that the present definition of "supervisor," as applied, is too exclusionary and locks many whose interests are more closely aligned with the rank-and-file out of bargaining units with them.

IV. Union Security

PROBLEM: Achievement of exclusive status means that the labor organization must represent all employees in the bargaining unit fairly and equitably, without regard to their membership or nonmembership in the organization--including negotiating agreements with the employer covering all unit employees. In the private sector, there is statutory authorization for the negotiation of arrangements which require payment of union dues as a condition of employment, or lesser forms of union security (except in those states which expressly forbid such contracts). In the Federal sector, however, it is argued that due to the special regard for employment conditioned only on merit, employees have the right to refrain from union membership or assistance--i.e., they may not be imposed as a condition of Federal employment. There is little or no union support for any arrangement short of the agency shop as the option on union security. Unions see the agency shop as the quid pro quo for the duty of fair representation of all unit employees.

OPTIONS:

1. Continue the present prohibition of the agency shop.
2. Mandate the agency shop.
3. Authorize negotiation of the agency shop.
4. Authorize variations of an agency shop.

IMPLEMENTING ACTION REQUIRED: Legislation appears to be required to authorize agency shop.

Part 3. SCOPE OF BARGAINING

I. General scope of bargaining

PROBLEM: The scope of bargaining is narrowed by the exclusion of pay and benefits and by policies controlled by CSC in most personnel areas and by other central-management agencies -- minimizing opportunities for meaningful trade-offs and focusing negotiations on areas of management discretion.

OPTIONS:

1. Continue the current scope of bargaining.
2. Maintain the current scope of bargaining, but modify and expand consultation procedures in pay setting to include benefits determinations -- total compensation consultation.
3. Expand the scope of bargaining at the central level of the national government to include pay and/or benefits determinations.
4. Expand the scope of bargaining to permit the negotiation of agreements which cover matters now within the authority of central-management agencies --e.g., certain personnel regulations issued by CSC.
5. Expand the scope of bargaining to permit the negotiation of agreements which cover matters now proscribed by certain laws, including some central personnel system matters.

IMPLEMENTING ACTION REQUIRED: Options 2 - 5 would require legislation, with relatively long-term developmental leadtime (1979-80) for total compensation consultation or bargaining.

II. Management Rights

PROBLEM: "Management rights" is a term which refers to those powers vested in management which bear a reasonable relationship to its ability to carry out its responsibilities. Although such matters are generally negotiable in the private sector, since the inception of the Federal labor relations program in 1962 "management rights" have comprised an express exclusion to the employer's bargaining obligation under the Order. Unions believe that these reserved rights unduly restrict the scope of negotiations under the Order, and constitute additional evidence of the Order's perceived management bias. Agencies, on the other hand, argue for a continuation of an exclusion of management rights from negotiations on the ground that fundamental differences between the public and private employer require that these essential management tools not be subject to the vagaries of the bargaining process.

- OPTIONS:**
1. Shift certain subjects enumerated in Section 11(b) to Section 12(b).
 2. Maintain the subjects enumerated in Sections 11(b) and 12(b) of the E.O. on reserved management rights.
 3. Reduce the subjects of these Sections.
 4. Eliminate these Sections.

IMPLEMENTING ACTION REQUIRED: Option 2 or 3 could be by Executive Order.

III. Productivity, Quality of Working Life, and Labor-Management Relations

PROBLEM: Productivity improvement is a commonly accepted goal in the Federal government. But while some constructive efforts have been undertaken bilaterally to improve productivity and quality of working life, those efforts have been relatively few. Productivity bargaining in its technical definition appears inapplicable in Federal labor-management relations -- i.e., restrictive work-rules have not been a pattern in negotiations and economic trade-offs are not possible. But there is a place for bilateral efforts to improve productivity and quality of working-life through consultation committees.

OPTION: Bilateral Consultation Committees.

IMPLEMENTING ACTION REQUIRED: No changes are required in labor-management relations provisions. Bilateral leadership is needed.

Part 4. IMPASSE RESOLUTION

I. Organization for Impasse Resolution

PROBLEM: Present FSIP provisions and its "arsenal of weapons" approach evoke general satisfaction for agency-level impasse procedures. If the scope of bargaining should be enlarged to include central level matters, such as pay, appropriate new procedures would be required.

OPTIONS -- CENTRAL GOVERNMENT-WIDE IMPASSES:

1. Current procedures.
2. Expansion of current procedures.
3. Tripartite or neutral advisory arbitration panel.
4. Binding arbitration.

OPTIONS -- AGENCY-LEVEL IMPASSE RESOLUTION: (not mutually exclusive)

1. Mediation and "med-arb."
2. Fact-finding with recommendations.
3. Compulsory binding arbitration.

IMPLEMENTING ACTION REQUIRED: Legislation and/or sanctioned reorganization would be required for central impasse procedures. Present FSIP probably requires no change. Administrative action may improve existing third-party processes.

RELATED ISSUES: 1. Aspects of Congressional control.
2. The public's interest in Federal bargaining and impasse resolution.

II. Federal government strikes, picketing, and other job actions

PROBLEM: Strikes by Federal employees, although not unknown, continue to be rare. Such job actions by Federal workers are now illegal, and there is no apparent groundswell of support by the parties to the Federal labor relations program, including employees, to alter this statutory policy. On the other hand, recent court decisions have established a First Amendment right of Federal employees to engage in peaceful informational picketing of their employer in a labor-management dispute in most instances, with an exception being drawn for picketing conduct which actually interferes with, or reasonably threatens to interfere with, Government operations. The express language in the current E.O. which attempted to circumscribe all picketing in a labor-management dispute has thus been nullified, and a more limited policy, based on a case-by-case review by the FLRC, is now in effect.

OPTION: Draft a narrower provision to ban picketing which actually interferes with (disrupts), or reasonably threatens to interfere with (disrupt), Government operations; which creates an impermissible work stoppage; or which aids in achievement of an unlawful objective.

IMPLEMENTING ACTION REQUIRED: Revision of Section 19(b)(4) of E.O. 11491.

PART 1

CENTRAL ORGANIZATION FOR LABOR-MANAGEMENT RELATIONS AND PUBLIC INTEREST CONCERNS

This portion of the Task Force review covers major issues in the administration of the Federal labor-management program: What kind of central authority should be established, and how can the public interest be represented? What concepts should govern decisions on such central administration concerns as recognition, unfair labor practices, standards of conduct, and central organization for handling negotiability disputes? The question of what relationship should exist between grievance and appeals systems is also considered.

The organization of the Federal employer for management under labor-management relations is a separate matter from these central administration concerns. Those issues are dealt with in Part 2 of this LMR Task Force Option Paper.

I. Organization of the Central Authority

A. Background

Administration of the Federal Labor-Management Relations (FLMR) program was on a decentralized basis under the 1962 Kennedy Executive Order (10988). In 1969, E.O. 11491 established the Federal Labor Relations Council (FLRC) to administer the program and gave key responsibilities to other entities as described below. The FLRC, composed of the Chairman, CSC; Director, OMB; and Secretary of Labor, interprets the Order, decides major policy issues, and makes recommendations concerning the responsiveness and effectiveness of the program. It is the final decisionmaking body for disputes arising under the FLMR program, including negotiability issues and exceptions to arbitration awards.

The Assistant Secretary of Labor for Labor-Management Relations (A/SLMR) decides unit determination questions, supervises representation elections, and decides cases involving unfair labor practices and standards of conduct. He also decides questions of eligibility for national consultation rights, and questions of grievability and arbitrability. Parties have a limited right to appeal from decisions of the Assistant Secretary to the FLRC.

The Federal Service Impasses Panel (FSIP) considers negotiation impasses and is authorized to take any action it considers necessary to settle them. The Federal Mediation and Conciliation Service (FMCS) also provides services and assistance in the resolution of negotiation disputes.

State practice varies on the issue of administrative authority. Some states have created separate, specialized agencies, while others have given public sector jurisdiction to their private sector boards.

B. Options and Discussion

Proposals concerning central administrative machinery for Federal labor-management relations may be grouped under four basic options:

1. Retain the current central organizational arrangements, either in E.O. or statute;
2. Alter the composition of the present Federal Labor Relations Council;
3. Establish an independent authority, patterned after the NLRB, to integrate functions;
4. Extend NLRB coverage to Federal sector employees, as under the Postal Reorganization Act of 1970.

Option 1. Retain the current central organizational arrangements

Proponents of this approach argue that the structure for central administration under the E.O. has worked reasonably well and that minimal changes should be made in this aspect of the program. The existing program has evolved from experience since 1962, and continued incremental development can be facilitated within this framework. Some management representatives continue to argue that control of this aspect of the personnel system is appropriately retained in management hands.

Opponents of this view cite the many criticisms that have been raised of the major central authority: e.g., its management composition, part-time character and lack of independence enjoyed by a body appointed for a set term, as well as problems arising out of fragmentation between the FLRC and A/SLMR.

Option 2. Alter composition of FLRC

The E.O. currently authorizes the President to appoint other officials of the Executive Branch to the Council. The criticisms of the Council based on its management composition and part-time character may be met by appointment of full-time members who do not manage a government department (e.g., persons in the Executive Office of the President), or by the possible addition of respected persons from outside the government. Even if the current three members were retained, the Council could be given a "neutral" majority by the appointment also of four "public" members -- one of whom could act as Chairman. Under this arrangement, the public Chairman could be given administrative responsibility for FLRC's day-to-day operations (full-time), the other three public members could decide routine cases and other matters that need full-time attention, and the current three members could function (part-time) with the

four public members on major-policy and other matters warranting action by the full Council.

Legal opinion is divided over whether these changes could be accomplished simply by amending the Order or whether legislation would be required. A committee of the American Bar Association, for example, has argued that the President lacks authority to create an independent full-time agency with continuing authority and funding. While the President may be able to use reorganization authority or E.O. or alter the structure somewhat, unions strongly want a statutorily-based authority not subject to question or facile alteration. The President's desire to reduce the size of his Office may also militate against placing this function in the Executive Office of the President.

Other possibilities include the provision of a full-time chairman and part-time members, and the possible designation of a full-time official to perform the FLMR functions of the Assistant Secretary. This could be sufficient to handle the work if the scope of bargaining were not significantly expanded.

Option 3. Establish an independent authority

This option has been advocated by the AFL-CIO and a committee of the ABA, along with other observers. These groups see a need to establish an independent administrative policy-making body devoted solely to Federal labor-management relations, made up of full-time members and completely separate from government central and agency management. Proponents of this alternative argue that the time has come to end what they consider the management-orientation of the program as structured under the Executive Orders, and that benefits to the public would be derived from a credible, independent body that would be free from the suspicion of pro-management or pro-union bias. The relatively moderate volume of work and manpower required for handling the expected caseload would appear to entail only modestly increased costs.

Other arguments advanced in favor of creating a separate, independent board, as opposed to coverage under the National Labor Relations Board (NLRB), include the unique character of Federal labor-management relations and the ready availability of considerable expertise in this field. This would be an incremental step, based in developed experience. (The structure and operation of the Canadian system, which has a separate Board for the Federal service, also provide a precedent for this approach.) Further, there has been much criticism in the past of NLRB delays in processing private sector cases.¹ Expedient handling of Federal labor-management problems is of utmost importance in the effective and efficient conduct of government business and may be accomplished best by a specialized independent agency.

(It should be noted that all Federal sector bills in recent Congresses, including H.R. 9094, the Clay-Ford compromise bill, have provided for establishment of a separate, independent neutral authority.)

Arguments against the establishment of a separate board include the view advanced by some experts that Federal labor-management relations are not so dissimilar from the private sector as to warrant creation of a separate administrative body, that the volume of work in the Federal sector is insufficient to justify the existence of a separate body, and that such body would be an unnecessary and costly duplication of machinery and expertise already available in the NLRB.

Other arguments against this option may be advanced by persons who express either basic satisfaction with the central authority as presently constituted or a belief that needed modifications should be made through change in the E.O., thereby maintaining the flexibility of a program that can be changed by Presidential action.

Option 4. Extend NLRB coverage to Federal sector employees

Arguments in favor of this option include the following: The Administrative machinery under the National Labor Relations Act, as amended, (NLRA) has been in operation for over forty years, and a vast body of private sector precedent, as well as considerable expertise, has been developed over the years. There may be a desire to use existing institutions and not duplicate administrative machinery needlessly.

While it is true that labor-management relations in the private and Federal sectors are dissimilar in many respects, problems encountered in both sectors may not be so different as to preclude special accommodations designed to fit the special Federal need without doing violence to private sector precedent. In this regard, it is noted that the Postal Reorganization Act gave the NLRB jurisdiction over Postal Service employees; and through this responsibility the Board has gained insight into the sensitivities of labor-management relations peculiar to the Federal sector.^{2/} It might be argued that all Federal employees should be under one law, and that the pattern set by the Postal Act should be followed for the rest of the Federal service. Another positive factor seen in this alternative is the availability of the Board's field organization and expertise, possibly resulting in some cost savings.

As mentioned under Option 3 arguments are advanced against this approach: for example, that the uniqueness of Federal labor-management relations warrants creation of an independent agency with special expertise and insight into the particular needs of Federal government, and that the transfer of Federal cases to the NLRB might impede rather than promote their expeditious processing. Not only is the NLRB's caseload heavy and growing, but it involves conflicts rooted in resistance to recognition and bargaining, with remedies that need to cut more deeply than remedies in the Federal sector.

C. Related Issues1. Composition: Neutral or Tripartite

If it were decided to establish some sort of independent authority to administer the Federal labor relations program, a related issue would be whether the entity should be neutral (composed entirely of public members) or tripartite (composed of representatives of the employees, management and the public).

Practice in the states varies on this issue. Canada's Federal board was established as tripartite under the 1967 legislation, but amendments to the law in 1975 changed it to a neutral authority.

^{1/} If the Administration's labor reform bill, H.R. 8410, is adopted, some of these delays may be alleviated.

^{2/} If it were decided that Federal sector problems are so sensitive and complex as to require some degree of separate treatment, consideration could be given to establishing within the NLRB a Federal Labor Relations Board (FLRB) that would have exclusive jurisdiction over the Federal sector. This FLRB would make use of existing NLRB field and national office staff and facilities.

Arguments in favor of a neutral body include its possibly greater acceptability to the general public, the fact that a portion of its membership could take action on cases (on a tripartite board all interests would have to be represented on each decision and the process of decision-making might be prolonged and politicized) and the relative ease of appointing qualified neutral members, as opposed to the possible considerations of such factors as union rivalry that may make the choice of one or two members from the ranks of labor difficult.

2. Powers of Central Authority and Judicial Review

Two related issues involve what powers the central authority should have in relation to other Federal agencies and what scope of judicial review, if any, should be provided.

Under the E.O., the Assistant Secretary, for example, has the power to direct an agency or labor organization to cease and desist from violations of the Order and to require it to take appropriate affirmative action. While the exercise of the Assistant Secretary's powers has resulted in a union's losing recognition for a period, the action he or the Council may take if an agency were to defy an order is unclear. If access to the courts were provided, the authority might seek a court order against the respondent.

The lack of access to judicial review has been one criticism of the E.O. program. This problem is inherent in a system based on Executive Order rather than statute; legislation is required if judicial review is to be provided.

Among the alternatives available on this issue are:

- (a) Provide no judicial review (i.e., maintain the E.O. basis). This would prevent some of the rigidities and legalisms that seem to come with enactment of a statutory program and formal court review procedures. Further, assuming that some independent review of initial decisions is retained (e.g., by a reconstituted FLRC) this review by a specialized body might be preferable to review by a less experienced court. Lack of judicial enforcement has not been a major problem under the Executive Order, according to many professionals, because agencies and unions have complied with final orders of the A/SLMR and FLRC, in contrast to private sector experience.
- (b) Provide, through legislation, judicial review equivalent to that under the NLRA. This would meet one criticism of the program, and it would permit agencies, employees and unions to protect their rights through judicial processes, as the parties in the private sector can.
- (c) Provide for a more limited scope of judicial review. It is possible that a more limited judicial review could be provided by law -- for example, review of decisions that are arbitrary or capricious. This could prevent the courts from being clogged with Federal labor litigation. On the other hand, such a restricted system might not be sufficient to protect rights that should be protected.

3. One or several "central" authorities

A related issue is whether the program should be administered by one or several central authorities. As spelled out above, the appellate, Impasse resolution, and recognition-unfair labor practice functions are separated among three agencies under the E.O., and mediation involves a fourth agency, the FMCS. The discussion relating to Impasse Resolution in Part 4 of this paper notes that an argument can be made

for separation of the mediation and arbitration functions. Separation of the representation and impasse functions may also be desirable, although many states vest these powers in one agency. An incremental model would be creation of a central Federal Labor Relations Authority with an Impasses Panel attached to it for administrative purposes, as under H.R. 9094.

4. Representation of the "public interest"

Another question involves whether a special mechanism should be created for expression of the "public interest" in Federal collective bargaining. (Of course, the choice of an appropriate mechanism depends on how one defines the ambiguous term "public interest.")

It may be argued that Presidential appointment of the members of the central authority, along with Senate confirmation, results in adequate representation of the public interest. Another approach, discussed earlier, is to constitute the authority as a tripartite body, thereby formally representing the interests of employees, management and the public in the administration of the program. Appointment of a well-known public interest advocate to an all-neutral authority is another possibility. Finally, a theoretical model of labor-management relations might view the management side of bilateral processes as representing the public, since management is ultimately responsible to the President.

If the scope of bargaining is expanded, means could be devised to give the public access to the negotiation process, e.g., by opening negotiations to the public or involving public-interest representatives in the bargaining process itself. Major questions raised by such direct procedures include how to determine who is representative of the public and what impact such arrangements may have on the course of negotiations. (See further discussion in Part 4 of this Task Force paper relating to Impasse Resolution.)

Congressional control over the results of bargaining (through its oversight responsibilities and the appropriations process) is yet another way that the people's interests in the Federal labor relations program may be expressed. This legislative control would probably still be exercised to some degree if major economic issues or personnel rules of broad application were brought within the scope of bargaining. Care must be taken to reconcile such ultimate control with the desire, particularly in the white-collar pay areas, to prevent the issues involved from becoming subject to political manipulation.

II. Recognition

A. Background

Three types of recognition were granted under E.O. 10988 --informal, formal, and exclusive. Informal and formal recognition were eliminated by E.O. 11491. (National consultation rights were substituted for formal recognition at the national level.) The granting of informal and formal recognition tended to encourage excessive fragmentation of units and fostered confusing and overlapping relationships. These types of recognition carried no right in the formulation and implementation of personnel policies and practices concerning working conditions for employee organizations to negotiate. Recent experience under the Order demonstrates that the organization and certification of Federal unions has not been impeded by restricting recognition to "exclusives."

Exclusive recognition under the Order presently is granted through the mechanism of an election supervised by the Assistant Secretary of Labor. There appears to be general satisfaction with this provision. In the private sector, however, an employer may recognize a union voluntarily, or an election may be held by the NLRB. The Board may also issue an order to bargain on the basis of a card check if employer unfair labor practices make a fair election impossible. Proposals have been made in the past to permit routine certification in the private sector on the basis of a card check if certain conditions are met. Elections are commonly employed in public sector jurisdictions.

B. Options and Discussion

1. Permit voluntary recognition
2. Permit routine certification on the basis of card check
3. Require secret ballot election except where employer ULP makes fair election impossible
4. Authorize a choice of these alternatives.

Arguments in favor of voluntary recognition center around the savings of time and money that would be spent in conducting an election. Also, it is asserted that the parties can better live with a bargaining framework they themselves have created. Arguments against this option include the possibility that employee interests may not be freely and fairly expressed and the chance that the units so established would not meet rational criteria and would be small and fragmented.

Arguments in favor of card-check certification are similar to some of those in favor of voluntary recognition: a savings of money and time. Arguments against this option include the fact that, under E.O. 10988 and in the private sector, authorization cards have not been completely satisfactory for determining majority status. In circumstances of group pressure, misrepresentation or coercion, authorization cards tend not to afford employees a means of freely expressing an informed choice. It can be argued that cost and time are not considerations sufficient to justify a limitation on the employee's right to express a choice concerning exclusive representation.

Reasons for supporting option 3, secret ballot election, are based in the need for an election under supervised, "laboratory" conditions to permit the free expression of the employees' wishes. Arguments against option 3 are those raised in favor of the other choices - especially the cost of conducting elections.

It is rare, indeed almost unheard of, for a Federal manager's ULP's to make a fair election impossible. But provision of a card-check alternative in that eventuality is a safe-guard that may help avert such an occurrence.

It would be possible to authorize some choice of these three alternatives.

(Note: The issues involved in unit determination are considered in Part 2 of this Task Force paper dealing with Organization of the Federal Employer, and Employee-Employer Relationships.)

III. Unfair Labor Practices

A. Background - Substance

E.O. 11491, like most state laws, contains many of the unfair labor practices spelled out in the NLRA. Major items not in the NLRA that appear in Section 19 of the Order include prohibitions on strikes, picketing

and various forms of discrimination by unions. State laws and Federal bills in Congress commonly add to the NLRA-type provisions such matters as prohibitions on violations of the labor-management statute or failure or refusal to comply with impasse procedures or decisions.

B. Options and Discussion

1. Retain E.O. language

2. Modify:

- a. concerning picketing
- b. addition of other matters

Option 1. Retention of the E.O. language may be advocated as a means of preserving continuity and stability in the system. It may also be argued that the current prohibitions continue to be appropriate for the Federal service.

Option 2.a. Modification of the prohibition on picketing to reflect the current legal status of the provision is discussed in Part 4 of the Task Force paper related to Impasse Resolution. Appropriate changes would be made in the ULP provisions.

Option 2.b. Expansion of the ULP provisions to cover other aspects of the employment relationship might also be considered. For example, discriminatory adverse actions based on union membership or activities (discharge, demotion or suspension for more than 30 days) could be remediable under the unfair labor practice procedure as an alternative to statutory appeals procedures. (See discussion below concerning relationship between negotiated grievance and statutory appeals systems.) It might also be argued that the ULP provisions should incorporate the concepts set forth in Section 8(d)(1), (2) and (3) of the NLRA, 3/ which define the duty to bargain collectively and which require notice of intent to terminate contracts, an offer to bargain and notification of the FMCS. The NLRA also protects the right of employees to engage in concerted activities for the purpose of "collective bargaining or other mutual aid or protection..." (emphasis added.) The emphasized phrase has been interpreted, among other things, to grant an employee the right in certain situations to union representation at an investigative meeting or interview to which he is summoned by management. The addition of this phrase to the current rights of employees could produce a similar interpretation in the Federal sector.

In addition, if agency shop arrangements were to be permitted, the ULP provisions might also include a 30-day proviso similar to that in Section 8(a)(3) of the NLRA and the provision in Section 8(b)(2) that employer discrimination is not an unfair labor practice if it is based on failure to tender dues or fees.

Finally, consideration of major change in this area should include the question whether the neutrality doctrine barring management from campaigning against union representation in organizing drives and other pre-election activities should be discontinued in favor of a form of employer free speech analogous to that available in the private sector under the NLRA.

C. Background Enforcement

E.O. 11491 originally provided for investigation and prosecution of ULP complaints by the interested parties. In 1975 the FLRC authorized the A/SLMR to conduct such independent investigation as he deems necessary to determine whether there is a reasonable basis for the complaint. Except in Section 19(b)(4) cases, the burden of prosecution and proof of the case still rests with the complainant.

Under the NLRA, present bills before Congress, and many state laws, unfair labor practice complaints are prosecuted by a General Counsel. The A/SLMR has recently repeated his request to the FLRC for authority to assume a prosecutorial role with respect to ULPs.

3/ If the NLRA were extended to cover Federal employers and employees, these provisions would apply automatically.

D. Options and Discussion

1. Retain E.O. system

2. Provide for enforcement by independent authority

3. Provide for court enforcement by complainant

Option 1. Current system

An argument in favor of the current system may be that the nonadversary nature of the Federal program, as compared to the private sector, renders the establishment of prosecution functions inappropriate. It is sufficient to have the role of the A/SLMR be to investigate, and the complainant can be effective in making his own case if he has a thorough investigative file. Another argument is that placing the burden and expense of prosecution on the complainant tends to screen out frivolous or unmeritorious complaints. Also, if there is an exclusive representative, the union may supplement the individual's resources. Arguments raised against this option include its possibly dampening effects on the resolution of ULPs and the inequality of resources available to individual employees, as compared to agencies, in investigating and prosecuting their respective cases.

Option 2. Prosecution by independent authority

Arguments in favor of this option include the need to protect the public interest in preventing or remedying ULPs, which might not be possible if the complainant must bear the burden and expense of proving his own case. The A/SLMR has argued that meritorious cases are not now prosecuted because of the current restriction, and those that are pursued have sometimes been inexpertly prepared and presented. Administrative bodies, moreover, can develop expertise in labor relations and in recognizing and framing ULP issues, in screening out non-meritorious cases and in prosecuting meritorious ones. (If prosecution functions are assigned to the central authority, such as the A/SLMR, they should be lodged in a division separate from the adjudicatory process.) Arguments against this option are those that may be made in favor of the other options listed.

Option 3. Court enforcement by complainant

Court enforcement by the complainant would eliminate the awkward situation of one Executive agency charging another with misconduct. The trouble and expense of individual legal action would screen out frivolous complaints.

On the other hand, meritorious complaints might not be brought because the aggrieved individual lacks resources. Court action would be time-consuming and costly, and the courts are already overburdened. Courts may also lack the expertise in labor relations matters that a special independent authority would have.

E. Background - - Remedies

In addition to the issues of court enforcement and judicial review discussed earlier in this paper, the question of what specific remedies should be provided for ULPs needs to be considered. The A/SLMR has cease-and-desist powers, but his make-whole remedies are limited. For example, he may not order interest to be paid on back pay, he may not remedy a discriminatory failure to hire by ordering that the discriminatee be selected, and his authority to order a make-whole remedy under the Back Pay Act is limited to cases in which the unwarranted personnel action would not have taken place "but for" the unfair labor practice. ^{4/} Furthermore, he can take no action under the ULP procedure to remedy discrimination that is subject to a statutory appeal system; e.g., adverse actions. Of course, injunctive relief is also unavailable. Powers of this type would require legislation.

The bills now before Congress provide for reinstatement with back pay and interest (by either the agency or the labor organization, whichever is responsible for the improper action). The central authority may also direct an agency to discipline, by demotion, suspension, removal, or other appropriate action, a supervisor or other agency official who has knowingly, arbitrarily or capriciously violated the Act. In addition, the authority may prohibit actions that may irreparably harm the complainant until the full merits of the case are heard, and court enforcement and injunctive procedures similar to those in the NLRA are provided.

F. Options and Discussion1. Retain current remedies

Arguments in favor of the current procedures include the contention that they are relatively simple to administer and adequate to the need and that they are the maximum obtainable without legislation.

2. Provide for expanded remedies including injunctive powers

^{4/} These limitations on the authority of the A/SLMR are spelled out in (and derived from) an opinion of the Comptroller General (S-180010) issued March 19, 1975.

Arguments in favor of option 2 include the need to provide effective remedies to protect employees equivalent to those possessed by the NLRB and some state and local agencies. Injunctive relief would also strengthen the authority of the central body to enforce the ULP provisions.

IV. Standards of ConductA. Background

The Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), governs the internal affairs of unions in the private sector and, pursuant to the Postal Reorganization Act, unions of Postal Service employees. Labor organizations representing government employees had originally been exempted by Congress from the Act, largely because they had been denied the basic organizing and bargaining rights under the NLRA, membership was voluntary, and no evidence of corruption in such unions was presented in the McClellan hearings that preceded passage of the Act.

Under Section 18 of E.O. 11491 and, to a lesser extent under regulations issued pursuant to E.O. 10988, labor organizations in the Federal government have been required

to adhere to basically the same standards of fiscal responsibility and internal democracy as are applied to unions in the private sector by the LMRDA. There is no access to judicial review or enforcement procedures, however. While one recent legislative proposal, H.R. 1589, makes no provision for standards of conduct, H.R. 13 and the current Subcommittee Staff discussion draft provide for standards similar to those under the E.O., and they also apply the reporting provisions of the LMRDA to Federal employee unions. But, apart from the reporting requirements, the mechanism for enforcement of the standards is unclear.

The application of standards of conduct to Federal sector unions is not an issue, but their form is. If the Federal program were continued under Executive Order, the standards in the current E.O. might be retained. If it were placed under law, it then would make sense to provide for LMRDA coverage.

B. Options and Discussion

1. Retain current provisions

2. Make Federal employee unions subject to LMRDA

Option 1. Retain E.O. standards

Continuity is the chief argument for this choice, along with the argument that E.O. requirements already are practically equivalent to the provisions of the LMRDA. Also, it is argued that no evidence has been presented of abuses by Federal unions that would require the stricter LMRDA enforcement procedures. Against this argument can be cited the virtue of having Federal and private unions governed by precisely the same requirements, along with the access to direct remedies, court enforcement and judicial review that would be provided by coverage under LMRDA.

Option 2. LMRDA coverage

Bringing Federal unions under the LMRDA would equalize the rights of union members. Many mixed unions represent both private and Federal employees, and they (the national unions and private or mixed locals and intermediate bodies) are already subject to the Act. Postal unions, as noted, are also already covered by the Act.

Remedies under the LMRDA are direct: e.g., the court may impose a fine on a union officer who has been found guilty of filing false reports. Under the E.O. by contrast, the ultimate sanction for violation of the Standards, e.g., withdrawal of checkoff or recognition, may punish the entire union and its membership for a violation by a single person.

Further, the shift from E.O. to statutory coverage would not disturb the continuity of administration, since the same agency within the DOL administers both the private sector and Federal sector provisions.

V. Organization for Handling Negotiability Questions

A. Background

Section 4(c) of E.O. 11491 vests final authority for the determination of negotiability questions in the FLRC. 5/ Negotiability disputes in the Federal program center around the question whether a proposal is within the intended scope of bargainable issues spelled out in Section 11(a) or whether a proposal is contrary to law, regulation or the Order and therefore not negotiable. Disputes involving conflict with the E.O. most often relate to Sections 11(b)

and 12(b). Matters covered by Section 12(b), the reserved management rights, may be characterized as "prohibited" subjects of bargaining, while those matters in Section 11(b) are "discretionary"; that is, an agency may but is not obligated to bargain over such matters.

Disputes over negotiability go, in the first instance, to the head of the agency in which the bargaining relationship is established, and thence on appeal to the FLRC. While the FLRC has the ultimate authority to determine questions of negotiability, as a rule it seeks the interpretation of other bodies, e.g., the Comptroller General, CSC or GSA, if the dispute involves a matter within their statutory or regulatory authority. The interpretations by these bodies of the applicability of their respective laws and regulations to the disputed issues are adopted, if dispositive, and incorporated in the FLRC's decision.

An appeal to the FLRC on the negotiability of a proposal during the course of negotiations usually results in the cessation of bargaining on this item, and perhaps other outstanding proposals as well, until the issue is resolved. The need to seek interpretations from outside authorities often creates delays in the processing of the case before the FLRC, and to that extent further delays the resumption of bargaining. The necessity of construing not only the language of the E.O., which is both broadly inclusive (Section 11(a))-- and broadly exclusive (Sections 11(b) and 12(b))--, but also the texts of several relevant statutes

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- 5/ Section 11(d) gives limited authority to the A/SLMR in this area. It provides that "if, as the result of an alleged unilateral change in, or addition to, personnel policies and practices or matters affecting working conditions, the acting party is charged with a refusal to consult, confer or negotiate as required under this Order, the Assistant Secretary may, in the exercise of his authority under section 6(a)(4) of the Order, make those determinations of negotiability as may be necessary to resolve the merits of the alleged unfair labor practice. In such cases, the party subject to an adverse ruling may appeal the Assistant Secretary's negotiability determination to the Council." (emphasis added.)
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and sets of regulations (e.g., Title V) makes negotiability issues more complicated and difficult than in the private sector.

Under the NLRA, negotiability disputes are resolved by the NLRB through the refusal-to-bargain (unfair labor practice) route, with subsequent appeal to the courts. Federal bills now before Congress appear to involve a similar procedure.

State practice in this area varies. A refusal-to-bargain complaint is often the vehicle used to resolve disputes. In other states the administrative authority has a special separate or expedited procedure to make such determinations. Additionally, the courts have frequently assumed a larger role than in the private sector, in part because the question of what is legally bargainable (as opposed to the "mandatory" versus "permissive" or "discretionary" distinction) is much more contentious and complex in the public sector, as it often involves legislative as well as executive policies and authority.

B. Options and Discussion

1. Maintain current system
2. Maintain the current procedures, with an altered FLRC
3. Provide for resolution of all such questions through the unfair labor practice procedures
4. Provide for single special expedited procedure by independent administrative authority. (possibly with appeal to the courts)

Arguments in favor of the current system include continuity and the contention that it may be desirable to retain FLRC authority over negotiability issues. -(ULP cases not involving negotiability issues are not now automatically appealable to the FLRC. If negotiability questions are to be treated as routine ULPs, conflicting lines of precedent might develop if some such decisions do not meet the criteria for review by or appeal to higher authority such as the FLRC.) It would be difficult, however, to question the desirability of seeking out some administrative changes within the present system that might accord these issues a higher priority and resolve them more quickly. In this regard, it is noted that the FLRC has recently initiated case processing procedures which it believes will shorten processing time by one-third to an average of about six months.

If the Council could be reconstituted and composed of non-management officials (option 2) the frequent complaint that management is serving as the final judge in its own cause would be avoided.

Arguments in favor of option 3 include the opportunity for a full evidentiary, adversary hearing that the ULP procedure would afford such issues. If the parties do not stop bargaining entirely during processing of the ULP case, the negotiability issue may "wash out" in continued negotiations. The relative speed - or lack of it - of this option as compared with option 1 is an issue that also needs to be considered. ULP processing in the private sector is sometimes time-consuming, but the data are not strictly comparable to Federal sector figures.

Arguments in favor of option 4 include the possible speed of such procedures (at least if decisions are not routinely appealed to the courts) and the maintenance of a single line of precedents. (Experience with this option has been mainly at the State and local level, where limitations on the scope of bargaining are not as broad as in the Federal sector, and negotiability questions may therefore be fewer and less complex.)

Of course, if a clearer and simpler formulation of the Federal scope of bargaining could be agreed upon, it might facilitate the resolution of negotiability disputes under all alternatives.

VI. Relationship between Grievance and Appeal Systems

A. Background

Federal managers, unions and employees have expressed concern over the question of what relationship is appropriate between statutory appeal procedures and negotiated grievance/arbitration procedures. Under the E.O., the negotiated grievance/arbitration procedure may not cover any matter for which a statutory appeal system exists. There are more than 20 statutory appeal systems, covering a range of personnel actions from short suspension to removal (chart attached).

Negotiated grievance procedures (most terminating in binding arbitration) cover 52 percent of the civilian work force. By far the most frequently arbitrated matters have been discipline and promotion. The average time-in-process, from inception of the grievance to issuance of the award, has been 10.1 months (2.2 months from hearing to award). The arbitrator's fee averages \$660 per case, commonly paid on a 50-50 basis by the agency and the union.

While directly comparable figures are not available for all statutory appeal systems, previous studies have concluded that they are more time-consuming and more costly to the Government than are the negotiated grievance/arbitration procedures.

Employees generally have fared better under negotiated procedures than under statutory appeal systems -- e.g., with arbitrators overturning or mitigating agency actions against employees in 45% of discipline-grievance awards, compared to 33% in adverse-action appeals to the Federal Employee Appeals Authority under the statutory system.

National unions express these complaints: (a) That matters covered by a multiplicity of statutory appeal systems, certain kinds of discipline in particular, are excluded from grievance/arbitration under the negotiated procedure. (b) That complete "make-whole" remedies are not available in some cases processed under the negotiated procedure, as well as some cases processed under statutory appeal systems. (c) That statutory systems are more time-consuming than the negotiated procedure.

In addition, there appears to be strong sentiment in the field -- among managers, local union officials and employees alike -- in favor of broad-scope grievance/arbitration under negotiated procedures and of simplifying the statutory appeal systems, which they complain have grown too complex, time-consuming and diffuse.

B. Options and Discussion

1. Continue current systems
2. Permit negotiation of procedures to cover all but certain specified appeals (e.g., FLSA, EEO, classification, political activity)
3. Permit negotiation of full-scope grievance arbitration covering all appeals (when applicable, the ULP procedure to be available as an alternative)
4. Permit employee to elect appeal route: either grievance procedure, or statutory procedure, or ULP

Option 1. Continue current systems

This option would continue to exclude from the negotiated grievance/arbitration procedure matters covered by the score and more of existing statutory appeal systems.

Option 2. Permit negotiation of procedures to cover all but certain specified appeals (e.g., FLSA, EEO, classification, political activity)

This option would exclude from the negotiated grievance/arbitration procedure only those statutory appeal matters which are deemed inappropriate for the variable contractual bases of grievance/arbitration awards. All other matters, including major discipline, could be covered by the negotiated procedure.

Option 3. Permit negotiation of full-scope grievance arbitration covering all appeals (when applicable, the ULP procedure to be available as an alternative)

This option would include all appeal matters under the negotiated grievance/arbitration procedure, as the exclusive forum for processing complaints and grievances by employees in the bargaining unit (although they could opt instead for the ULP procedure on matters covered by it as well). In effect, statutory appeal systems would be available only to exempt personnel and to employees not covered by full-scope grievance/arbitration under a negotiated agreement.

Option 4. Permit employee to elect appeal route: either grievance procedure, or statutory procedure, or ULP

This option would simply remove the current exclusion of statutory appeal matters to permit the employee a binding election of forums for processing a complaint or grievance under the negotiated procedure, the applicable statutory appeal system or the ULP procedure on matters covered by it as well.

Related issues in determining the appropriate relationship between grievance and appeal systems include the following:

- a. An employee may choose any representative under statutory appeals systems, but may be limited to a representative approved by the union under a negotiated procedure. This could be restricted under Option 2, and could be eliminated under Option 3. The employee would retain a right to choose his/her own representative, by electing to go the statutory appeal route, under Options 1 and 4.
- b. The question of "make-whole" remedies is tied in with the Back Pay Act and related statutes "administered" by the Comptroller General. Unless those laws are changed, or the role of the Comptroller General in authorizing payment under those laws is altered, the availability of complete "make-whole" remedies will continue to be a concern.
- c. Judicial review is available from decisions under statutory appeal systems, whereas appeal from or exception to arbitration awards is taken to the FLRC on the same grounds as are used by the courts for reviewing arbitrators' awards in private sector labor relations. If all else remained the same, judicial review could be more available from decisions under the statutory systems in Options 1 and 4, available on a more limited basis in Option 2 and extremely limited in Option 3. If the FLRC were composed of non-management persons, as mentioned above, its handling of the arbitration review function might be a more acceptable substitute for judicial review.
- d. Expedited arbitration (mini-arb) could be included in any negotiated grievance/arbitration procedure -- Options 2 and 3 especially, but Options 1 and 4 as well. In the Postal Service and in the steel industry, expedited arbitration (where the arbitrator simply hears the case and renders a decision on-the-spot or within two days) is used in employee grievances over discipline and other individual-impact cases involving only factual, as distinguished from policy, disputes. Both USPS and steel industry spokesmen report that mini-arb has geometrically reduced the backlog and costs of grievance/arbitration.

STATUTORY APPEALS PROCEDURES*

Action or Decision	Taken by	Appealable to	Statutory Ref.	Hearing	Implementing Regulations SCFR
1) Adverse Action against: a. preference eligibles b. non-pref. eligibles, competitive service eligibles	Agency or CSC Agency or CSC	FEAA FEAA	SUSC7701	YES	Sec. 752.203, sec. 754.105
			E.O. 11491 (ear- lier E.O. 10988)	YES	Sec. 752.203
2) Classification and Job grading a. CS b. Prevailing rate	agency agency	CSC/1 agency/ then CSC	SUSC5112	NO	sec. 511.603 - 612
			SUSC5346	NO	sec. 532,702-703
3) Discrimination	agency	agency/ then ARB	PL 93-259 (FLSA) PL 92-261, sec. 717	YES	sec. 713,221
4) Level of Competence Decisions	agency	agency/then FEAA	SUSC5335	NO/2	sec. 531.407
5) Performance Rating Appeals	agency	Perf. Review Board	SUSC4305	YES	sec. 430.401
6) Removal of Hearing Examiner /3	agency	ALJ	SUSC7521	YES	sec. 930.221
7) Restoration after Military Duty	agency	FEAA	62 Stat. 614 50 USC App. 459	NO	sec. 353.701
8) Retirement a. Disability b. Hires Act c. Other	CSC		SUSC8347D		
		FEAA		YES	sec. 831.1205
		ALJ ARB		YES/4 NO	sec. 831.1111 sec. 831.107

¹ Appeal may be filed through agency or directly with CSC Classification Appeals Office.

² May request reconsideration in agency and have personal presentation.

³ Not strictly an appeal. Listed here because agency initiates action but law requires that decision be made at level usually reserved for appellate review.

⁴ Hearings held before initial decision, not during appellate process.

* Included are appeals procedures established in Executive Order or regulations of appropriate authorities outside the agency to implement or administer responsibilities assigned by statute. This is in accordance with the Federal Labor Relations Council's Information Announcement of March 22, 1972.

STATUTORY APPEALS PROCEDURES*

Action or Decision	Taken By	Appealable to	Statutory Basis	Hearing	CSC Regulations - 5CFR
9) Adverse action for Political activity /5	Agency	Commissioners	5USC7321 - 7325	YES	Sec. 733 - 201 - 204
10) Adverse suitability rating	CSC rating office	FEAA	5USC3301,3302 7301 - also CSC Rule 5.4	NO	Sec. 733 - 201, Sec. 754.105
11) Denial of Life Ins. Coverage	employing office	ARB	5USC8716(a)	NO	Sec. 870.205
12) Denial of Reemployment or Reinstatement rights					
a. executive agency transfer	Agency	FEAA	5USC3101 Note, 3301	NO	Sec. 352.209
b. internat. org. transfer	Agency	FEAA	5USC3584	NO	Sec. 352.313(a)
c. Foreign Asst. Act transfer	Agency	FEAA	Sec. 625, 75 Stat 449 22 USC 2385	NO	Sec. 352.508
d. reemployment priority	Agency	FEAA	5USC1302, 3301, 3302	NO	Sec. 330.202
13) Determination of Exempt Non-Exempt/6	----	----	P.L. 93-259 (FLSA)	--	----
14) Employment Practice	CSC	ARB	5USC 3301, 3302 7151, 7154	YES	Sec. 300.104
15) Examination Ratings /7	CSC rating office	CSC Regional Dir. or Examining Review Board	5USC 3301, 3302	NO	Sec. 300.104
16) Health Benefit Decision	(coverage)				
a. employees	Agency	ARB	5USC 8913(a)	NO	Sec. 890.103
b. retirees	CSC	ARB	5USC 8913(a)	NO	Sec. 891.105
c. Claims Review	carrier	CSC	5USC 8902(j)	NO	- not yet in effect
17) Reemployment/reinstatement eligibility					
a. after removal for security		CSC (BFL)	5USC 3301, 3302, 7312	NO	Sec. 732.401
b. after removal for suitability		CSC (BFL)	5USC 3301, 3302, 7301	NO	Sec. 731.401

/5 Applies only to excepted Service employees. Prohibited political activity of competitive Service employees handled entirely by CSC under Hatch Act.

/6 CSC has enforcement authority under recently enacted law. Will provide for some kind of CSC review on employee request, but regulations not yet in final form.

/7 Request for reconsideration only.

STATUTORY APPEALS PROCEDURES*

Action or Decision	Taken By	Appealable to	Statutory Basis	Hearing	CSC Regulations - 5CFR
18) Reduction - in-force	Agency	FEAA	5USC1302,3502	YES (preference eligibles only)	Sec. 351.901
19) Restoration after Military Service (temporary and indefinite employees)	Agency	FEAA	Regs. extend Stat. Restoration rights under 50 USC App. 451 to these employees	NO	Sec. 353.801
20) Salary Retention Decision	Agency	FEAA	5USC5338	NO	Sec. 531.517
21) Separation of Probationers					
a. Post-appointment/8	Agency	FEAA	5USC1302,3301,3302	NO	Sec. 315.806(b)
b. Pre-appointment/9	Agency	FEAA	5USC1302,3301,3302	NO	Sec. 315.806(c)
22) Suspension-30 days or less /2	Agency	FEAA	5USC1302,3301,3302, 7701	NO	Sec. 752.304
23) Mandatory Reinstatement for Injury on Job	Agency	FEAA	5USC8121	NO	(Chapter 810) Proposed addition to Sec. 353, Right of Appeal

- /8 - May appeal only on grounds that action taken because of discrimination
 /2 - Appellate review limited to examination of procedures

Abbreviations:

FEAA - Federal Employee Appeals Authority
 ARB - Appeals Review Board
 FLSA - Fair Labor Standards Act
 ALJ - Administrative Law Judge

NOTE: In addition to 3) and 13), other complaints under the Fair Labor Standards Act may also be subject to statutory appeals, depending on regulations to be issued by USCSC.

PART 2

ORGANIZATION OF THE FEDERAL EMPLOYER FOR MANAGEMENT UNDER LABOR-MANAGEMENT RELATIONS: EMPLOYEE/EMPLOYER RELATIONSHIPS

This part of this summary of options in Federal labor-management relations deals primarily with the government as an employer with responsibility to manage under collective bargaining. The focus here is on organization at operating levels of the government to permit bilateral employee-employer relationships to function. These relationships may be collaborative--not simply adversary--but they cannot exist at all without the two parties functioning effectively in their particular roles of management and labor. Stated simply, effective management is essential to labor-management relations. The key problem here is: How should the system be organized to achieve that essential management element?

The other side of that problem is how to assure effective and representative unions as the active agents of organized employees. That is essentially a private responsibility of unions and their members, and they generally accept that challenge. But the framework of collective bargaining must provide underpinnings for such responsibility. Key aspects of such provisions are standards of conduct and unfair labor practices, both treated in Part One of this paper. Another central factor is union security, discussed in Section IV below.

The big problem in organizing for effectiveness of both the employer as management and the unions as representatives of employees is the structuring of units. That is the major technical issue discussed here. Related mechanisms for dealing are also analyzed.

Since unions accept responsibility for their own internal organization for effectiveness in representing employees, the other half of the relationship is central here, as stated above: What organization is consistent with effective management of the Federal service? That key issue is dealt with in general terms first before discussion of options for more technical matters.

I. Organization of the Employer for Management Effectiveness.

Definition of the employer for purposes of collective bargaining is one of the biggest problems in Federal labor-management relations. In practical terms, the problems are these:

1. Authority to make policy is separated between the Executive and Congress, subject to judicial review, and it is further dispersed within the Executive Branch, with the results that (a) management is fragmented and cannot speak with an effective voice in bilateral relations, and (b) most big issues, such as pay and benefits, are beyond the scope of bargaining, resulting in negotiations focusing largely on a narrow range of management discretion and the shifting of union actions to other arenas to meet their representation responsibilities.
2. Management leadership within the Executive Branch isn't integrated at the central level and is uneven at agency levels, with labor-management relations sometimes functioning as just another overlay of complicated procedures--an add-on to already complicated personnel administration provisions.

A. Background--Current problems of separated and dispersed authority and of lack of management leadership in collective bargaining.

The basic Constitutional concept of Separation of Powers in the United States Government is a fundamental barrier to collective bargaining in the sense in which it operates in private enterprise. That is accepted as a "given" of the system. But an initial problem is to face up to that given and then to formulate organizational alternatives which are consistent with it--without ignoring either the Constitutional framework or present labor-management relations needs.

In practical terms, the problem is this: Congress now legislates most bread and butter issues in the Federal sector and therefore little of most significance to employees is left for bargaining. That scope of bargaining issue is dealt with in Part 3 of this Options Paper. The other part of this problem is this: Authority over other major issues of concern to employees and their unions is widely dispersed within the government. The Civil Service Commission and the General Services Administration, for example, issue controlling regulations affecting working conditions and, yet, under the present system these issuing authorities do not negotiate with exclusive representatives of employees on the impacts of these issuances. Those issues of scope of bargaining are also dealt with in Part 3 below. But the organizational issues and related options for identifying management with authority to deal effectively with unions are outlined here.

One particular feature of the present system should be noted in this background comment. That is the existing system of bilateral consultation in pay setting. Congress has delegated authority to fix wages for hourly-paid employees to parts of the Executive Branch since the 1860's. This authority was modified in 1967 by creation of the Coordinated Federal Wage System. It was further modified in 1972 to include a role for employee union representation in the decision-making

process. This was through the vehicle of the Federal Prevailing Rate Advisory Committee. Passage of the Federal Pay Comparability Act of 1970 also created a role for unions in setting "white collar" pay. In addition to creating a Pay Agent (initially the Director of OMB and the Chairman of the CSC, with the later addition of the Secretary of Labor, in response to union concerns) to act for the President in determining white collar pay rate proposals, the Act established an Advisory Committee on Federal Pay (composed of three persons outside of government) and a five-member Federal Employees Pay Council.

This system of the Pay Agent/Pay Council has been beset by disagreement between the parties at times in the past. Three members of the Pay Council--major union representatives--resigned their seats on the five-member body in 1976 and returned in 1977. President Carter recently issued E.O. 13004 to deal with criticisms of the program, and it now appears that these problems have been resolved in large measure.

Two other background features of the present system which merit initial note are these. First, a fundamental aspect of policy under the Executive Orders has been decentralization of labor relations responsibilities to operating agencies. But this has often conflicted with extensive centralized authority for personnel and other matters which affect working conditions. Second, within the Civil Service Commission, an Office of Labor-Management Relations has been developed to serve the CSC's leadership and administrative role in labor-management relations. In addition, this Office has a separate function to provide basic information which is available to all interested parties.

B. Options for organization of the employer for effective management.

Options for organization of the Federal government as an employer for effective management under forms of bilateral labor-management relations must be related to the scope of bargaining, as noted. Also, unit structure is a key aspect of this matter. However, it is possible to identify these general organizational options:

1. Retain the existing structures for bargaining in agencies and for consultation on pay.

2. Establish central Executive Branch management leadership, with (a) possible changes in pay setting machinery and (b) general management leadership responsibility with respect to labor-management relations.

3. Within agencies, elevate responsibilities for collective bargaining to more integral levels of management organization.

Option 1. Retain the present structure.

The present system could be left to continue its incremental development. Despite the problems noted above, there are some redeeming features of the existing arrangements. There is general satisfaction on the part of unions with the Federal Wage System, and, recently, an increased acceptance of the white-collar pay structure. Unit consolidation is continuing, although fragmentation is still the rule, with roughly 3600 bargaining units.

Continuation of the existing framework might make extensive decentralization of personnel and related management responsibilities from the Civil Service Commission to agencies difficult. The potential expansion of the scope of bargaining which could result from such decentralization could severely strain the present fragmented unit structure.

In short, while retention of the present system is an option for a while longer, it might foreclose much decentralization of further responsibilities to agencies. Alternatives for unit structure and mechanisms for dealing are dealt with below.

Option 2. Establish central Executive Branch management leadership, with (a) creation of a central labor relations office to provide general management leadership, and (b) possible changes in pay setting machinery.

A major problem of the present labor-management relations system in the Federal government is a confusion of functions, with a consequent lack of forceful management leadership in personnel and labor relations activities. For example, the present Civil Service Commission Chairman must serve both as Chairman of the Federal Labor Relations Council and as Chairman of the Commission. In his latter role, other conflicts also exist: responsibilities for management leadership and for protection of employee rights. Other principal actors in the present system have similarly conflicting roles, making it difficult to locate central management-oriented leadership in labor relations.

Depending on other organizational changes in the general Federal personnel and labor relations system, consideration could be given to creating a management office of labor-management relations in a central Federal Personnel Agency. For economic issues, such an office would necessarily relate to the Budget organization in the Executive Office of the President. For other matters, it could well provide management guidance and leadership while continuing general decentralization of labor-management responsibilities to operating agencies.

One possible change in organization would be a two-level system of bargaining which would preserve much of the present system. For example, government-wide bargaining, with multi-union groups representing the employees, could take place on rates of pay and/or other major economic issues and/or the most broadly applicable personnel rules and related issues. A more modest step would be to formalize consultation at such a level -- perhaps with further modifications of the consultation process of white collar pay setting. In either case--bargaining or enlarged consultation at the central level--most issues over working conditions and other local issues could remain subject to bargaining by agencies in configurations more or less unchanged from the present.

Whatever the direction of the important details, the point here is that some central leadership for effective management deserves consideration if collective bargaining forms are to be continued in the Federal government, while recognizing probable

merits of decentralization of general operations to agencies. Creation of an office of labor-management relations with clear and unmixd responsibilities for effective management in a central personnel agency is an option for that purpose.

Option 3. Within agencies, elevate responsibilities for labor relations and related personnel functions to more integral (and influential) levels of management organization.

Federal agencies have moved far toward bilateralism under the frameworks of Executive Orders on employee-employer relations. An informed and skilled professional community now provides considerable management leadership in collective bargaining in the various agencies. However, the tendency persists to treat labor-management relations as just another add-on to personnel staff functions rather than as an activity which, with related personnel activities, is increasingly central to effective agency management.

In the same sense that personnel management came to be recognized as a central management function following President Roosevelt's 1938 Executive Orders, improved management effectiveness could result today from action to elevate management responsibilities for collective bargaining to higher levels of agency management organization.

Again, technical unit aspects of these issues are treated below.

II. Mechanisms for Dealings

A. Basic Program Concepts.

Since 1962, when the essential philosophies and approaches of the Federal labor-management program in the Executive Branch were formulated in Executive Order 10988, a policy of decentralized dealings has been basic to the program. Thus, while that Order established a labor policy on a government-wide basis, ultimate agency independence and responsibility for implementation of the program were also emphasized. Although Executive Order 11491 created central machinery which made significant improvements with regard to the administration of the labor relations program, the primary emphasis on agency responsibility for implementing collective dealings with exclusive representatives remained unchanged.

The scope of bargaining under Section 11 of the Order, for the most part, is affected by the level of exclusive recognition, with agency-wide bargaining primarily reserved for parties dealing within the framework of national exclusive recognition. While the present Order provides for limited consultation on a national basis between agency and union representatives in the case of unions which lack exclusive recognition at that level, such discussions are less than true collective bargaining. Such "national consultation rights" discussions, authorized by Section 9 of the Order, do not require the parties to arrive at a mutual agreement on the matters at issue, nor is reaching such an accord contemplated as part of the process. Furthermore, many important issues of concern to employees are discussed by high-level representatives of Federal agency management and Federal employees--pay, benefits and centrally administered personnel policies, for example--but in most cases the relevant dealings and agreements reached are outside of the scope and coverage of topics authorized by the Order and are, in a technical sense, not a formal part of the Federal labor relations program.

Finally, while effectuation of the Federal labor relations policy is predominantly a local and consequently a fragmented affair (there are now approximately 3,600 exclusive units functioning under the program, over 2,000 of them in the Department of Defense alone), the Order places substantial oversight authority and certain regulatory power with respect to activity-level bargaining in the hands of higher headquarters agency management. Thus, even if higher level management within an agency is not directly involved

in local negotiations, it is in a position to influence activity positions on significant issues (if it does not actually dictate the substantive terms), and, to that extent, to exercise a measure of central control over the quality of negotiations within the agency. This authority to determine the outcome of many important labor relations issues is but one facet of the overall tendency in the Federal service to control personnel matters centrally, and it has not gone unnoticed either by students of the program or by the affected parties. Indeed, union spokesmen have complained that the current labor relations program authorizes nothing more than "sham" bargaining, while defenders of the Order observe that such controls over the mechanisms for dealing are necessary to protect the "public interest," the established polestar of the program; i.e., management's operating responsibilities.

Several alternative channels for formalized dealings between the parties to a collective bargaining relationship are discussed below. These options are not mutually exclusive, nor do they exhaust the list of possible forums which could be used to implement a labor relations program. Rather, this discussion focuses on the four most common mechanisms.

B. Options and Discussion

The following alternative mechanisms are considered here:

1. Bargaining unit negotiations.
2. Master agreements (government-wide or agency-wide) with local supplements.
3. Multi-tiered, multi-unit, coalition bargaining.
4. Unit structures in agencies plus other mechanisms at the central level (i.e., FPRAC, Pay Agent, President, Congress, etc.).

Option 1. Bargaining unit negotiations.

Unit structures at varied organizational levels, with representation by a majority or exclusive union, have been the dominant mechanisms for collective bargaining in the private sector and in government. This is a well-established feature of the present Federal program. Although the Bonneville Power Administration and T.V.A., among others, have successfully employed forms of blue-collar and white-collar coalition bargaining, the varied unit structures have shown themselves to be well-suited to the complexities of the Federal Government as a whole.

The most fundamental labor relations mechanism, particularly in a system predicated on the concept of exclusive recognition, is the conduct of negotiations within a specific bargaining unit, on issues related to the interests of the employees and management in that unit, and resulting in a contract applicable only to the covered unit work force. Principal unit alternatives are discussed in the next section of this paper. But related mechanisms for dealing are noted here first.

Currently, the dominant agency practice in the Federal program is to conduct negotiations at the installation or field level, although some national and other levels of negotiations occur, and there is some tendency toward movement to higher levels.

Negotiations specifically tied to local bargaining units offer the prospect of high visibility and acceptance to the parties and employees alike. Since such discussions are usually conducted by persons familiar with the conditions existing within the unit and the constraints upon the employer, substantive bargaining terms may be tailored to the specific prevailing circumstances. Similarly, in matters of contract administration, bargaining unit negotiations ideally leave an "institutional memory" of bargaining discussions which can facilitate the resolution of issues related to the interpretation and application of the contract's terms.

On the other hand, however, if the concept is applied uniformly to all situations, the process of bargaining unit negotiations translates into a limited scope of bargaining at the lower levels of an agency's hierarchy. Furthermore, except perhaps for negotiations on a national exclusive basis, when collective bargaining is confined to the certified unit, experience suggests that the local labor union may suffer a negotiation disadvantage in terms of bargaining power and expertise available to the employer. (There are other cases, however, which indicate that such disparities may be more apparent than real, and that it is the local management which often capitulates during the bargaining process in the expectation, or hope, that higher agency headquarters will save them from themselves in the review process.) Similarly, the employer may not have the expertise to use the agreement as a problem-resolution mechanism -- one of the principles of collective bargaining. Expertise frequently brings with it novel methods to achieve solutions to difficult problems.

In summary, under dominant concepts and by experience, bargaining unit negotiations comprise the keystone to labor-management dealings. Whatever the debits and credits of such a forum, it would be difficult to construct a labor relations system for the Federal Government as a whole which did not provide for meaningful dealings at varied unit levels between the parties most affected by the discussions; i.e., the employer of the unit work force and the appropriate exclusive representative.

Option 2. Master agreements (government or agency-wide) with local supplements.

Should the scope of bargaining be substantially increased or expanded, general experience in the private sector and tendencies in the Federal Government indicate that the parties would seek to restructure, broaden, or consolidate their units to meet enlarged objectives. This tendency is already present in some Federal agencies. In these cases, master agreements at agency levels may be employed to deal with matters within the authority of central agency levels.

This is a common mechanism in such major industries as steel, rubber and automobile manufacturing; i.e., the negotiation of master agreements concerning major items at the "corporate" level, with local, supplemental agreements specifically addressing local issues. Such a mechanism assumes a single labor organization which represents agency employees, under an appropriate recognition, at both the local and national levels, or, at the very least, the existence of several unions willing and able to coordinate their efforts. (See Option 3 *infra*)

The advantages of such a system are several and varied. In the first place, it seems clear that national negotiations (either agency or Government-wide) provide the best opportunity to resolve matters which are national in scope, or to establish policies which require uniform application within the agency or across the Government. Secondly, it is also apparent that master contracts derived from national bargaining tend to be more cost-effective, since negotiation time and effort expended in the resolution of particular issues need only to be spent once. Furthermore, master negotiations tend, in the long run, to produce a cadre of professionals and to develop bargaining expertise on both sides of the table through better preparation, resulting in more informed bargaining on the issues concerned. Moreover, assuming the union has won the required national recognition, master agreements are more likely to be the product of more equalized bargaining power than local accords, and thus, may provide a more stable labor relations atmosphere.

On the other hand, master agreement negotiations, standing alone, tend to minimize or disregard local problems. A labor relations system which reduces provision for the consideration of peculiarly local questions in independent local negotiations could suffer in credibility and relevance among local employees. Thus, where master agreements develop, provision for local level supplements seems desirable.

It must be recognized, however, that local leaders who may be discontent with a master contract may attempt to utilize supplemental agreements to subvert the master accord, and to negotiate away the impact of clauses in the master contract with which they disagree.

Option 3. Multi-tiered, multi-unit, coalition bargaining.

For the most part, the above options focus on dealings between agency management and single and separate labor organizations. This alternative addresses negotiations in terms of combinations of unions and units for the purposes of bargaining with their employer. Three distinct possibilities are reviewed in this Section -- multi-tiered bargaining, multi-unit negotiations and coalition bargaining.

Multi-tiered bargaining, that is, labor negotiations which take place at different levels of agency management depending on the level and amount of discretion over the subject matter involved, was considered in the preceding option. The advantage of multi-tiered bargaining is that it connects the scope of negotiations to the source of management authority over the subject matter, while, at the same time, preserving local interests in local matters. Its major disadvantage is that negotiations are no longer comprehensive but rather become a chain of interrelated dealings as the agency and the unions establish formal contacts along the lines set forth in the agency's organization chart.

Multi-unit bargaining is another approach used. In this situation, a single union which has obtained recognition at several activities or in several unit groupings at the same activity, consolidates its bargaining efforts. This is usually through the auspices of the national labor organization which influences its locals to adopt a uniform approach to bargaining and to make coordinated demands on the employer so as to establish uniform agreements. Similarly, there may be instances where two or more unions acting independently, consolidate locals of their organization within a particular agency, for the purposes of bargaining with their employer. In many cases, the process of such consolidation may create competition between unions, and, to that extent, frustrate bargaining efforts and drain union treasuries and resources.

The present program permits multi-unit bargaining on a voluntary basis. By engaging in multi-unit bargaining, organizations may avoid whipsaw effects and add to each local bargainer some of the strength inherent in presenting a unified front. Thus, an employer-agency is usually faced with uniform union demands for similar units, firm positions jointly taken on key issues, and on some occasions, union head-quarter-controlled spokesmen. Agency management, on the other hand, may tend to favor such multi-unit discussions because of the opportunity to economize on negotiation effort, and because the uniform personnel policies and practices which may result are easier to administer than a multiplicity of policies and practices.

Coalition bargaining and coordinated bargaining are other levels at which dealings may occur. Essentially, coalition bargaining refers only to situations where two or more unions bargain jointly for a common master agreement covering all the employees represented by the unions. The unions' bargaining committee consists of a mix of interested unions which negotiates with the employer. This is like the situation in TVA. Coordinated bargaining is the situation where two or more unions representing separate bargaining units negotiate concurrently through mixed teams for individual unit contracts containing common terms. In such situations, it is possible for a central policy committee of the cooperating unions to direct separate negotiating teams to seek contracts with common terms.

At the present time in the Federal service, union coalitions mandated by statute are involved in the pay systems for both blue collar and white collar employees, and indeed, the Postal Service's basic national agreement is the product of coalition bargaining by the major unions. The fairly well-defined craft lines between such unions tend to avert inter-union rivalries in the negotiating process.

As in the case of the Postal Service, which had a long history of extensive employee organization, future readiness of the Federal service for bargaining in such a broad coalition framework will largely depend upon the extent of union growth and recognition, and the willingness to alter existing relationships. Coalition bargaining could possess several advantages for the Federal service with respect to the implementation of full collective bargaining:

- (1) It permits direct, face-to-face access to top Executive Branch management and to the considerable scope of personnel concerns which they control at that highest level.
- (2) It eliminates whipsawing by management or by unions which represent various units of agency employees.
- (3) It may tend to professionalize negotiations by creating a cadre of negotiation experts on both sides of the bargaining table.
- (4) It provides Government-wide or multi-agency consistency and uniformity in the negotiated terms and conditions of employment, and in their administration.
- (5) It permits economizing of bargaining effort by allowing the settlement of national personnel and other policies in a common and single round of negotiations.
- (6) It enlarges predictability in budgeting and manpower planning as they relate to negotiated provisions.

It must be recognized that organized labor is not the only segment in the Federal work force with an interest in what might be negotiated in Government-wide bargaining. Veterans groups, professional associations, women, and minority organizations share vital interests in provisions of agreements which affect their members. Thus, without some protection of these important interests, substantial groupings of affected employees would remain "unrepresented" during coalition bargaining, and thus might not accept the terms and conditions of national agreements that might affect them. Also, there is always the possibility that the presence of different unions in coalition bargaining may lead to competition and to internal disagreements over bargaining positions so as to threaten or disrupt bargaining processes. Ideally, however, the broadly composed bargaining committee tends to impel its various components to iron out their differences in order to present a common position.

Option 4. Unit structures in agencies plus other central mechanisms and dealings at the national level.

Labor-management relationships in the Federal Government take several forms: collective bargaining over mostly non-economic issues in units at agency levels, consultation at agency levels and in central management agencies of the Executive Branch, varied political interactions with both the Executive Branch and Congress, and court actions.

While these options papers focus on agency-level relationships and possible consultation and/or bargaining at central management levels of the Executive Branch, those matters should not be dealt with in a vacuum. Federal employees have political and legal rights aside from collective bargaining, and many of those are constitutionally protected or otherwise valued so as to preclude consideration of changes. Yet, they often impact on bilateral labor-management relations. Some restrictions on certain statutorily or administratively created rights of employees may require and be subject to modification, however. For example, multiple appeals routes now available to employees conflict with concepts of bilateral grievance handling.

Two-tiered bargaining, with negotiations in agencies on some matters and bargaining or more formalized consultations at central Executive Branch levels on others, is discussed at other points in this paper. Present forms of bilateral dealings have moved the Federal Government a little in these directions already, as in structured consultations on pay-setting, the Federal Advisory Council on Occupational Safety and Health, and ad hoc consultation on government-wide personnel policies and benefits.

III. Unit Structure

Like other substantive issues related to collective bargaining, unit structure is directly influenced by the scope of bargaining (discussed in Part 3 of this LMR Task Force Option Paper). To the extent the scope of bargaining is limited to matters of local concern to the parties--e.g., grievance resolution, overtime assignments, tours of duty--units may be established on a plant, installation, craft, functional or other basis to deal with work-site concerns. To the extent the scope of bargaining extends also to system-wide matters--e.g., pay and economic fringe benefits, or Government-wide personnel policies--units at that higher level would be appropriate to deal with them. This is not to suggest that the configuration of bargaining units must be an either-or proposition; narrow units may be established to deal with local concerns while system-wide and higher-level matters are handled in national and agency-wide units (discussed in Section II above), which include the former.

The question of unit structure is tied in as well with the procedural issue of recognition (discussed in Part 1 of this paper) and with the substantive issue of centralization versus decentralization of roles and authorities for personnel management (discussed in Option Papers developed by other Task Forces--notably, Task Force 8). It is clear that ideally the unit structure for bargaining should match the personnel system's structure for determining policies and practices affecting employees' pay, benefits, and working conditions.

A. Background--Other Experiences

Currently, there are approximately 3,600 bargaining units in the Federal service covering an average of 334 employees each and including 35 units which are agency-wide or national in scope. The bulk of the units have evolved in two stages under a relatively limited scope of bargaining: (1) From 1962 through 1969, when recognition was granted on the sole basis that the employees in a unit shared a community of interest; (2) Since 1970 recognition has been granted on the additional basis that the unit would promote effective union/management dealings and efficient agency operations--as well as community of interest among the employees. Throughout these stages, moreover, Federal management has been required to remain neutral in organizing campaigns and representation elections--facilitating the growth in bargaining-unit coverage (now 58% of the work force).

The proliferation or fragmentation of bargaining units is viewed as a major problem-area by agencies, unions, and others, but no one has claimed that there is an ideal solution to it. On the one hand, it is argued that broader units are more cost-effective to administer and reach a higher level of bargaining authority and effectiveness; but it is asserted that narrower units ensure individual employees greater participation and more immediate impact on their union's positions at the bargaining table. In 1975, the ground-rules of the program were changed to facilitate the consolidation of existing, smaller units into combined, bigger units--while continuing the option of smaller unit structures.

In private-sector labor relations and in many state and local programs, community of interest among employees is the sole criterion for determining the appropriate bargaining unit--although some jurisdictions use such criteria as effectiveness of dealings and/or efficiency of operations as well. The Foreign Service labor relations program (State, USIA, and AID), which operates under different ground rules from the Federal service generally, and some states have limited the number of units in their labor relations systems. For example, laws in Hawaii and Wisconsin spell out broad units based on functional or occupational categories while New York has established a few broad units through its Public Employment Relations Board. Under its 1967 Public Service Staff Relations Act, Canada has simplified its classification system and, based on that, has established 72 basic units along occupational lines (which nonetheless have been criticized by some practitioners as still too fragmented).

The value of these experiences in assessing the situation in the Federal service is limited by a number of factors. Their mandate for broad bargaining units may have been made easier where no established pattern of bargaining existed and, thus, there were no previously existing units to be modified, combined or eliminated. Also, their organization for management and generally broader scope of bargaining may have made smaller units unfeasible. In contrast with the unit fragmentation that has grown up in the Federal service and in some states, however, these experiences do point up the diversity of approaches to be considered in assessing the situation.

B. Options and Discussion

Options for bargaining-unit structure in the Federal service must be related to the scope of bargaining, as noted. Also, the organization of the employer for effective management is a central aspect of this matter, as is the extent of employee interest. Nonetheless, it is possible to identify these basic options:

1. Retain the present system
2. Apply unit criteria and bargaining experience to merge existing units into a smaller number.
3. Establish units in the program charter (Executive order/statute).

Option 1. Retain present system

The present system of case-by-case unit determination is well understood throughout the labor-relations community and is reasonably well-accepted by both unions and management. Established bargaining relationships would not be disrupted or threatened. The equal application of the effective-dealings and efficient-operations criteria with community of interest in unit determinations and the policy favoring consolidation of smaller into broader units may retard the fragmentation of bargaining units. (Although there has been relatively little use of this mechanism to date).

The present system, conversely, could perpetuate unit proliferation and limit the scope of bargaining in narrower units. It would not alleviate the problem of administering diffuse and fragmented bargaining situations. Nor would it, absent aggressive use of the merger possibilities, elevate the unit structure to higher levels of personnel authority and general management decision-making.

Option 2. Apply unit criteria and bargaining experience to merge existing units into a smaller number.

This approach would not disrupt established bargaining relationships, but would seek to rationalize unit structure on an ad hoc basis over time. Incrementally, it could have the long-term effect of substantially reducing fragmentation and enhancing more efficient and effective bargaining. It is a way of reducing fragmentation, though not overnight, while posing no immediate threat to existing relationships.

There is, of course, no guarantee that unit proliferation will be eliminated--and in the short-term, this problem would certainly not be rectified for all situations. While their status would not be disrupted immediately or altogether, unions which have gained their standing through the organization of smaller units would perceive the threat to them of moving toward broader units. And since broader units would elevate bargaining to higher levels on a wider range of personnel policies, some agencies might see this approach as a means of gradually opening up negotiations in areas they traditionally have considered the exclusive province of higher-level management. Larger units might also preclude employees from eliminating or changing representation by virtue of size and a 30% showing of interest for decertification.

Option 3. Establish units in the program charter.

Under this option, bargaining units would be predetermined in the operative charter of the program (whether it is Executive order, law, or Presidential Reorganization Plan)--along broader lines and facilitating negotiation on national issues. Units could be defined on the basis of occupational or functional groupings--e.g., clerical, administrative, technical, operational, professional--on a nationwide scale or in each of the 10 Federal Regions.

Spelling out the unit structure in the program charter is certain to assure implementation of a policy to avoid fragmentation--as opposed to ad hoc determination, which may result in an irrational pattern of units and in unevenly negotiated policies between similar groups of employees. Further, it would have a positive impact on sound, constructive and more comprehensive bargaining--consistent with the organization for management and personnel policy-making. Such predetermined units would be highly predictable and stable.

There would be an immediate, disruptive effect on established bargaining relationships, however, and some employee interests may go unrepresented as the employees are subsumed under the broader units. Also, spelling out units in the program charter would sacrifice the countervailing advantages from having units determined by a central, administrative authority--e.g., flexibility and adaptability to changing circumstances such as agency or Government-wide reorganizations, and timely application of labor-relations expertise to a specific bargaining-unit situation. Furthermore, it would prevent the extension of organization into smaller, workable units where employees choose representation--units which, by a building block process, may later be joined with others in broader, optimum unit structures.

C. Related issues

1. Impacts of Reorganization

Tied in with the issue of bargaining unit structure is the related consideration of treatment of previously existing units in reorganization.

As noted in the discussion above, the basic approach and ground-rules governing unit determination under the program may answer for both purposes--previously existing units and changes resulting from reorganization.

Established bargaining units may be carried over, or "grandfathered", under any of the options above--although it would be most difficult under Option 3. Option 1 would continue previously existing units as they are, while Option 2 envisions gradual phasing out of narrow units through consolidation and broader-unit determination. Clearly, some transition would have to be provided under Option 3, and to a lesser extent under Option 2, in order to avoid the dislocation and the disruption of established bargaining relationships that would result from the sudden elimination of previously existing units.

Reorganization presents distinct labor-relations problems as it affects employees in established bargaining units. In view of the wide variety of representation questions that can emerge from the diverse factual configurations of agency reorganization situations, a contextual approach to such problems has been adopted under the current program. The case-by-case approach has been deemed better to facilitate the resolution of such problems than would a blanket policy for dealing with them on a uniform basis. This approach would be available under Options 1 and 2, but may not be feasible under Option 3.

Basic changes in unit determination and reorganization situations can give rise to a number of appropriate unit, recognition, and agreement status questions. It would appear that existing recognitions, agreements, and dues-withholding arrangements should be honored to the maximum extent possible, consistent with the rights of

the parties involved, pending final resolution of issues raised by changes in unit determination policy and by agency reorganizations and resulting operating needs.

2. Exclusion of Supervisors

Another most fundamental issue with respect to bargaining units is the inclusion or exclusion of supervisors from collective bargaining and/or from the units in which non-supervisory employees are represented.

The practice of the private sector generally and of the present Federal Executive Order is exclusion of supervisors. This is based on the conflict between the role of supervisors as the first line of management in an organization and their potential activity on the opposite side of the bargaining table if they were unionized. Where supervisors have management responsibilities and authority in fact, unions seldom dispute their exclusion from bargaining. However, in state and local governments, supervisors and middle-managers in some public services tend to assert demands for inclusion in bargaining. This is most often found in police and fire services, but it also occurs in some areas of education, health services, and social services generally. In a few governments, supervisory inclusion in bargaining is general. Because of these developments, the issue is often raised of supervisory exclusion from bargaining in the Federal service. In a more technical form, this issue generally translates into definitions of supervisors and their functions.

Again, the general rule is the one which is now practiced in the Federal service: exclusion of supervisors.

IV. Union Security

The framework for collective bargaining should provide minimum conditions to facilitate effective and representative unions, which are as essential to successful labor-management relations as is effective and responsible management. As noted in Part One above, the standards of conduct and unfair labor practice provisions may help in achieving that goal. In addition, some other practices under the Order provide stability to the labor-management relationship: exclusive recognition, payroll dues deduction or "check-off", services and facilities provided to unions, and official time for bargaining and representation. These forms of support are relatively common and are therefore touched on only briefly at the end of this discussion.

Other forms of union security that are negotiable in the private sector involve more controversy. These include the union or agency shop (in the 30 non "right-to-work" States) and, in some industries, the hiring hall. The closed shop is generally unlawful.

A union shop requires employees to join the union within a specified time as a condition of continued employment. It may be functionally equivalent to the agency shop, because court decisions under the NLRA have held that the union shop requirement boils down to a requirement that non-members tender dues and initiation fees to the union.

While both the E.O. and the Postal Reorganization Act prohibit the agency shop, several states now mandate or authorize agency shop for the public sector. Among these are Massachusetts, Hawaii, New York, Alaska, Rhode Island, Oregon, Vermont and, in public education, California. The agency shop is negotiable in the District of Columbia, but unit employees may elect not to pay the "representation fee" by waiving the right to representation by the union in grievances and appeals. Employees who waive these rights, however, are not excluded from overall benefits which are gained at the bargaining table.

The problem that currently gives rise to discussion of possibly authorizing some form of agency shop in the Federal service is this: Under collective bargaining as it is commonly practiced in both private and governmental sectors in the U.S., one union generally wins exclusive representation rights for employees in a particular bargaining unit. With that status comes an obligation to represent all employees in the unit, whether or not they are union members. That responsibility can be carried out effectively only by a union that has the stability of organization and financial resources to perform functions that are sometimes expensive and long-term, such as grievance handling and negotiations. The question is often presented as an issue of "free riders" versus the right of individuals to choose which organizations they will associate with and support, and the need to retain a system of public employment based on merit.

The constitutionality of an agency shop requirement in the public sector was recently upheld by the U.S. Supreme Court in Abood v. Detroit Board of Education. The Court held that there is no First Amendment bar to such agreements if an employee is not compelled to make certain payments (e.g., for ideological activities unrelated to collective bargaining). In the Federal government, it appears that authorization of an agency shop would require legislation.

A.. Options with respect to the agency shop:

1. Continue the present prohibition of the agency shop.
2. Mandate the agency shop.
3. Authorize negotiation of the agency shop.
4. Authorize variations of the agency shop.

Option 1. Continue the present prohibition on the agency shop.

Prohibition of the agency shop in government is generally based on the view that public employees should not be required to support union representation functions because (1) individuals may object to unions in government or to personal membership in a union and should have their views protected as rights, and (2) no compulsory payment to a union -- indeed no condition except merit--should be required for Federal employment. These views are similar to other "open shop" positions, including objections to extension of agency shop provisions for Federal employees in "right-to-work" states and opposition generally to any union representation.

Option 2. Mandate the agency shop.

A mandated agency shop would require all employees in a unit to pay a representation fee unless they paid union dues as union members, once a union won exclusive representation rights. This would provide a strong financial base for the exclusive union.

It may be that if the agency shop were mandated or made negotiable, employees who presently fail to participate in elections would be motivated to vote. A special problem would be whether special arrangements like those mentioned in Option 4 below should be considered for employees already covered by exclusive representation, should either mandated or negotiable agency shop be authorized. One consideration is that decertification procedures, already available to employees, could be utilized by employees who object to union representation. Another possibility is to provide a vote similar to the union shop deauthorization procedure under the NLRA.

Option 3. Authorize negotiation of the agency shop.

Provision could be made to authorize negotiation of the agency shop. If negotiable, but not required, management and unions could bargain trade-offs for it. In a system with severely limited subjects of negotiation, this could enrich exchanges at the bargaining table.

With regard to the mandated or negotiable agency shop under Options 2 and 3, another approach might be to limit the authorization to recognitions at the agency-wide or primary national subdivision level -- where the recognitions were gained as a result of an election on or after the date agency shop was made available. This could provide a strong incentive to unions for consolidation of existing units to higher levels of dealing.

Option 4. Authorize variations of the agency shop.

Variations of the agency shop could be considered to meet objections to it. These include the following:

- a. Permit waiver of some representation rights such as carrying matters to arbitration--or generally, as in the District of Columbia.
- b. Authorize payment to an alternative, charitable fund by employees with religious or conscientious objections, as in the health-case amendments to the NLRA.
- c. Require an election separate from the representation election to authorize the union to negotiate an agency shop (generally, or in those units with existing exclusive representation).
- d. Condition the union's authority to negotiate the agency shop upon the union's demonstration that it makes effective provision for a dissenting member to receive a rebate of that portion of the union dues and fees not used for representational purposes.

B. Payroll dues deduction (Checkoff)

Executive Order 11491 permits negotiation of payroll dues deduction with unions with exclusive representation rights. The charge for performing this service is also negotiable. The Postal Reorganization Act mandates no-cost dues checkoff for unions with exclusive representation and for supervisory and managerial organizations which have consultation rights.

To facilitate some stability of union membership, it is common under the Executive Order to negotiate a period during which employees who authorize payroll dues deduction must continue to pay union dues. This limitation on revocation of checkoff authorization is subject to the proviso that an employee must have an opportunity to opt out at no less than six month intervals. Unions generally favor lengthening this period to provide greater stability of income.

C. Other considerations

A countervailing policy consideration in assessing the need or economic justification for agency shop or related forms of union security is the provision of official time and services to unions.

A number of negotiated Federal agreements now provide such financial benefits to unions and their employee representatives--e.g., (a) official time for stewards under 2650 agreements, (b) official time for arbitration under 2218 agreements, (c) office space for the union under 1742 agreements, and (d) office services for the union under 1677 agreements. While official time for bargaining is provided for in 778 basic agreements, this benefit is commonly agreed to in ground-rules (rather than in basic agreements) and is believed to be provided in most --if not all-- situations. (Official time for negotiations is limited to 40 hours or one-half time.) All of these benefits, and others, which accrue to the financial security of the union, are paid for by the agency (and ultimately, the taxpayers).

Authorization of agency shop or related arrangements which would make the union more self-sufficient could provide an argument for shifting some or most of these financial burdens from the taxpayers to the employees whose interests

the union is representing in these activities. Conversely, it has been argued that the current provision of such economic benefits to unions and their employee representatives offsets any demonstrated need for agency shop or related forms of union security. This, squarely, is a subject for policy determination.

PART 3

SCOPE OF BARGAINING

The issue here is, "What should be the scope of bargaining in Federal government labor-management relations?"

This is the most basic matter in collective bargaining--the one around which the organizational issues in the previous two sections turn.

To deal with this issue, this part of this paper is organized in three interrelated sections:

- I. General Scope of Bargaining Problems and Options:
What changes may be considered in laws, executive branch, central management and agency regulations, and provisions of Executive Order 11491?
- II. Management Rights: What management rights should be prescribed and/or made negotiable in the basic framework (Executive Order/Reorganization/Statute) for Federal sector collective bargaining?
- III. Productivity and Labor-Management Relations:
What approaches may be taken to bilateral efforts to improve productivity and quality of working life?

I. General Scope of Bargaining Problems and Options

The big problem with respect to scope of bargaining in the Federal government is the separation of decisions on economic issues and centrally-determined personnel policies from agency-level bargaining over a severely limited range of other issues. The result of this situation is extensive preoccupation with organization management, with no choices of economic trade-offs, in operating-level negotiations.

The scope of bargaining in the private sector and in many public sector jurisdictions extends to such economic items as pay and benefits and embraces virtually all other items which affect employee working conditions. The relatively broad scope found in these jurisdictions has caused Federal sector labor organizations and other interested groups, including a committee of the Labor Relations Law Section of the American Bar Association, to advocate a wider scope for the Federal sector. Such advocates assert that many subjects of vital concern to employees and amenable to the negotiating process are barred from the bargaining table. Their arguments are reflected in the preamble to the current labor-management relations program under E.O. 11491 -- participation of employees in the formulation of personnel policies and practices which affect the conditions of their employment facilitates the efficient administration of the Government and the well-being of employees. In short, unions and some other groups urge increased participation through an expanded scope of bargaining.

Federal managers, concerned with carrying out their agency missions effectively, efficiently, and economically, tend to resist union efforts to extend negotiations to new subjects.

Understanding of the current scope of bargaining is essential to deciding on options related to these conflicting views. With respect to E.O. 11491, that may be dealt with in terms of exclusions. These may be grouped under three headings:

- (1) Laws, including pay and major benefits.
- (2) Executive Branch central management and agency regulations.
- (3) Provisions of E.O. 11491.

These exclusions are briefly summarized here before options are spelled out.

A. Present exclusions from the scope of bargaining.

1. Laws.

Title 5 of the U.S. Code contains provisions on the merit system, including the mechanisms for pay setting and benefits determination. It covers such matters as recruitment, appointment, training, and promotion of employees. Also included are the classification and grading of positions and over 20 appeal procedures designed to protect employee rights.

The mechanisms for pay setting and benefits determination range from the statutory enumeration of holiday and leave entitlement, with no express provision for labor organization participation, to the pay setting mechanisms which do provide for such participation. This participation in the area of white collar employee pay setting takes the form of the Federal Employees Pay Council, composed of five labor organization representatives who advise the President's Agent (Chairman of CSC, Director of OMB, and Secretary of Labor) on various aspects of the pay setting process. In this connection, the President's Agent meets with the Council and gives consideration to its views and recommendations and includes these views and recommendations in its report to the President. After also receiving an outside Advisory Committee's report, the President considers these two reports and decides what pay adjustment will provide comparability with private enterprise pay. He then has the option of either putting this pay adjustment into effect or sending an alternative plan to Congress. If he opts for the latter course, his decision can be overruled by either House of Congress, in which case the President must implement the pay adjustment he has decided will provide comparability with private sector pay.

In blue collar employee pay setting, labor organizations participate through the Federal Prevailing Rate Advisory Committee, which is composed of five labor organization representatives, five agency management representatives, and an impartial chairperson. The Committee meets regularly and arrives by majority vote at recommendations concerning system-wide rules and methods governing the local determinations of comparability or "prevailing" wage rates, with the Chairperson casting the deciding vote as necessary on such system-wide changes. The Committee's recommendations are submitted to the CSC Commissioners, who make a decision, taking into consideration the recommendations made.

In brief, matters covered by Title 5 of the U.S. Code are excluded from bargaining under E.O. 11491. These matters constitute a comprehensive personnel management structure which has been developed without labor organization participation except through the legislative process. Certain basic administrative aspects of this structure, such as those for pay setting, do provide, however, for advisory or consultative participation by labor organizations. This consultation has had a meaningful impact, but it is not bargaining in a technical sense.

2. Executive Branch Central Management and Agency Regulations.

Regulations of appropriate authorities outside of the operating agencies include those of the Civil Service Commission, including the Federal Personnel Manual provisions implementing Title 5 of the U.S. Code, regulations of the General Services Administration which implement its statutory authority, and to a lesser extent, those of other agencies responsible for government-wide application of more narrowly prescribed subjects which affect working conditions.

In the case of operating agency regulations, to be excluded the regulations must be issued at agency headquarters or primary national subdivision levels and meet a "compelling-need" standard as determined according to criteria applied by the Federal Labor Relations Council (FLRC) on a case-by-case basis. For example, agency regulations which implement those established by appropriate authorities outside the agency or which implement statutory delegations of authority to the agency are "off-the-table" subjects.

3. Provisions of E.O. 11491.

Provisions of E.O. 11491 include Section 11(a), which defines the scope of bargaining, and Sections 11(b) and 12(b), which limit the scope by enumerating "management rights". Section 11(a) defines the scope as extending to personnel policies and practices and matters affecting working conditions and as excluding matters covered by law, controlling regulations, and provisions of E.O. 11491. Sections 11(b) and 12(b) enumerate management rights in such areas as mission, budget, and the right to determine the methods, means, and personnel by which operations are to be conducted. Matters not within the 11(a) definition of the scope of bargaining--nonpersonnel policies and practices--are excluded from the scope of mandated bargaining, although an agency may bargain with respect to them if it chooses.

Matters in Sections 11(b) and 12(b) are also excluded, but under Federal Labor Relations Council interpretations, an agency may bargain with respect to 11(b) matters. An agency is prohibited from bargaining with respect to management decisions on 12(b) matters--rights of management to take specified actions--but it may be required to bargain over the procedures to be used and the impact on employees of these decisions.

Matters covered by law, regulations, and the provisions of E. O. 11491 carve out by some estimates 50 percent or more of the items which are negotiable in the private sector. What remain are in large measure matters of implementation and impact which must not run contrary to laws, regulations, and provisions of E. O. 11491. These implementation and impact items are important, as evidenced by the growing number of them dealt with in agreements, but they are not "bread and butter" issues which occupy most of the attention of negotiators in other sectors. Yet, with the 1975 changes in E. O. 11491, interpretations by the FLRC, and growing experience of managers and unions in dealing with permissible subjects, the scope of bargaining in actual practice has steadily broadened.

The problem arising from the thrust of unions and resistance by managers is further complicated by the fact that the lines between mandatory, permissible, and prohibited subjects are not entirely clear. Numerous controversies over negotiability arise. The procedures to resolve these frequently result in long delays before the parties know their rights and duties. A widespread desire for greater clarity and expedition in setting the guidelines is the result. Suggested organizational and procedural changes for handling negotiability disputes have been discussed in Part 1 of this paper.

B. Options with respect to scope of bargaining.

Five options with respect to scope of bargaining are discussed here:

1. Continue the current scope of bargaining.
2. Maintain the current scope of bargaining but modify and expand consultation procedures in pay setting to include benefits determinations--total compensation consultation.
3. Expand the scope of bargaining at the central level of the national government to include pay and/or benefits determinations.
4. Expand the scope of bargaining to permit the negotiation of agreements which cover matters now within the authority of central management agencies, e.g., certain personnel regulations issued by CSC.
5. Expand the scope of bargaining to permit the negotiation of agreements which cover matters now proscribed by certain laws, including some central personnel system matters.

Option 1. Continue the current scope of bargaining.

This option is favored by most agency managers who believe that the Federal government is sufficiently different from private employers and other public sector jurisdictions to justify a different scope of negotiations. Collective bargaining in government is perceived to be a double-deck system on top of existing systems; what unions cannot secure through bargaining they may obtain in other (usually political) forums.

It is also argued that the full contours of the currently authorized scope of bargaining are still being developed pursuant to the 1975 amendments to Executive Order 11491. Through FLRC decisions determining whether a "compelling need" exists for excluding agency regulations and through exploration in negotiations of "implementation" and "impact" items, the practical scope of bargaining has been expanded. These developments and the success of experience with them are likely to lead to further meaningful extensions of the bargaining scope in practice without a change in the definition itself.

In this regard, it should be emphasized that any significant decentralization of personnel authority from the central-management agencies to the line agencies would, by itself, result in a corresponding expansion of the scope of bargaining in practice even if there were no change in the current labor-relations program. This contextual issue of decentralization is being addressed separately by other Task Forces--notably, Task Force 8-- and is implied in Option 5 and to a more limited extent in Option 4 in this section of this paper.

Arguments against continuing the present Executive Order unchanged are found in the options discussed below.

Option 2. Maintain the current scope of bargaining but modify and expand the CONSULTATION procedures in pay setting to include benefits determinations -- total compensation consultation.

As noted above, unions presently have different consultative roles in white collar and blue collar pay setting. With respect to benefits, they also have inputs to more limited extents on Federal Retirement System and life and health insurance benefit proposals. But meaningful union inputs in these economic benefit areas take place largely with Congress. Major changes in legislation would be required to combine Executive Branch consultation on benefits with those on pay under the white collar and blue collar systems, and technical aspects of such a change would require a lead time to 1979/80.

But such a change is one option to be considered. It would permit meaningful TOTAL COMPENSATION CONSULTATION and decisions at the central level of the Executive Branch.

This sort of expanded consultation at the top of the government would fall short of full collective bargaining. But it would provide bilateral experience to unions and management in the resolution of compensation issues. And it would be an approach to dealing with TOTAL COMPENSATION PACKAGES.

Because of the complexity of existing systems and statutory changes required even for total compensation consultation, this would represent a major change.

Option 3. Expand the scope of BARGAINING at the central level of the national government to include pay and/or benefits determinations.

As a further step toward full-scope bargaining, an option is to authorize bargaining at the central level over pay and/or benefits. If statutory barriers to total compensation bargaining are initially too complex, an intermediate step would be modification of pay-setting procedures to authorize forms of bargaining on pay alone. (It should be noted, however, that there appears to be general satisfaction with present forms of bilateral input into blue-collar pay setting. This form of bilateralism is one workable option).

With respect to both Options 2 and 3, few seriously advocate decentralized or agency-level pay and/or benefits setting. This appears to be a view publicly held by only a few employees or unions, but not generally proposed.

But as noted at the outset of this part of this Option Paper, a major problem of the present Federal labor-management relations program derives from this separation of economic decisions from agency-level negotiations on other matters. Because of the absence of wage/hour issues in the Federal program, bargaining in agencies focuses heavily on management rights, with no economic trade-offs, and Federal managers perceive erosion of their ability to manage.

Finally, it should be noted that special impasse procedures would be required, should central-level bargaining over pay and/or benefits be authorized. That topic is discussed in Part 4 of this Option Paper.

Option 4. Expand the scope of bargaining to permit the negotiation of agreements which cover matters now within the authority of central management agencies, e.g., certain personnel regulations issued by the Civil Service Commission.

Proponents of this option think that personnel rules applied at the worksite are as much a source of employee dissatisfaction and poor morale as any other working conditions. If employees had a greater voice through their unions (through central-level bargaining or consultation) concerning such personnel policies, satisfaction and morale might improve.

Likewise, the scope of central consultation or bargaining could include government-wide personnel policies. The Civil Service Commission currently consults on these policies on an ad hoc basis, and their inclusion in an expanded scope of structural consultation or bargaining could maximize the opportunities for trade-offs in negotiations.

To avoid excessive fragmentation, bargaining over such general regulations could be at one central level of government, as with pay. That would have the drawback of continuing the separation of the process from working levels where the conditions are most felt.

Option 5. Expand the scope of bargaining to permit the negotiation of agreements which cover matters now proscribed by certain laws, including some central-personnel system matters. (To this option could be added the condition that the laws would continue in effect until superseded by conflicting provisions of negotiated agreements.)

This option would provide for maximum labor organization participation in the formulation of employee working conditions at the levels of exclusive recognition, while the continuation of laws until conflicting provisions were negotiated would enable the parties to concentrate on principal issues with the knowledge that other subjects covered by laws would continue in effect during a transition. The scope of bargaining for the Postal Service was expanded in this manner when it was placed under the National Labor Relations Act.

Such an expansion of the scope of bargaining could be selective, with some basic elements of the personnel system specifically excluded.

The principal argument against this option is that it would subject basic aspects of the central-personnel and related systems to the vagaries of bargaining.

II. Management Rights

The problem here is: What management rights should be prescribed and/or made negotiable in the basic framework for Federal sector collective bargaining?

Management rights generally encompass those aspects of the employer's operations which do not require discussion with or concurrence by the union, or rights reserved to management which are not subject to collective bargaining. Although there are some subjects on which bargaining is not mandated in the private sector and in several public sector jurisdictions, private sector management rights are not generally prescribed by law but may be negotiated and made part of the collective bargaining agreement. In such circumstances, a strong management rights provision is often obtained only if management is willing to pay a price by granting concessions in other areas.

In the Federal sector, as in a number of state and local governments, the management rights provisions are prescribed. They are a part of E.O. 11491, and are required to be included in every initial or basic agreement. and they govern the relationship just as effectively as negotiated provisions but without the necessity of having to agree to reciprocal concessions to unions. This lack of reciprocity and the breadth of the provisions themselves lead unions to conclude that the current program is too heavily biased in management's favor. Moreover, the management rights provisions have been viewed by some as unduly restricting the scope of bargaining.

Unions generally favor narrowing the scope of these restrictions; agency management generally prefers to preserve existing restrictions. Critical to understanding these views is an appreciation of the matters contained in the prescribed management rights provisions of E.O. 11491, as presently interpreted.*

Section 11(b) of E.O. 11491.

The Federal Labor Relations Council has held that while agencies are obligated under Section 11(a) to bargain with respect to personnel policies and practices and matters affecting working conditions, that bargaining obligation does not extend to the matters enumerated in Section 11(b), namely: the mission of the agency, its budget, its organization, the number of its employees, the number, types, and grades of positions or employees assigned to an organization unit, work project or tour of duty, the technology of performing its work, and its internal security practices.

Section 12(b) of E.O. 11491.

Matters over which an agency cannot bargain include the rights to direct employees of the agency, hire, promote, transfer, assign and retain employees in positions within the agency, to suspend, demote, discharge, or take other disciplinary action against employees, relieve employees from duties because of lack of work or for other legitimate reasons, maintain the efficiency of the Government operations entrusted to them, determine the methods, means, and personnel by which such operations are to be conducted, and take whatever action may be necessary to carry out the mission of the agency in situations of emergency.

This enumeration of management rights qualifies as a "strong" provision under any standard. It is hard to conceive of a management right appearing in private sector agreements which is not listed here. At the same time, a realistic appraisal of the current situation must note, as indicated in the scope of bargaining section above, that the implementation and impact of these management actions have been held to be bargainable subjects. Thus, the enumeration of management rights is not as restrictive as may appear on the surface. In practice, there is latitude for unions to protect employees against abuses or adverse consequences of management rights. Still, controversies over their scope arise.

With this background, the question is, what rights should be reserved to management?

Management Rights Options

Options with respect to management rights are these:

1. Shift certain subjects enumerated in Section 11(b) to Section 12(b).
2. Maintain the subjects enumerated in Sections 11(b) and 12(b) on reserved management rights.
3. Reduce the subjects in these Sections.
4. Eliminate these Sections.

*On this matter see: Report of the Federal Labor Relations Council, July 1, 1970 - December 31, 1976, reprinted in: Subcommittee on Civil Service of the Committee on Post Office and Civil Service, House of Representatives, 95th Cong., 1st Sess., Federal Service Labor-Management Relations Program (Washington: GPO, April, 1977), Committee Print No. 95-5.

Option 1. Shift certain subjects enumerated in Section 11(b) to Section 12(b).

Among the "discretionary" bargaining subjects listed in Section 11(b) of E.O. 11491, are an agency's "mission", "budget", "organization", and "internal security practices". Such matters form the essence of an agency and establish its place in the scheme of Federal governmental organization, and in the view of agency management, are more crucial to overall agency operations than some of the subjects enumerated in Section 12(b) as reserved managements rights. Therefore, logic may dictate that if the labor relations program intends to continue to prohibit bargaining in Section 12(b) areas, these Section 11(b) items should also be foreclosed from negotiations (probably by redrafting Section 12(b) to incorporate these Section 11(b) topics). In practice, agency managers have not bargained on such matters, and regard these particular Section 11(b) subjects as inappropriate for negotiations. Thus, the shifting of these topics to Section 12(b) would conform the definition of the scope of negotiations in the program to the current practice, and would clarify the enumeration of "discretionary" and "prohibited" topics in a more realistic fashion.

Labor organizations, on the other hand, oppose this shift of subjects from Section 11(b) to Section 12(b). They argue that agency management is in the best position to determine whether to exercise its Section 11(b) discretion on certain matters, and that the scope of bargaining under the Federal labor relations program should not be further narrowed.

Option 2. Maintain the subjects enumerated in Sections 11(b) and 12(b) on reserved management rights.

This option is favored by agency management on the basis that the enumeration of rights is necessary to avoid the possibility that the rights may be bargained away through inadvertence or design, e.g., in furtherance of short-run labor relations advantages. Where economic issues are not bargainable, experience is that labor organizations make large inroads into management rights. The consequences of this happening, with its attendant effect on the operation of the Government, are much more critical in the Federal sector than in the private sector.

Many labor organizations, on the other hand, tend to believe that what rights management needs to accomplish its work are best determined in the first instance by management at the level of bargaining and then tested through the process of collective bargaining and contract administration. Centrally-prescribed and uniformly administered management rights may bear little relation to the needs of management at the bargaining level, but they may preclude bargaining on many of the issues not already preempted by law and regulations.

Option 3. Reduce the subjects enumerated in Sections 11(b) and/or 12(b).

Provisions most often suggested for elimination are, from 11(b), "the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty" and "the technology of performing the agency's work," and, from 12(b), the right to "direct employees", "suspend, demote, discharge", and "determine the methods, means and personnel by which... operations are to be conducted." These reductions would be favored by unions and would, in their view, make bargainable matters which are more closely associated with employee working conditions than with management's essential operating needs. They point out that these reductions would only make these matters bargainable and that management would not have to agree and could test its arguments for not agreeing through impasse procedures.

Agency management, on the other hand, opposes this reduction on the basis that these rights are necessary to management's ability to determine how operations are to be conducted and which personnel will perform work. It is also argued that making these matters bargainable would inevitably lead to their erosion because agency management does not have the economic "trade-offs" available to private sector bargainners to shield them from attack. The existing bargainability of implementation and impact issues gives the unions adequate scope to protect real employee interests.

Option 4. Eliminate Sections 11(b) and 12(b).

Some labor organizations would favor this option because it would increase the scope of bargaining to include all matters except those covered by law and regulation. Also, it would treat management rights in a manner consistent with their treatment in the private sector and in some public sector jurisdictions. That is, management rights would be subjected to the "give and take" of bargaining where the need for them would have to be demonstrated and balanced against their interference with represented employee interests.

Agency management opposes this elimination on the grounds that the narrow scope of bargaining deprives management of the requisite weapons--economic trade-offs--to defend against an attack by labor organizations on management rights. So long as the scope remains narrow, it is contended, prescribed management rights are necessary to avoid the serious incursions which have occurred in some public sector jurisdictions. An incursion into management rights in the Federal sector could have disastrous effect on the functions of the government, according to this view. Also, without some definition of management rights, each negotiation could find this subject to be one for extended bargaining and ultimately impasse resolution. Many negotiability questions would have to be approached anew due to the absence of the guidelines furnished by the prescription of management rights. These developments could produce uncertainties which could aggravate or de-stabilize relations for a considerable period.

III. Productivity, Quality of Working Life, and Labor-Management Relations

Public employee unions and labor-management relations are key factors to be considered in most government efforts to improve productivity and quality of working life--particularly in employee-centered programs.

The present labor-management program in the Federal government has no inherent problems with respect to such bilateral efforts. In fact, many constructive efforts have been carried out by management and union collaboration to improve productivity and quality of working life in the Federal government. But it is important to note that the Federal program, like traditional collective bargaining generally, is neutral to, while consistent with, productivity improvement. The principal key is that it looks to management to manage.

To state that as a problem: MANAGEMENT MUST MANAGE. That can be done under the existing Executive Order and under many of the other options spelled out here. However, organizational structures discussed in Parts 1 and 2 of this Option Paper merit consideration to facilitate clear management leadership in collective bargaining.

With respect to Scope of Bargaining, two general issues exist related to productivity and quality of working life: (1) Use of bilateral committees to work for improvements, and (2) Productivity Bargaining. The first of these is an option in Federal labor-management relations.

A. Option: Bilateral Consultation Committees.

Collaboration of unions and management in bilateral consultation committees which meet on regular schedules with defined agendas on general and/or specific relationships may facilitate improvements in quality of working life, productivity, and general labor-management relationships as well.

Several Federal government agencies have formed such productivity improvement committees. These have focused on such programs as these:

1. Conservation of materials, manpower, and supplies.
2. Improvement of working methods and working practices likely to cause illness or injury.
3. Promotion of education and training.
4. Correction of conditions causing grievances and misunderstandings.
5. Improvement of relations with the public.
6. Strengthening of employee morale.

7. Reduction of absenteeism, tardiness, carelessness, and other practices that hamper efficiency.
8. Elimination of waste.
9. Improvement of quality of workmanship.
10. Elimination of improper use of sick leave.
11. Encouragement of well-qualified personnel to submit applications for promotion.

While the adversary character of collective bargaining may be suited to constructive bilateral confrontation and resolution of issues and problems in contract negotiations and in grievance handling, Federal experience is that collaborative bilateralism between periods of contract negotiations may enrich the process without detracting from other collective bargaining values.

But while success has been demonstrated, the practice is not widespread. It requires constructive attitudes on the part of both sides, and leadership by management which, under collective bargaining, is expected to manage. While this is not necessarily a matter of technical language on the scope of bargaining, it is a most fundamental problem.

B. Productivity Bargaining.

If by productivity bargaining, one means the sort of bilateral relationships just noted, then it has a large place in the Federal government. However, productivity bargaining has a technical definition, as follows:

Productivity bargaining generally refers to the negotiation and implementation of formal collective bargaining agreements which stipulate changes in restrictive work rules and/or out-of-date practices with the objective of achieving increased productivity and reciprocal worker gains.

Under that definition, productivity bargaining has little place in the Federal program. For one thing, economic issues are not generally bargained. For another, restrictive work rules which do exist are not commonly the result of collectively-bargained rules. They are the products of legislation, regulations, and patterns of management and practice. Under existing Federal management rights, the government has extensive authority to correct such matters without productivity bargaining.

In local governments where productivity bargaining has been possible and where it has been tried, the results have not been very promising of long-term successes. In fact, they have shown high potential for counter-productive, even dismal consequences, in the form of "buy-out" bargaining. Single-agreement buy-outs of outdated rules have been successful, but they have not been generally applicable because the restrictive rules have derived from other sources, such as statutes and management regulations. The general consequence of productivity bargaining efforts has been to turn away public employee unions from their traditional willingness to go along with reasonable management initiatives for improvement. Instead, under pressures from management to engage in productivity bargaining, they have become calculating and have insisted that management may make no changes in organization, work processes, or rules without paying for them through buy-out bargaining.

While such productivity bargaining is impossible under the present Executive Order, this experience underlines one problem which is common to government in this area, as in others:

There is a temptation in government to transfer currently popular fads in management from quite different situations to government problems where they may have no place except to complicate matters.

But while productivity bargaining, as technically defined, is generally inappropriate to the Federal government, other bilateral efforts noted above are suited to help to improve productivity and quality of working life in the public service. Ideally, that is a major component of what scope of bargaining is all about.

PART 4

IMPASSE RESOLUTION

In the Federal service, where strikes are prohibited by law, special machinery has been developed for the orderly resolution of interest disputes or negotiation impasses at existing levels of exclusive recognition. There is no procedure with finality, short of Congressional action, for resolving disputes over basic pay or benefits (although the neutral chairperson on the central union-management committee in the blue-collar pay system may break a tie vote between the parties on what action to recommend to the CSC).

In the private sector, management has the right to lock out, and unions may strike to force a resolution of their differences and bring about an agreement. In the public sector at the state and local levels, a wide variety of impasse procedures and machinery has been instituted, including, in some instances, a limited right to strike.

In the face of a continued prohibition of strikes in the Federal government, most observers believe that it is essential for orderly relations that some fair and equitable alternative procedures be used to bring finality to the negotiation process. The discussion that follows describes current E. O. procedures, some mechanisms for resolving impasses in government-wide dealings and agency-level negotiations, and some aspects of the strike issue.

I. Organization for Impasse ResolutionA. Current Procedures Under E. O. 11491

There appears to be some general satisfaction with the operation of the E.O. machinery to resolve negotiation disputes (except for the resolution of negotiability questions discussed in Part 1 of this paper). Section 16 of the Order provides that the FMCS shall provide mediation assistance to Federal agencies and labor organizations in the resolution of negotiation impasses. Section 17 provides that when voluntary arrangements, including FMCS intervention, fail, either party can request the Federal Service Impasses Panel (FSIP) to consider the matter. The FSIP is a seven-member, part-time panel of respected persons from outside the government (most of whom are arbitrators). The Panel, in its discretion, may recommend procedures to the parties for the resolution of the impasse or may settle the impasse by appropriate action. The authority granted to the Panel constitutes, in effect, an "arsenal of weapons" approach to the resolution of negotiation impasses. (Major Federal labor relations legislative proposals have contained provision for an Impasses Panel with similar powers.) There has not been undue reliance by the parties on the services of FMCS and the Panel. Thirty percent of an estimated 800 negotiations in FY 1977 required the assistance of FMCS or the Panel to reach agreement. About one percent of these negotiations required postfactfinding recommendations by the Panel. In one half of one percent of these negotiations (four cases), the Panel was required to impose a settlement through a Decision and Order.

B. Options for Central Government-wide Level Impasses

1. Current procedures
 2. Expansion of current procedures
 3. Tripartite or neutral advisory arbitration panel
 4. Binding arbitration
- Related Issue: Aspects of Congressional control

Option 1. Current procedures

If the scope of bargaining is not expanded, the current mechanisms for consultation on nationwide issues (e.g., pay) may be appropriate. As other portions of this paper note, however, the white-collar pay system has come in for some criticism, although the President has taken steps to deal with this problem in E. O. 12004.

Option 2. Expansion of current procedures

An incremental step, as noted elsewhere in this paper, would be to modify the pay procedure for some or all white collar employees to an equivalence with blue collar modes and to create similar consultation processes for health and other benefits. The impasse mechanism would be the tie-breaking vote of the neutral chairperson.

Option 3. Advisory arbitration

An incremental change in the current consultative mechanisms might be to establish an independent panel, either neutral or tripartite, to issue advisory decisions on pay (and possibly benefit) changes if the management and union representatives at the government-wide level are unable to reach agreement. A final decision on the packages proposed would be made by Congress, as noted below. This type of mechanism is provided for in H.R. 9094.

Option 4. Binding arbitration

Although this option may be feasible for agency-level impasses (see below), it is not viewed as practicable at this time for resolution of major government-wide economic disputes, because it is doubtful that Congress would delegate full bargaining authority to the Executive Branch over such matters, or authorize an outsider to issue binding determinations in this area.

Related issue: Aspects of Congressional control

Even if the scope of bargaining were to be expanded to include economic items, Congress would doubtless want to retain some control over the outcome. (While full autonomy over most dollar issues was granted to the Postal Service by the Postal Reorganization Act, the Postal Service was intended to become self-supporting. This would not be the case with other Executive agencies. Moreover, some Congressional dissatisfaction with the Postal Service system has been indicated by introduction of bills which would amend the Act to require the Postal Service to come to Congress for its funds once again.)

Some options in the area of Congressional control that might be considered include:

- (a) Make bargaining between unions and management a matter of developing recommendations to Congress. Congress would then have to act--approve, reject or revise the settlement.
- (b) Provide for total delegation to the Executive within guidelines set by Congress. Congressional action would be needed to approve settlements beyond the guidelines.
- (c) Grant the Executive authority to commit on all issues, subject to veto of the settlement as a whole by Congress within a specified number of days. Action by Congress would be limited to disapproval; it could not sweeten the package.
- (d) Provide for advisory arbitration recommendations to go into effect unless both Houses vote to accept the President's alternate plan.

It may be of interest to note that New York State melds the impasse resolution and legislative control issues by providing that

negotiation disputes not settled in factfinding are referred to the legislature or to a committee thereof for hearing and a final decision by the legislative body.

C. Options for Agency-level Impasse Resolution

Commentators have identified several factors which are important to the development of an effective impasse procedure. For example, impasse procedures should not be too accessible. Those that have been mutually designed, administered, and shaped to the particular problem at hand work best. Because impasse procedures are an extension of the bargaining process, the procedures should be simple and reflect the pressures and inducements of that process to reach agreement. The following impasse steps are listed as options in line with the format of the paper, but they are not mutually exclusive, and a combination of them may be selected.

1. Mediation and "med-arb"
2. Factfinding with recommendations
3. Compulsory binding arbitration

Option 1. Mediation

Mediation, which involves the informal involvement of a third party to assist the parties in reaching a voluntary settlement, provides the least amount of third-party disruption to the collective bargaining process. It is widely used in the private sector and in State and local government, and has been fairly successful in the Federal sector, although the following problem areas have arisen:

There is a lack of knowledge of the Federal sector labor relations system on the part of many mediators--particularly of the wide array of legal constraints on the scope of bargaining. Moreover, the parties do not know how to use mediation properly--they sometimes view mediation as a coercive rather than as a voluntary process. Some parties "go through the motions" with the mediator because they know FMCS cannot impose a settlement on them or definitively influence a settlement imposed by the FSIP. This "going through the motions" process can have an inhibiting effect on the performance of the mediator.

Further, the Federal sector has few incentives to the parties to reach an agreement--in particular, there are no strike deadlines, with default costs, as exist in the private sector. Deadlines are a definite asset to the mediator. Since it is part of the mediator's job to get the parties to shift their rock-bottom positions and thereby narrow their differences, this job is made easier when factors beyond the parties' control penalize the parties for procrastinating or adopting unrealistic and rigid and uncompromising positions.

To meet the need for Federal sector expertise, FMCS plans to provide special training in the Federal bargaining system to a cadre of mediators.

Other questions that might be addressed for the longer-term future of the program include whether the mediator should become involved in arbitration, whether both such functions should be housed in the same or separate agencies, and whether some form of artificial deadline should be imposed to put pressure on the parties.

Option 2. Factfinding

At least 25 States provide for factfinding with recommendations as a step beyond mediation. The factfinder supplies basic facts pertaining to the dispute in order to assist the parties and help to identify and clarify the issues and makes recommendations to resolve them.

In some jurisdictions, factfinding is a flexible process in which the neutral can combine the role of mediator and factfinder and opt either to adjust or to adjudicate the dispute. In some states up to

80 percent of all cases going to factfinding are resolved at this step. The factfinders' recommendations are made public but there is no evidence that this is a significant factor in producing settlements.

While factfinding has in many instances proved to be a useful technique, standing alone it does have drawbacks. Its ready availability may lead to overuse. Furthermore, factfinding may degenerate into no more than a formality. Without some form of finality, factfinding in difficult cases may be only a waste of time.

Option 3. Compulsory binding arbitration

A third type of procedure, contained in both the Postal Reorganization Act and some state laws, is compulsory arbitration, which follows mediation, and sometimes factfinding, if these techniques are unsuccessful in resolving the dispute. About 20 states provide for compulsory arbitration and 7 provide for voluntary arbitration.

There are several variations of binding arbitration, including "traditional" arbitration, final-offer arbitration (entire package), and final-offer arbitration (issue by issue). Under "traditional" arbitration, each of the parties presents its case before the arbitrator(s) or arbitration board. The arbitrator then makes a final and binding decision.

The two final-offer arbitration methods are similar in principle. Both are designed to get the parties as close together as possible so that the arbitration award resembles as nearly as possible the results of a negotiated settlement. In the first version (entire package), the arbitrator (or arbitration board) is asked to choose either management's or labor's final package offer. The choice is then final and binding on the parties. Under issue-by-issue final-offer arbitration, the arbitrator selects from management's and labor's final offers on each issue separately. Thus the final award could constitute the labor package or the management package or some combination of the two. The rationale for final-offer selection is that since the arbitrator is not permitted to compromise the parties' demands, the procedure increases pressure on the parties to reduce the gap between their positions and to settle their disputes through direct negotiations.

Historically, there has been resistance by both labor and management to the use of compulsory arbitration in interest disputes. It has been viewed as an unconstitutional delegation of executive and legislative powers to outsiders to fix terms and conditions of employment and budget and tax rates. It has also been argued that the parties will rely on arbitration exclusively, thereby jeopardizing the give-and-take of collective bargaining, or that, because of the propensity of arbitrators to "split-the-difference," the parties will freeze in their initial positions, forestalling meaningful bargaining. Another fear is that, should one or both parties reject the arbitrator's award, it may be difficult to enforce compliance.

These criticisms of arbitration have not been borne out in fact. Court decisions in at least seven states have upheld the constitutionality of compulsory arbitration statutes. Studies have indicated that the use of interest arbitration has not had a chilling effect on the bargaining process. Further, noncompliance with arbitration awards has been rare, except in those jurisdictions where labor organizations did not seek enactment of the arbitration statute. (Minnesota has a novel method of compelling public employer acceptance of an award: The law permits non-essential employees to strike if the employer refuses to comply with an award or refuses to invoke arbitration at the union's request.)

From a labor relations point of view, however, the most telling criticism of compulsory arbitration is that the award does not necessarily reflect a settlement that both parties can live with. (This is also true of the final-offer procedures, particularly if the arbitrator must choose between two whole packages, or if non-economic issues are involved.) On the other hand, this drawback must be weighed against the need to maintain essential services. Moreover, to the extent that the parties may fear the results of arbitration, they may be encouraged to settle on their own.

Related Issues

A related issue of concern is the public's interest in Federal bargaining and impasse procedures. Questions involved in this area include whether and at what point factfinders' recommendations should be made public, and what special mechanisms might be provided for the expression of the public interest. In a few jurisdictions, for example, bargaining processes have been subject to public scrutiny under so-called "sunshine" laws. California has made provision for public comment on the initial bargaining proposals of both parties in school negotiations. The effect of such provisions is yet to be weighed. While they give an opportunity for a broad range of public comment, it is not clear that interest is sustained over the course of negotiations or that the interests who are vocal in fact represent the "public interest." Moreover, negotiations could tend to be rigidified or prolonged if parties should indulge in grandstanding.

How to express the public interest in the resolution of interest disputes also warrants examination. The nature of factfinding and arbitration procedures, wherein parties present evidence and state their positions, is readily adaptable to the inclusion of other parties. (The public could be limited to written submissions without actual attendance.) A major problem here is how to determine who is entitled to participate as a representative of the public interest. Some jurisdictions have, through statutory provisions, required factfinders and arbitrators to consider factors such as the public interest and welfare along with other criteria in making their recommendations or awards. How much weight such factors are actually given in their determinations is difficult to determine.

Another related issue in the area of impasse procedures is whether the steps should be prescribed in the statute or other charter or whether the administering authority should have discretion, as FSIP now has under the E. O., to select from among a range of procedures appropriate to the particular situation. It has been argued that, for individual cases, the authority should be able to resort to a choice of procedures such as mediation, factfinding, arbitration, cooling-off periods, and injunctions, to be applied at its discretion, and that the application of impasse resolution devices should be sufficiently uncertain and flexible as to create doubt in the minds of the negotiators as to what the third party agency will do. (As mentioned above, the FSIP's operations, with a similar mix of available procedures and with seasoned administration, has been notably successful in resolving disputes and has won widespread approval. Its continuation, possibly with slight changes, should be considered as one important option.)

II. Federal Government Strikes, Picketing, and Other Job Actions

A. Strikes

1. Background

Strikes in the Federal government have been barred since at least 1912, when the Lloyd-LaFollette Act, relating to postal workers, was passed. Subsequent provisions of law and Executive Order have made strikes both a crime and an unfair labor practice. As in the states that prohibit strikes, these Federal prohibitions have not been totally effective in preventing the occurrence of strikes.

In a recent private sector development involving essential services, the NLRA was amended in 1974 to cover private non-profit hospitals, with only mediation and a 10-day notice as conditions on the right to strike in health care institutions. In the non-Federal public sector, at least seven states have adopted laws that permit strikes. The states whose laws specifically permit strikes regulate them in several different ways. Public employee strikes are enjoined in several states when they endanger the public health or safety, and sometimes welfare, while in other states, public employee strikes are regulated by type of work.

Canada's Federal employees have had the statutory right to strike since 1967. The Canadian Public Service Staff Relations Act provides two options for resolving negotiation impasses. Before negotiations between labor and management commence, the union must elect either to

proceed to final and binding arbitration should an impasse be reached, or to go to conciliation, (i.e., mediation) with the ultimate right to strike if conciliation does not produce agreement. So-called "designated" employees whose duties are necessary to be performed in the interest of the safety or security of the public, may not strike. When the Canadian law was enacted, most bargaining units opted for arbitration, but there has been a trend toward selection of the conciliation-strike option, in part because of the delays involved in arbitration and its scope, which is narrower than the scope of bargaining.

2. Discussion

Among the arguments long raised against public sector strikes are that the state is sovereign and cannot tolerate strikes against itself; that public services are essential and interruption by a strike might endanger the public welfare; that governmental services are a monopoly and no effective substitute is available; and that public employees should not have the power to shift the allocation of public resources through exercise of an economic weapon, since such decisions should be made through regular political and representative processes. The recent interest of some private sector parties in devising alternatives to the strike might also be cited.

Among the arguments raised on the other side are that punitive laws against public sector strikes are ineffective, since strikes occur; that the right to strike is essential to equalize collective bargaining power between management and labor; that many government services could be interrupted without serious harm; that many services are performed by government in one jurisdiction and by private sector employees in another, yet only the private employees' right to strike is recognized; and that some governments permit public employee strikes without disastrous consequences.

There is no apparent groundswell of support by the parties for a change in the current statutory prohibition on strikes.

B. Picketing and other job actions

1. Informational picketing

Section 19(b) (4) of the Order prohibits a labor organization from picketing an agency in a labor-management dispute. While the prohibition is broad and unqualified, a recent District Court decision in National Treasury Employees Union v. Paul J. Fasser, Jr., et al., Civ. Action No. 76-408; 428 F. Supp. 295, held that application of this blanket ban to the "precise fact situation presented" violated the First Amendment of the Constitution. The Court found that the E. O. can prohibit picketing that actually interferes with or may reasonably be perceived to threaten to interfere with operation of the affected government agency.

A narrower provision could be drafted that would ban such disruptive picketing, in line with the Court's decision. It would be possible to use additional standards as well, such as a ban on picketing designed to create an impermissible work stoppage or to aid in achieving an illegal objective. Such specific restrictions would render unnecessary a broad ban on all picketing. The scope of the applicable language could prevent picketing by Federal employees in conjunction with unlawful strikes but allow non-disruptive informational picketing. This would accomplish the Government's interest in promoting the efficiency of the Federal service without infringing upon Federal employees' First Amendment right of freedom of expression.

2. Job Actions Adverse to Productivity or Performance of the Agency's Mission

Section 19(b) (3) of the Order bars a labor organization from coercing or imposing sanctions against a member as punishment or reprisal for, or for the purpose of hindering or impeding, his work performance, productivity, or the discharge of his duties as an officer or employee of the United States. Such prohibitions do not appear in private-sector law or in most state laws, although it is possible that such provisions may be included in negotiated agreements.

Section 19(b) (4) bars not only picketing as mentioned above, but also strikes, work stoppages, and slowdowns. Such tactics as "work-to-rule" would probably fall within the scope of this prohibition.

TOTAL EMPLOYEES IN EXCLUSIVE UNITS AND COVERED BY AGREEMENT

1963 - 1976

EMPLOYEES IN EXCLUSIVE UNITS							Employees Covered By Agreement	
YEAR ¹	Total Employees		Wage System Employees		General Schedule		NUMBER	PERCENT
	TOTAL	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT		
1963	180,000							
1964	230,543	12					110,573	6
1965	319,724	16					241,850	12
1966	434,890 ²	21	226,150	40	179,293	15	291,532	14
1967	629,915	29	338,660	54	291,255	21	423,052	20
1968	797,511	40	400,669	67	396,842	28	556,962	28
1969	842,823	42	426,111	72	416,712	29	559,415	28
1970	916,381	48	429,136	81	487,245	35	601,505	31
1971	1,038,288	53	437,586	84	600,702	42	707,067	36
1972	1,082,587	55	427,089	83	655,498	46	753,247	39
1973	1,086,361	56	404,955	84	681,406	47	837,410	43
1974	1,142,419	57	406,000	82	736,419	48	984,553	49
1975	1,200,336	59	410,716	84	789,620	51	1,083,017	53
1976 ³	1,190,478	58	384,820	83	805,658	51	1,059,663	52

NOTE: ¹1963-1966 statistics are based on figures as of mid-year; 1967-1976 figures are as of November.

NOTE: ²Wage system and general schedule do not equal total due to the unavailability of information on the status of some employees.

NOTE: ³The Tennessee Valley Authority was excluded from coverage on January 30, 1976.

Employees Under Agreement by Selected Agencies

AGENCY	# OF AGREEMENTS ¹	EMPLOYEES UNDER AGREEMENT ¹	% ²	WAGE EMPLOYEES UNDER AGREEMENT ¹	% ²	PROF. EMPLOYEES UNDER AGREEMENT ¹	OTHER GS EMPLOYEES UNDER AGREEMENT ¹	% TOTAL GS EMPLOYEES UNDER AGREEMENT ²
Total-All Agencies ³	2,766	1,060,916	50%	360,547	73%	84,407	615,853	43%
USAF	218	154,090	62%	75,977	74%	1,577	76,536	54%
USA	492	174,169	49%	76,902	63%	6,272	90,995	41%
USN	477	168,547	54%	105,562	74%	3,706	59,279	37%
HEW	188	72,548	46%	4,176	62%	2,211	66,161	46%
Treasury	126	93,167	69%	4,611	89%	22,977	59,579	68%
VA	321	145,457	65%	36,048	87%	15,062	94,347	60%

¹Based on LAIRS (Labor Agreement Information Retrieval System) File as of April 1, 1977.

²Agency Employment figures based on Federal Civilian Workforce Statistics, Monthly Release - June 1977.

³There are 49 Federal agencies with negotiated labor agreements.

AUTHORITIES INVOLVED IN EXECUTIVE ORDER 11491

PROGRAM ADMINISTRATION

FEDERAL LABOR RELATIONS COUNCIL

ASSISTANT SECRETARY OF LABOR
FOR LABOR-MANAGEMENT RELATIONS

IMPASSE RESOLUTION

FEDERAL SERVICE IMPASSES PANEL

FEDERAL MEDIATION AND
CONCILIATION SERVICE

MANAGEMENT POLICY GUIDANCE

U.S. CIVIL SERVICE COMMISSION

OFFICE OF MANAGEMENT AND BUDGET

THE FEDERAL LABOR RELATIONS COUNCIL (FLRC)

FEDERAL LABOR RELATIONS
COUNCIL (FLRC)

COMPOSITION

- ① CHAIRMAN, U.S. CIVIL SERVICE COMMISSION CHAIRMAN
- ② SECRETARY OF LABOR
- ③ DIRECTOR OF OFFICE OF MANAGEMENT AND BUDGET

RESPONSIBILITIES

- ④ ADMINISTERS AND INTERPRETS ORDER
- ⑤ RESOLVES MAJOR POLICY ISSUES
- ⑥ DECIDES NEGOTIABILITY QUESTIONS ARISING DURING CONTRACT NEGOTIATIONS
- ⑦ PRESCRIBES REGULATIONS
- ⑧ CONSIDERS APPEALS FROM A/SLMR
- ⑨ CONSIDERS ARBITRATION AWARD EXCEPTIONS
- ⑩ REPORTS AND MAKES RECOMMENDATIONS TO THE PRESIDENT

**ASSISTANT SECRETARY OF LABOR
FOR LABOR MANAGEMENT RELATIONS (A/SLMR)**

**ASSISTANT SECRETARY OF LABOR
FOR LABOR MANAGEMENT RELATIONS**

RESPONSIBILITIES

- 1. PRESCRIBES NECESSARY REGULATIONS RELATING TO REPRESENTATION, CONSOLIDATION AND UNFAIR LABOR PRACTICE CASES
- 2. DECIDES APPROPRIATE BARGAINING UNIT
- 3. SUPERVISES SECRET BALLOT ELECTIONS
- 4. CONSIDERS UNFAIR LABOR PRACTICE COMPLAINTS AND ISSUES CEASE AND DESIST ORDERS
- 5. PRESCRIBES REGULATIONS CONCERNING CONDUCT OF LABOR ORGANIZATIONS HEARS AND DECIDES COMPLAINTS ON VIOLATIONS
- 6. DECIDES WHETHER GRIEVANCE DISPUTES ARE SUBJECT TO STATUTORY APPEAL PROCEDURES OR TO NEGOTIATED GRIEVANCE PROCEDURES AND MAY ALSO DETERMINE GRIEVABILITY OR ARBITRABILITY OF OTHER ISSUES
- 7. DECIDES NEGOTIABILITY ISSUES AS THEY ARISE IN AN UNFAIR LABOR PRACTICE ALLEGING A UNILATERAL ACT BY ONE OF THE PARTIES

OPERATIONS

- 8. ISSUES DECISIONS ON MATTERS WITHIN JURISDICTION
- 9. MAY CONDUCT INDEPENDENT INVESTIGATIONS OF UNFAIR LABOR PRACTICE CASES
- 10. FUNCTIONS THROUGH HEADQUARTERS AND FIELD OFFICE STAFFS
- 11. MAY REQUEST AND USE SERVICES AND ASSISTANCE OF OTHER AGENCIES

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)

FEDERAL MEDIATION
AND CONCILIATION SERVICE
(FMCS)

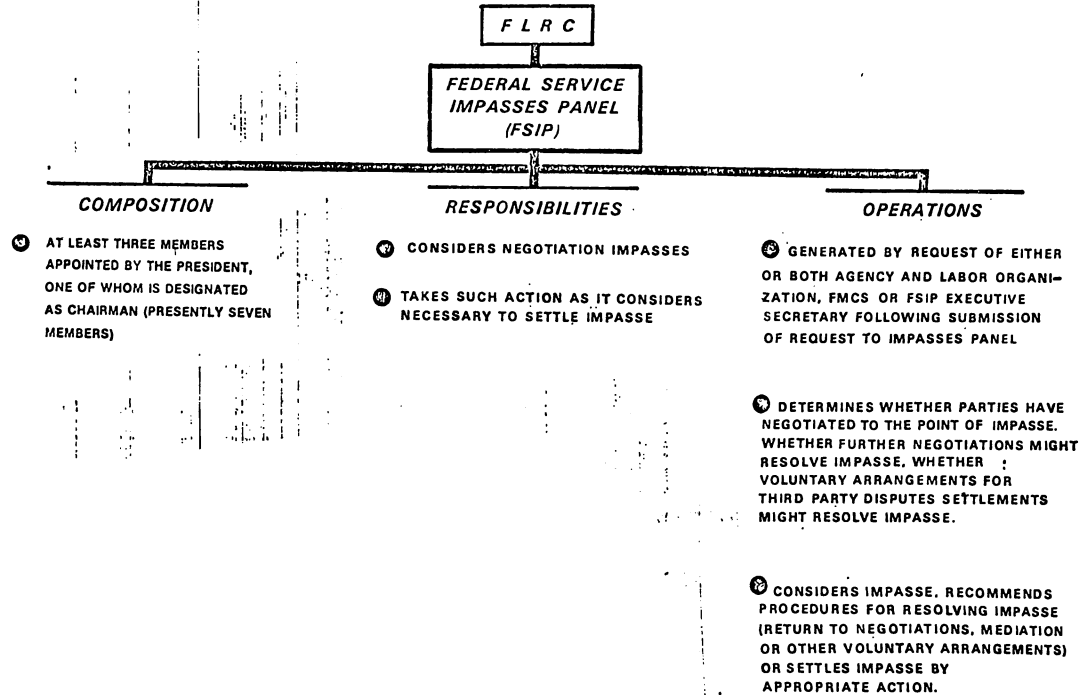
RESPONSIBILITIES

- ① PROVIDES MEDIATION SERVICES TO MANAGEMENT AND LABOR ORGANIZATIONS
- ② PROVIDES TECHNICAL ASSISTANCE TO MANAGEMENT AND LABOR ORGANIZATIONS TO PREVENT DISPUTES

OPERATIONS

- ③ FUNCTIONS THROUGH HEADQUARTERS AND FIELD OFFICES NATIONWIDE
- ④ MAINTAINS INDEPENDENT PANEL OF QUALIFIED ARBITRATORS
- ⑤ SEEKS TO HELP PARTIES REACH AGREEMENT THROUGH NEGOTIATION
- ⑥ IS INVOLVED AT REQUEST OF EITHER PARTY OR BY DIRECT PROFFER OF SERVICES, FOLLOWING SUBMISSION OF FORM 53

FEDERAL SERVICE IMPASSES PANEL (FSIP)



U.S. CIVIL SERVICE COMMISSION

U.S. CIVIL SERVICE COMMISSION

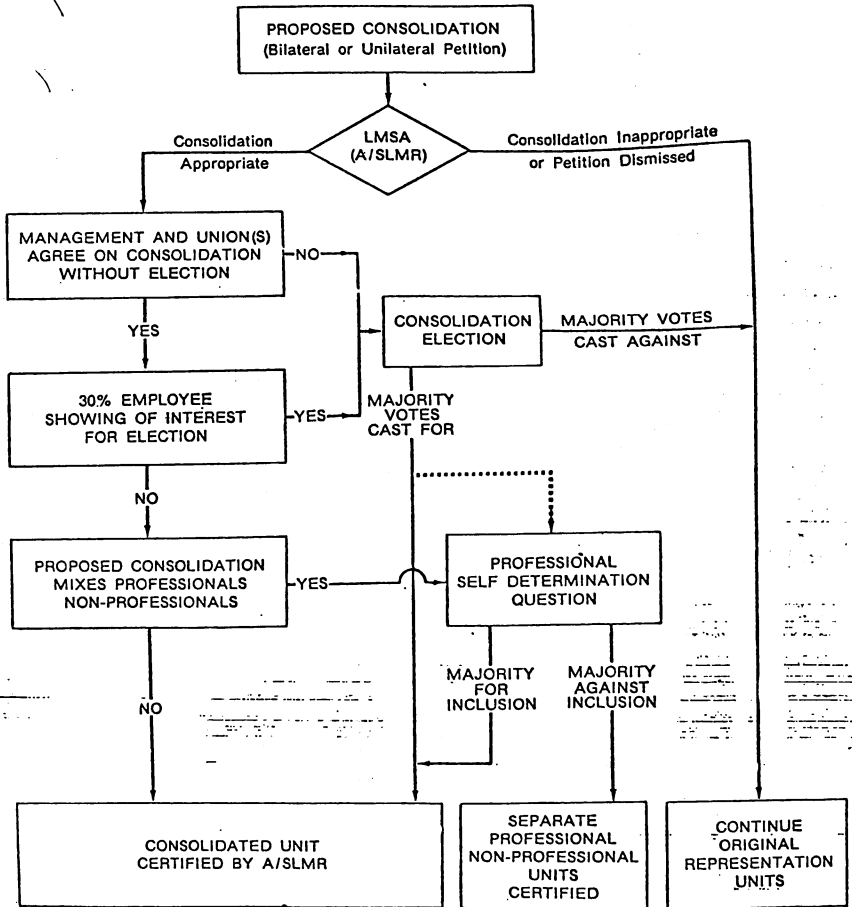
RESPONSIBILITIES

- ④ ASSURES COMPLIANCE WITH MERIT PRINCIPLES AND REVIEWS OPERATIONS OF THE PROGRAM
- ④ REPORTS TO FEDERAL LABOR RELATIONS COUNCIL ON PROGRAM AND MAKES RECOMMENDATIONS FOR IMPROVEMENT.
- ④ SERVES AS CONSULTANT TO FEDERAL DEPARTMENTS AND AGENCIES IN IMPLEMENTING ORDER AND ITS OBJECTIVES
- ④ VICE-CHAIRMAN ASSUMES ROLE AND DUTIES OF A/SLMR WHEN DEPT. OF LABOR IS A PARTY TO PROCEEDING
- ④ JOINTLY WITH DEPT. OF LABOR, COLLECTS AND DISSEMINATES INFORMATION APPROPRIATE TO NEEDS OF AGENCIES, LABOR ORGANIZATIONS, OTHER ORGANIZATIONS, AND PUBLIC
- ④ IN CONJUNCTION WITH OFFICE OF MANAGEMENT AND BUDGET, DEVELOPS POLICY GUIDANCE FOR AGENCIES

OPERATIONS

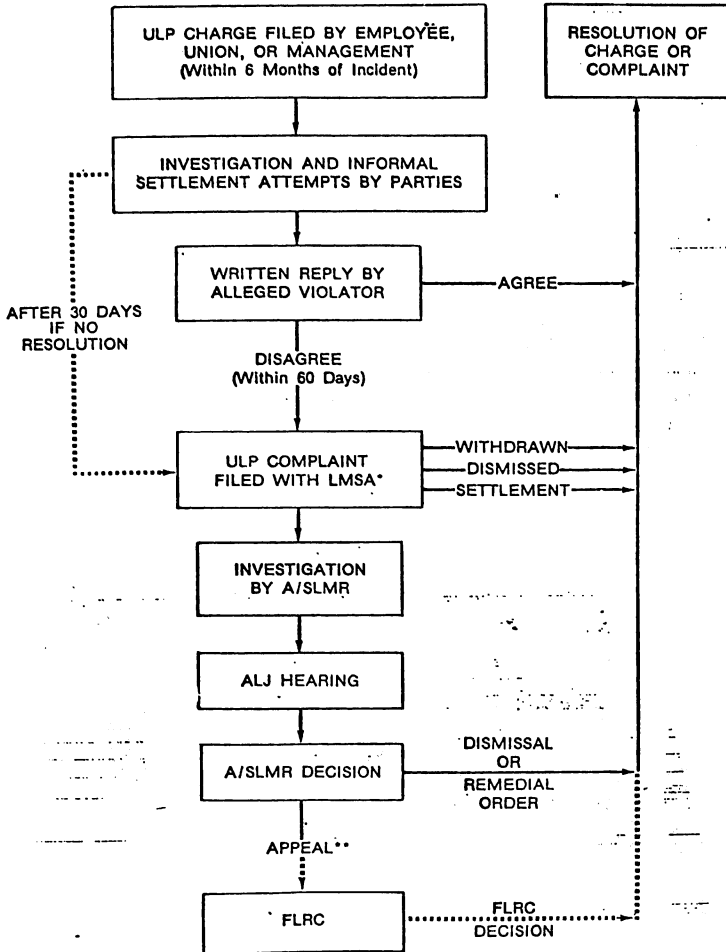
- ④ PROVIDES GUIDANCE THROUGH FEDERAL PERSONNEL MANUAL ON PERSONNEL MANAGEMENT
- ④ PROVIDES MANAGEMENT LABOR RELATIONS GUIDANCE AND ASSISTANCE
- ④ PROVIDES MANAGEMENT LABOR RELATIONS TRAINING
- ④ PROVIDES HOUSEKEEPING SUPPORT TO THE FEDERAL LABOR RELATIONS COUNCIL
- ④ PROVIDES GENERAL INFORMATION ABOUT OPERATION AND IMPLEMENTATION OF EO 11491 TO ALL INTERESTED PERSONS AND PARTIES

CONSOLIDATION OF BARGAINING UNITS



*Details of Petition and Procedures for Consolidation at the level of A/SLMR and LMSA are covered in *Rules and Regulations of the Assistant Secretary*, Sec. 202.1(f) and Sec. 202.2(h).

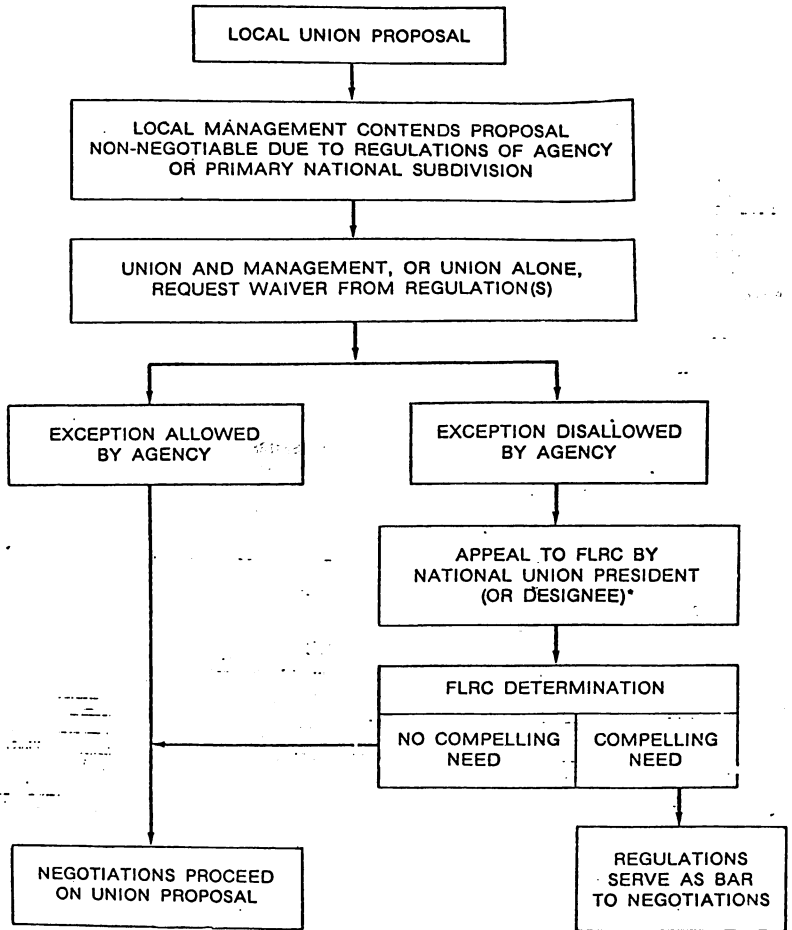
UNFAIR LABOR PRACTICE PROCESS



*All complaints must be filed within 9 months of alleged violation or within 60 days of final decision, whichever is shorter.

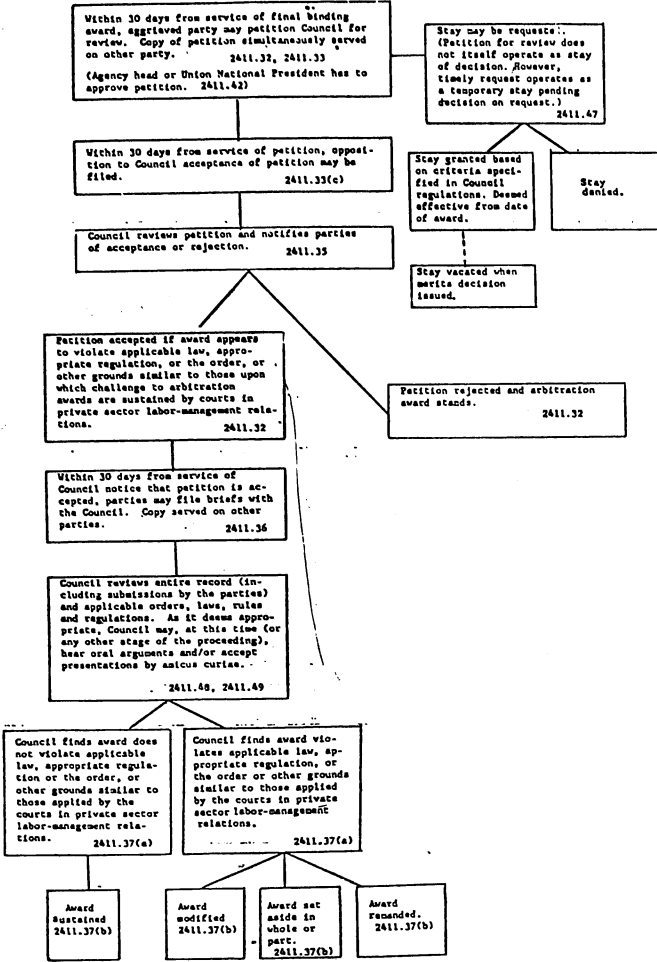
**Automatic right to appeal negotiability findings of A/SLMR. Other appeals accepted only where major policy issues are present or it appears A/SLMR decision was arbitrary or capricious.

PROCESS OF COMPELLING NEED DETERMINATION



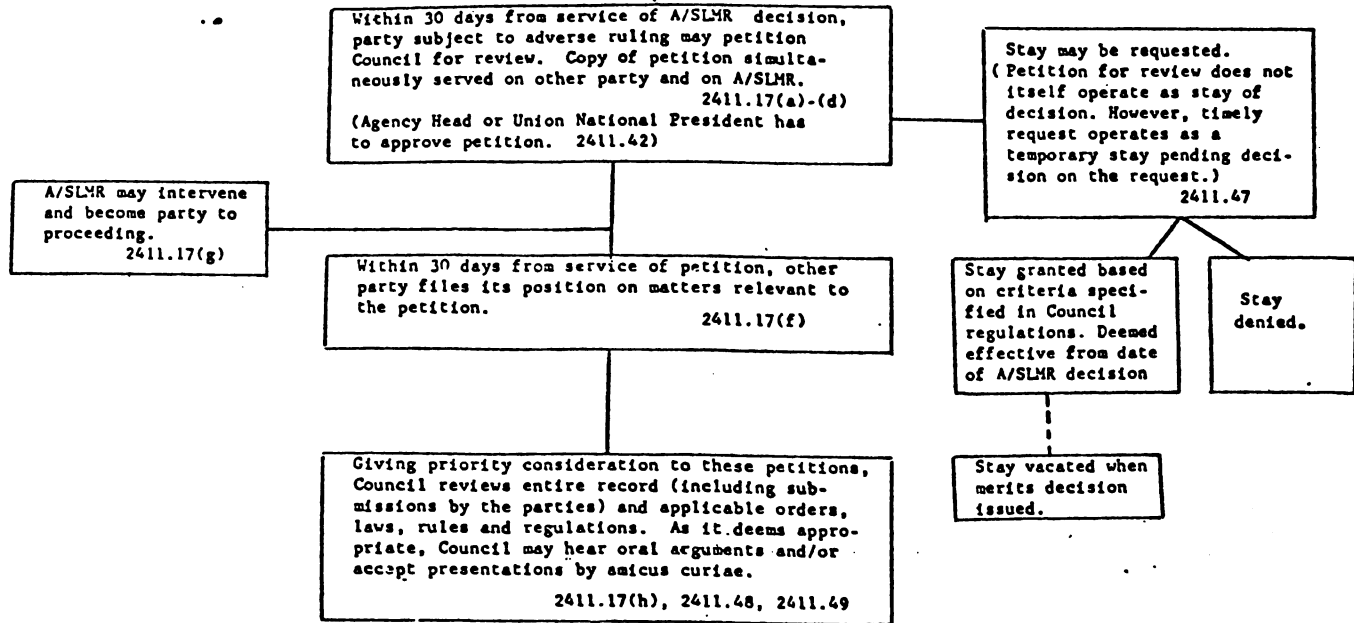
*Or the president of a labor organization not affiliated with a national organization (or his designee).

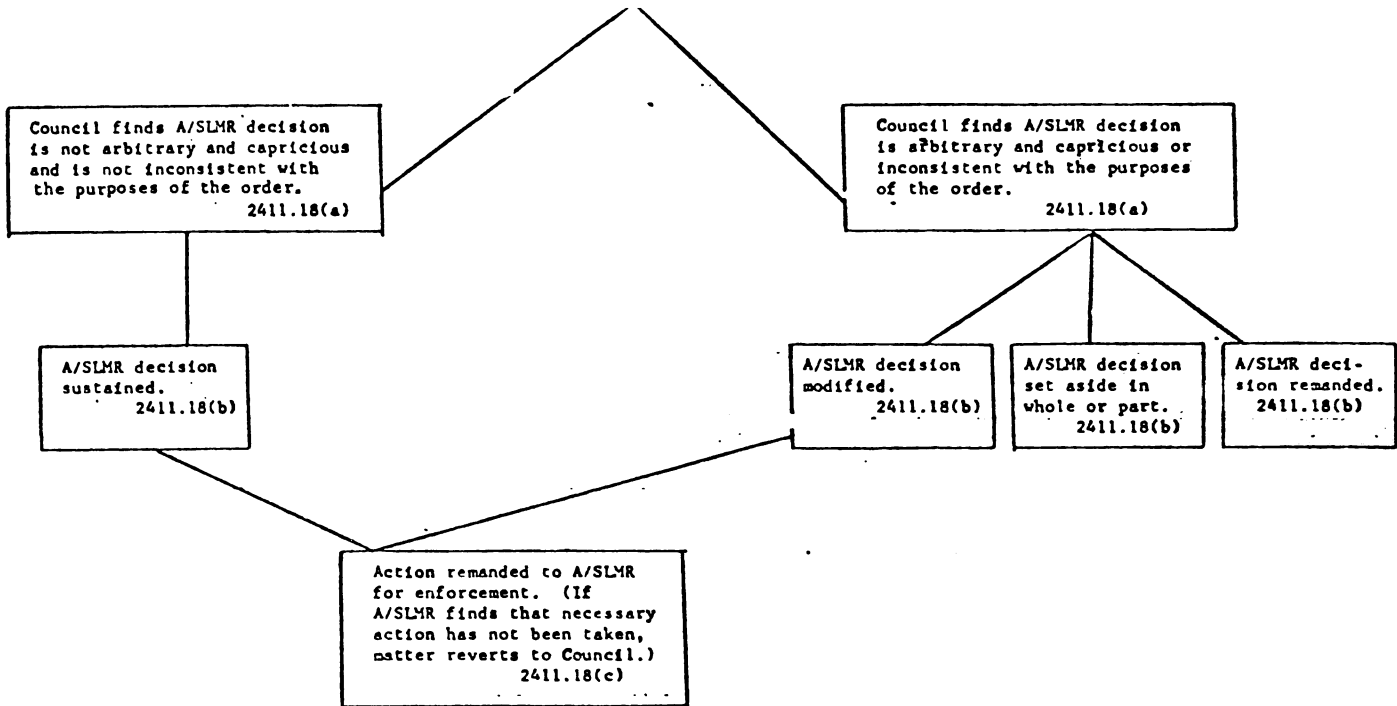
COUNCIL REVIEW OF ARBITRATION AWARD

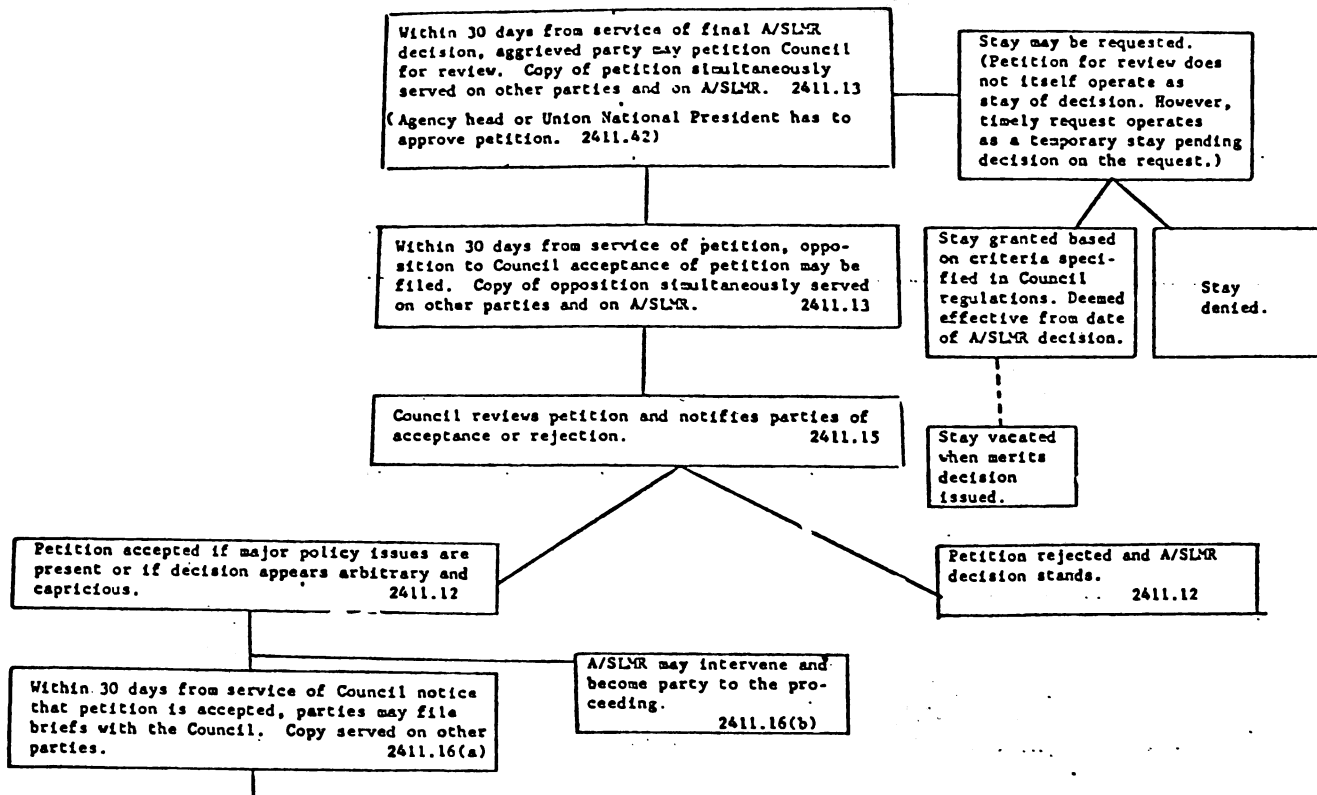


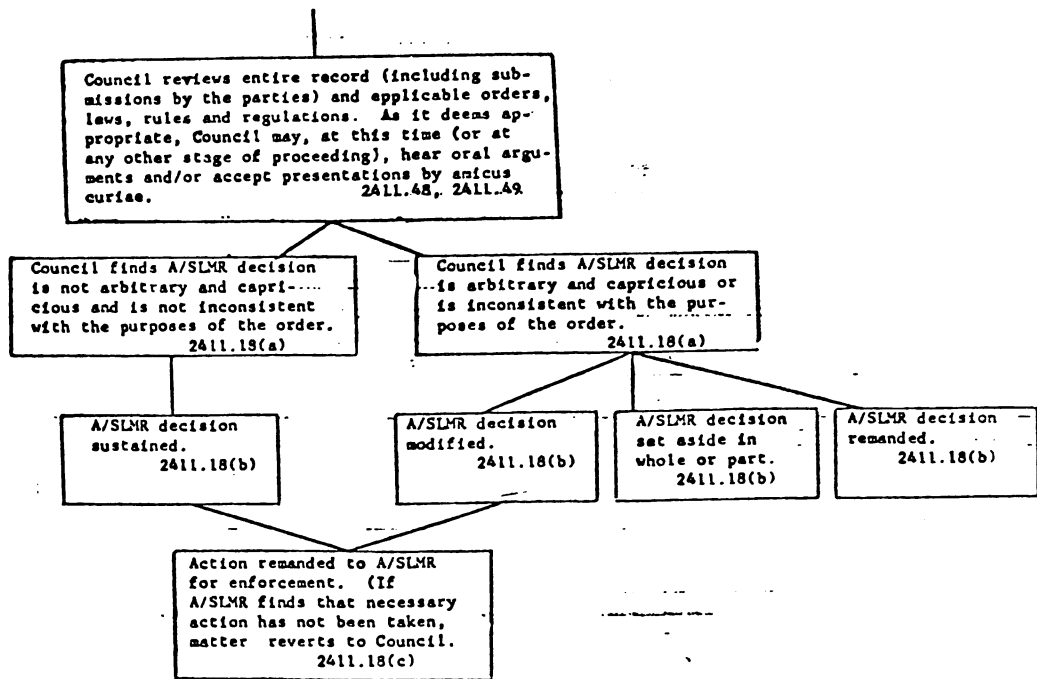
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CNS

COUNCIL REVIEW OF ASSISTANT SECRETARY DECISION
NEGOTIABILITY DETERMINATION INVOLVED

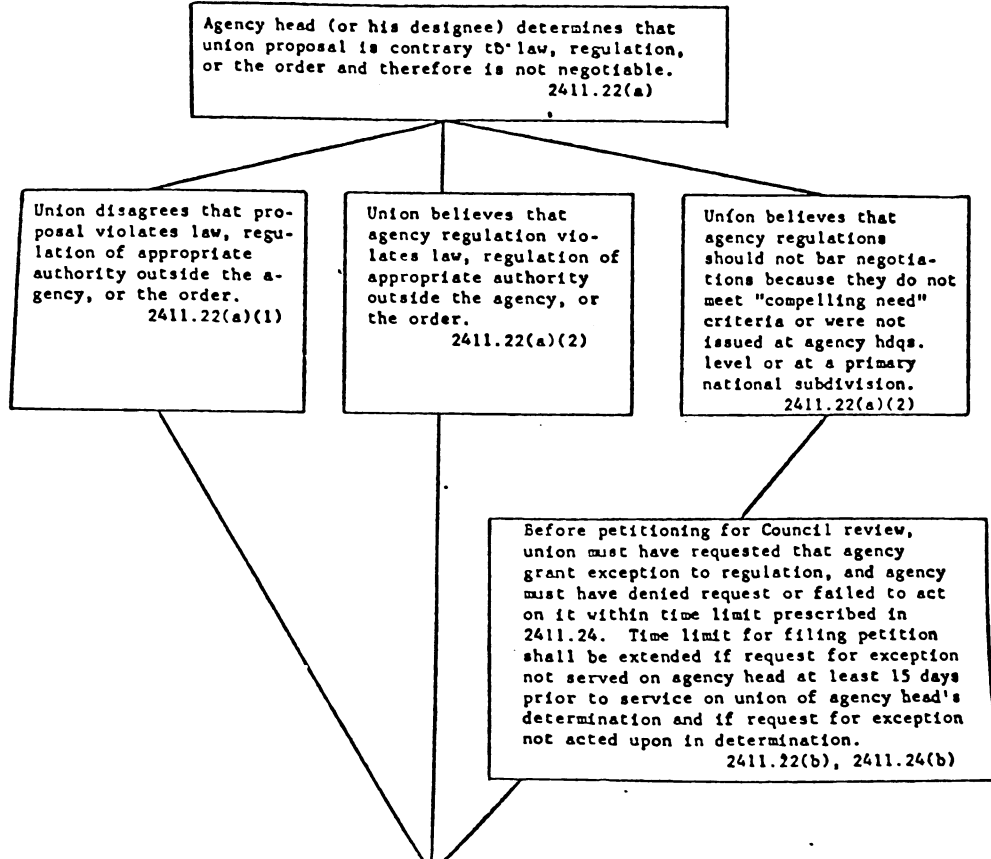








COUNCIL REVIEW OF NEGOTIABILITY ISSUES



At any time during its consideration of a negotiation impasse, Panel may refer negotiability issue to Council for priority consideration and decision.
2411.27

Within 30 days from service of agency head's decision of "nonnegotiable," unless time limit has been extended in case of request for exception, union may petition Council for review. Copy of petition simultaneously served on other party.
2411.23, 2411.24, 2411.25

Within 30 days from service of petition, agency shall file its statement of position on matters relevant to the petition which it wishes the Council to consider.
2411.26

Council reviews entire record (including submissions by the parties) and applicable orders, laws, rules and regulations. As it deems appropriate, Council may hear oral argument and/or accept presentations by amicus curiae.
2411.48, 2411.49

Agency head's determination sustained: Proposal non-negotiable.
2411.28

Agency head's determination set aside in whole or in part. Proposal is wholly or partially negotiable.
2411.28

Agency head's determination remanded.
2411.28

FEDERAL LABOR RELATIONS COUNCIL

	1972		1973		1974		1975		1976	
	Received	Closed	Received	Closed	Received	Closed	Received	Closed	Received	Closed
A/SLMR Cases	26	16	33	33	57	33	69	86	75	74
Negotiability Issues	19	10	22	38	20	9	18	27	36	12
Arbitration Awards	10	3	12	11	28	18	42	38	46	33
Total	55	29	67	82	105	60	129	151	157	119

A/SLMR Caseload Comparisons

Fiscal 1976 brought the biggest Federal-program caseload into the Assistant Secretary's operation since Executive Order 11491 brought him into the program six years ago.

At field offices of his Labor-Management Services Administration, a record 1,556 cases were opened, with 1,499 of them closed. "This indicates not only an increased amount of activity and interest in Federal labor-management relations but also a fine productivity effort on the part of those involved in dealing with the cases on a day-to-day basis," the Assistant Secretary reports.

Section 6(a) of the Executive Order provides that the Assistant Secretary shall:

- (1) Decide questions on what makes a unit appropriate for the purpose of exclusive recognition and related issues submitted for his consideration;
- (2) Supervise elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit and certify the results;
- (3) Decide questions as to the eligibility of labor organizations for national consultation rights;
- (4) Decide unfair-labor-practice complaints and alleged violations of the standards of conduct for labor organizations; and
- (5) Decide questions as to whether a grievance is subject to a

negotiated grievance procedure or subject to arbitration under an agreement and whether or not a grievance is on a matter for which a statutory appeal procedure exists.

Table 1 provides a statistical picture of A/SLMR's activities in issuing (i.e., published and numbered) Decisions, holding hearings and supervising elections.

During fiscal 1976, the Assistant Secretary issued 142 decisions (involving 291 cases) which were decided on the basis of records developed by Hearing Officers or on the basis of reports and recommendations by Administrative Law Judges. He also ruled on 194 requests for review of LMSA Regional Administrators' dismissal actions involving 218 cases.

From January 1, 1970, through June 30, 1976, LMSA opened 8,271 cases and closed 7,351 of them; held 860 formal hearings; and supervised 2,803 representation elections. During the same period, the Assistant Secretary issued 667 formal Decisions involving 1,045 cases and ruled on 731 requests for review involving 829 cases.

Most of the formal Decisions issued by the Assistant Secretary involved unfair-labor-practice complaints or representation petitions. Table 2 compares the level of formal Decision-making in these categories since fiscal 1971.

TABLE 1

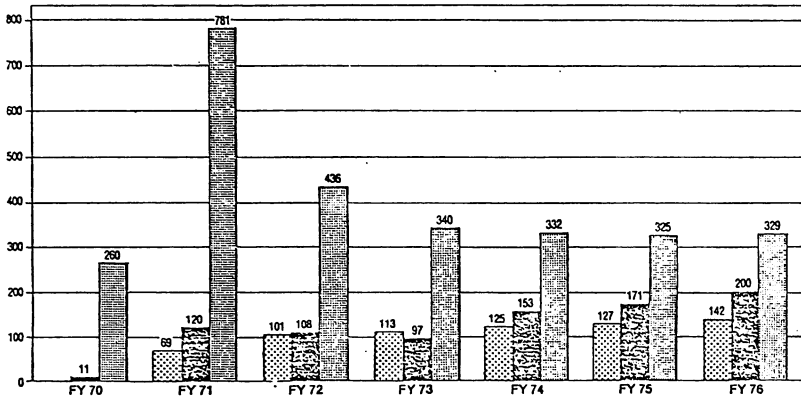
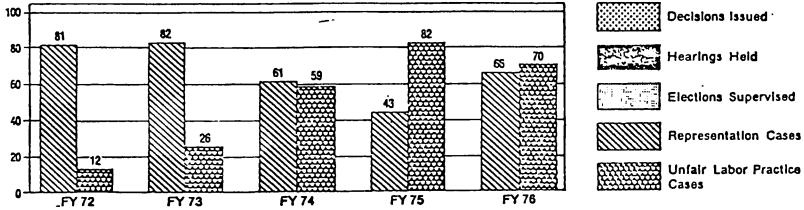
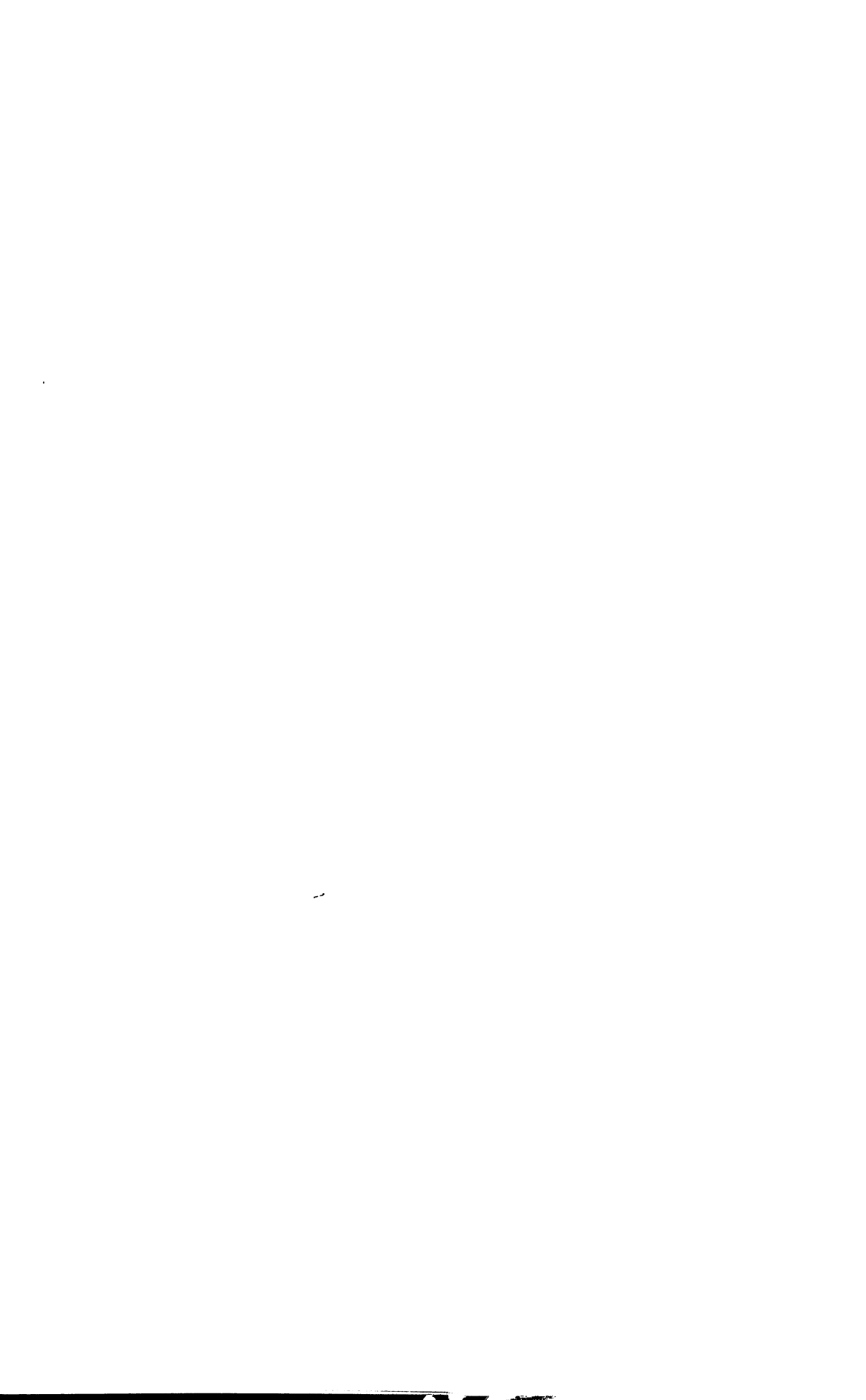


TABLE 2¹



¹In other actions during this five-year period, the Assistant Secretary has decided 17 cases involving objections and challenges to elections, five involving the standards of conduct for labor organizations, and three in the area of grievability-arbitrability.



TASK FORCE 6 REPORT

LABOR-MANAGEMENT RELATIONS

TASK FORCE 6: LABOR-MANAGEMENT RELATIONS

Manager

Newland, Chester A. University of Southern California

Senior Consultant

McCulloch, Frank University of Virginia

Senior Advisors

Burkhardt, Francis Labor
Gabusi, John Community Services Administration
Vaughn, Robert D. Veterans Administration

Staff Director

Dickinson, David S. Civil Service Commission

Members

Dailey, William F. Federal Labor Relations Council
Fibish, Nancy Federal Mediation & Conciliation Svce.
Foss, Stewart M. Defense
Goldsmith, Scott Civil Service Commission
Hense, Patti Ann Civil Service Commission
Reynolds, Joy K. Labor
Wilson, Donald L. Office of Management and Budget

FEDERAL GOVERNMENT LABOR-MANAGEMENT RELATIONS

The Federal service labor-management relations program has evolved under Executive Orders for 15 years. Fifty-eight percent of the work-force has been organized into exclusive bargaining units, and agreements have been negotiated covering 89 percent of those organized. The purpose of the program has been to promote worker morale and Government efficiency by giving employees a voice in personnel processes. The approach has been through a modified form of collective bargaining which does not include negotiations of pay and benefit issues.

Changes which may be considered in labor-management relations provisions for the Federal service need to be dealt with not in isolation but as one key aspect of the overall personnel system. In that regard, a major problem is that collective bargaining exists as just one of several disparate procedures which serve as the framework for Federal personnel administration.

The problems and options identified here assume that they will be considered as an integral part of an effort at comprehensive reorganization of the existing hodge-podge structure. Exceptions from the Federal labor-management relations program, such as the Foreign Service under E.O. 11636, and exclusions, such as security agencies, are not dealt with here.

I. CENTRAL ORGANIZATION FOR LABOR-MANAGEMENT RELATIONS - FEDERAL LABOR RELATIONS AUTHORITY

RECOMMENDATION:

An independent central organization, the Federal Labor Relations Authority (FLRA), should be designated to administer the Federal Government labor-management relations program. The Authority should carry out functions like those now performed by the Federal Labor Relations Council (FLRC) under Executive Order 11491, as amended. It should also assume responsibilities similar to those now performed by the Assistant Secretary of Labor for Labor-Management Relations (A/SLMR), whose functions under the E.O. (except for standards of conduct and grievability/arbitrability determinations) should be assigned to the Office of Labor Relations Commissioner (OLRC) which should be an integral administrative part of the Authority. An independent General Counsel should be appointed within OLRC to administer representation election provisions and to investigate and present unfair labor practice complaints. The Commissioner should exercise independent decisional authority without prior consultation with the members of the Authority. In addition, a Federal Service Impasses Panel (FSIP) should be continued, but as an organization clearly within the FLRA organization, to carry out the function now performed by FSIP under the Executive Order. (No change is recommended in the relevant organization of, or functions performed for the Federal service by, the Federal Mediation and Conciliation Service.) The Panel should also take its actions to settle negotiation impasses independently of the members of the Authority. Members of the FLRA, FSIP, and OLRC should not engage in activities which conflict or appear to conflict, with their official duties and responsibilities.

The composition and functions of the Federal Labor Relations Authority, the Office of Labor Relations Commissioner, and the Federal Service Impasses Panel are explained in detail below, and their organizational relationships are shown in the chart included in the main body of the PMP report.

A. FEDERAL LABOR RELATIONS AUTHORITY

1. Composition

The FLRA should be composed of a full-time Chairperson and two members (consideration could be given to part-time or a combination of full-time/part-time) who should not be otherwise employed by the Federal Government. This separation of Authority members from management functions will eliminate the much-criticized present appearance of and possibility of management orientation in the program's top adjudicatory body. The members should be chosen from among persons who are knowledgeable in Federal personnel administration and labor-management relations. The Chairperson and other members of the Authority should be appointed by the President and, if the reorganization is by legislation, they should serve staggered terms of five years and should be removable only for neglect of duty or malfeasance in office. Not more than two members of the Authority should be of the same political party.

2. Program Functions

The FLRA should administer and interpret the labor-management relations charter, decide major policy issues, review the operations of the program and recommend changes to the President.

and prescribe regulations to carry out its functions. The Authority should continue to issue interpretations of the basic program charter and statements on major policy issues which it deems to have general applicability to the effectuation of the overall labor-management relations program. The FLRA should also continue to issue information announcements and should provide technical assistance and information to agencies and labor organizations, including the publication of its decisions and other issuances and related indices, and should maintain files of labor agreements and arbitration awards interpreting these agreements, a function now performed by the Civil Service Commission (CSC). The Authority should continue the practice of periodic, general reviews and assessments of the operation of the labor-management relations program and recommend changes. In particular, the FLRA should initiate a review and assessment of the scope of bargaining within two years from the date of its establishment to give further consideration to impacts on bargaining of internal agency regulations and of central personnel and General Services Administration (GSA) regulations. At the same time, it should also review and assess the functioning of the unit determination process to determine whether changed criteria or procedures are needed. Several of these functions will need to be modified if legislation, in contrast to Executive Order, is chosen to implement these recommended changes.

3. Appellate Functions

The Authority should be empowered on specified grounds and upon request of an aggrieved party to review the decisions of the Office of Labor Relations Commissioner, the negotiability determinations of agency heads, the awards of arbitrators and the negotiation impasse actions of the Federal Service Impasses Panel.

a. Office of Labor Relations Commissioner Decisions

The FLRA should exercise its discretion in the granting of review of a Commissioner's decision on a basis similar to that of the FLRC in the review of a decision of the Assistant Secretary of Labor for Labor-Management Relations. That is, a petition for review should be granted only where major policy issues are present, or where it appears that the decision was arbitrary and capricious or where the Commissioner's findings of fact are not supported by substantial evidence on the record considered as a whole.

b. Negotiability Determinations

The Authority should continue to review as a matter of right the negotiability determination of an agency head, except that a 30-day time limit should be established for the agency head to act upon the request for a negotiability determination. Failure to act upon the request within this time period would entitle a labor organization to appeal to the Authority, without a prior determination of the agency head. In addition, the Authority should give negotiability issues the priority consideration which FLRC now accords to the referral of such issues from the Federal Service Impasses Panel. These changes should speed the resolution of negotiability issues and as a consequence should reduce the occasions for interruption in the bargaining process which may arise while they remain unresolved. If the FLRA finds that the presence of factual issues renders it difficult or impossible to rule on a negotiability issue, it should have the authority to appoint an administrative law judge to develop the necessary facts and to issue his findings and conclusions, and recommended decision and order.

c. Arbitration Awards

The Authority should continue to review the awards of arbitrators in grievances under negotiated contracts, including determinations of grievability/arbitrability, where it appears that the exceptions to the award present grounds of violation of applicable law, appropriate regulation, or labor-management relations charter or other grounds similar to those upon which challenges to arbitration awards are sustained by courts in private sector labor-management relations. Experience has demonstrated that FLRC's policy of calculated restraint in exercising this review authority has not adversely affected the arbitration process. Indeed, the Council's policy has fostered the process of making it clear that awards will not be reviewed except on the quite limited grounds described here.

d. Federal Service Impasses Panel Actions

The Authority should review the final negotiation impasse actions of the Federal Service Impasses Panel, but only where the action presents a major policy issue or where the action presents the same grounds for review as now apply to awards of arbitrators. This authority, heretofore implied in the nature of the relationship between the Panel and FLRC as the program's central authority, has not been exercised in the past, and it is not anticipated that it would often be necessary to exercise it in the future, except in the unlikely event that the limited grounds described here are present. This authority should not otherwise include power to review the substance or merits of any final settlement issued by the Panel.

e. Neutrality and Coordination

The composition and functions of the Authority, explained above, complete the transition of the past several years of the central administrative organization for labor-management relations to a "neutral" body composed of persons who are not otherwise employed by the Federal government.

It also integrates into one organization the dispute resolution machinery and should bring about better coordination among the several decision-makers, particularly at the field office level. An integrated neutral body will avoid the appearance of bias inherent in the existing third-party machinery and be responsive to labor organization complaints, justified or not, concerning a management orientation of the decisions reached by this machinery. However, the basic functions and responsibilities of the existing third-party machinery would remain unchanged and would be assumed by the integrated neutral body. This machinery is suited to the current needs of the program and should be preserved and strengthened as proposed. (The separate, strengthened central management leadership, suggested in part IV below, should maintain the proper balance in the operation of this more neutral structure.)

B. OFFICE OF LABOR RELATIONS COMMISSIONER

1. Structure

The Office of Labor Relations Commissioner (OLRC) should be created as a discrete entity within the Federal Labor Relations Authority to perform the representation and unfair labor practice functions now lodged in the A/SLMR. An independent General Counsel (GC) within OLRC should be appointed by either the President or the FLRA, to exercise authority over such matters as representation elections and the presentation of ULP cases. This integration of functions is designed to improve efficiency and effectiveness in administration.

The GC should supervise a small field structure similar to that of the present A/SLMR, and the OLCRC should have available the services of administrative law judges. The decisional and prosecutorial functions should be performed by separate staffs between OLCRC and GC, both organizationally within the FLRA, along the lines of the functional separation in the NLRB, to avoid conflicts of interest. As noted above, decisions of the OLCRC should be appealable to the FLRA, as those of the A/SLMR are now appealable to the FLRC. With an independent, neutral FLRA, it is anticipated that judicial review will not be required except, of course, on Constitutional matters. (If the labor-management program continues on an executive order basis, judicial review would not be generally available to employees or unions, in any event, except on Constitutional issues.)

2. Functions

a. Representation

With regard to representation, exclusive recognition should continue to be granted on the basis of a secret ballot election. Eligibility for national consultation rights should be decided by the OLCRC in accordance with criteria prescribed by the Authority.

In the Federal program, a labor organization must achieve exclusive recognition in an appropriate unit of employees before it is entitled to negotiate for those employees. Under E.O. 11491, exclusive recognition is won by secret ballot election supervised by the A/SLMR. Other methods for granting recognition are also employed in other labor relations systems. The election requirement of E.O. 11491 has been criticized as unduly restrictive, expensive and time-consuming. On balance, however, most observers think that the secret ballot provisions in the Order have worked well, and that considerations of cost and time that might be saved by adoption of other methods of determining recognition where there is a question concerning representation are not sufficient to justify a limitation on the employees' right to express by vote a choice concerning exclusive representation.

Present procedures for unit determination and conduct of elections are generally accepted and should be followed by the OLCRC at this time, subject to review within two years of this reorganization. In the private sector, the NLRB may issue an order to bargain on the basis of a majority showing of interest through authorization cards ("card check") if an employer's unfair labor practices (ULPs) make a fair election impossible. It is rare, indeed almost unheard of, for a Federal manager's ULP to preclude a fair election. But provision of a card-check alternative in that eventuality is a safeguard that may help to avert such an occurrence. Accordingly, FLRA should examine whether there is a need for the OLCRC to be empowered to issue a bargaining order on the basis of a card-check in such limited circumstances.

The conditions under which national consultation rights are granted have proved practicable and generally acceptable. No change is proposed.

b. Unfair Labor Practices

The General Counsel of the OLCRC should be given authority to present unfair labor practice complaints before administrative law judges.

The Federal labor-management relations program has already adopted, with some adjustments, the basic ULP provisions of the National Labor Relations Act (NLRA). Overall, such provisions are well understood and accepted, both as to substance and enforcement. However, unlike the NLRA procedures, each complainant in a ULP dispute under Executive Order 11491 is responsible for prosecuting his own case before an administrative law judge. This means that in some cases ULP records may be misleading or incomplete, may not address the issues, may be unnecessarily long, etc. As a result, the cost of litigation, both to the parties and to third-party officials, may be excessive. Moreover, inconsistencies in the quality of representation may result in poor presentations, making administrative justice in some meritorious cases more difficult to achieve. Although the 1975 review of the Order authorized independent ULP investigations by the A/SLMR, that official is not permitted to present these cases at trial (except for cases involving strikes or picketing) as is done by the General Counsel of the NLRB to enforce the NLRA in the private sector. Many Federal managers have argued that the nonadversary nature of the Federal program, as compared to the private sector, renders the establishment of such enforcement authority inappropriate. It is alleged that if the Government investigates ULP charges, the complainant can make his own case if he has access to the investigative file. Another argument is that placing the burden and expense of prosecution on the complainant tends to screen out frivolous or unmeritorious complaints. Also, if there is an exclusive representative, the union may supplement the individual's resources (unless the action is against the union). But there are strong arguments that the effective enforcement of the ULP provisions requires a more extensive involvement of the central authority. There is a need to protect the public interest in preventing or remedying ULPs, which might not be possible if the complainant must bear the burden and expense of prosecuting his own case. In this connection, the present and past A/SLMR's have argued that meritorious cases are not now prosecuted because of the current restriction, and those that are pursued have sometimes been ineptly prepared and presented. A General Counsel, experienced in administrative proceedings, moreover, can develop expertise in labor relations and in recognizing and framing ULP issues, in screening out non-meritorious cases and in presenting meritorious ones. (As noted above, the prosecutorial functions should be lodged in a division separate from the decisional process.)

The substance of the ULP provisions should be revised to take account of recent court decisions on picketing. ULP coverage and prevention should not be precluded by the availability of statutory appeals.

Recent court decisions have recognized a First Amendment right of Federal employees to engage in peaceful informational picketing of their employer in a labor-management dispute in most instances, with an exception being drawn for picketing conduct which actually interferes with, or reasonably threatens to interfere with, Government operations. The express language in Executive Order 11491 which attempted to circumscribe all picketing in a labor-management dispute has thus been nullified, and a more limited policy, based on a case-by-case review by the FLRC, is now in effect.

Accordingly, a narrower provision should be applied that would ban only that picketing which actually interferes with, or reasonably threatens to interfere with, Government operations.

The ULP procedures should be permitted to encompass matters subject to statutory appeal procedures, where applicable. (See part III.)

Remedies for unfair labor practices should be expanded to permit greater relief in certain areas; e.g., back pay with interest. (See part III.)

The A/SLMR's function of determining questions of grievability and arbitrability should be vested in arbitrators, with provision for limited review by the FLRA. (See part III.)

c. Standards of Conduct

Standards of conduct administered by the A/SLMR should continue to be applied to unions in the Federal service. The form of their enforcement should depend on the legal basis for the Federal labor relations program as a whole.

In the private sector, as well as in the Postal Service, union members are guaranteed rights to democratic participation in the internal affairs of their labor organization by the 1959 Labor-Management Reporting and Disclosure Act (LMRDA). Furthermore, that law requires the filing by labor unions of certain reports and places fiduciary responsibilities on the officers of labor unions to ensure that they act in the interest of their members. While unions that represent Federal employees are subject by regulation to standards of conduct generally equivalent to those applied by law in the private sector, the Order's provisions and the implementing regulations lack the direct remedies for violations, court enforcement, and judicial review that would be available under the LMRDA.

The application of standards of conduct to Federal sector unions, and their substance, are not at issue, but their form is. If the Federal program is continued under Executive Order, the standards in the current Order should be retained. (If it is placed under legislation, it then would make sense to provide for LMRDA coverage.) The standards of conduct are enforced by the A/SLMR. These A/SLMR functions should not be integrated in the FLRA. Since the LMRDA is administered for the private sector by the A/SLMR, uniformity makes it desirable that he retain this function with respect to Federal employee unions. The A/SLMR's authority to effectuate the standards through regulation should be continued, with a possible appeal to the FLRA.

C. FEDERAL SERVICE IMPASSES PANEL

1. Composition

The FSIP should be composed of a part-time Chairperson and at least two part-time members who should not be employed in any other capacity by the Federal Government. Panel members should be chosen from persons who are knowledgeable about government and in the resolution of negotiation impasses. The Chairperson and other members should be appointed by the President, and, if the reorganization is by legislation, they should serve staggered terms of five years and should be removable only for neglect of duty or malfeasance in office. Not more than a majority of the members of the FSIP should be of the same political party.

2. Functions

The FSIP should consider and settle negotiation impasses. It should continue to employ an "arsenal of weapons" approach.

That is, it should continue to fashion approaches to resolving impasses which are tailored to the individual impasse situation and which represent the least interference with the collective bargaining process consistent with resolving the dispute between the parties. The methods which have been used range from directing the parties to engage in additional negotiations, with or without mediation assistance, to the utilization of representatives at higher levels of the agency or labor organization, to factfinding with recommendations, and finally but very rarely to the imposition of a settlement -- interest arbitration. The uncertainty as to which approach will be selected by the FSIP has encouraged the parties in the vast majority of cases to reach agreement voluntarily, a fundamental concept of collective bargaining. Accordingly, the record is clear that the FSIP should continue to employ its proven techniques in the resolution of negotiation impasses, as the deterrent to, and substitute for, the prohibited strike.

D. ALTERNATIVE STRUCTURES

The Task Force considered alternatives to the FLRA structure outlined above. These included additions to the present FLRC or changes in its composition short of reconstituting it with all neutral members. Another possible variation in the FLRA sub-structure would be to retain A/SLMR functions in the Department of Labor, continuing the present divided program administration.

II. SCOPE OF BARGAINING AND CONSULTATION

A. BARGAINING

RECOMMENDATION:

The current scope of bargaining should not be changed.

The current scope of bargaining is narrowed by the exclusion of matters covered by laws (Title 5 of the U.S. Code and others), regulations (central personnel regulations issued by the Civil Service Commission and others, and regulations issued by agencies at headquarters or primary national subdivision levels for which a compelling need exists as determined by the Federal Labor Relations Council), and provisions of Executive Order 11491, as amended (Sections 11(b), 12(b) and others). The actual bargaining scope on the other hand has been broadened by determinations that procedures leading to, and the impact of, management decisions are mandatory subjects, and by the pragmatic experience of bargainiers in negotiating permissible subjects. The compelling need concept was introduced as a result of 1975 changes in the Executive Order and to date has been the subject of a very small number of FLRC determinations. The practical scope of bargaining may expand with the issuance of a greater number of determinations on the reach of this concept and the procedures and impact rulings, and as representatives of labor organizations and agencies acquire experience in interpreting and applying these principles to individual bargaining situations. Also, any substantial decentralization of personnel authority from the Civil Service Commission to line agencies would expand the scope of bargaining in practice. The effect of all these developments on the current scope of bargaining should be assessed before giving further consideration to expanding the scope. As noted in part I of this report, it is recommended that the Federal Labor Relations Authority review and assess unit determination and the scope of bargaining in two years with the view to removing or relaxing the current constraints on bargaining imposed by internal agency regulations and central personnel regulations issued by the Civil Service Commission and regulations issued by the General Services Administration. For these reasons, it is recommended that the current scope of bargaining not be changed at this time.

Although it is not recommended that the scope of bargaining as now formulated be altered, it is recommended that "mission", "budget", "organization", and "internal security practices" be shifted from Section 11(b) of the Executive Order, which lists permissible subjects of bargaining, to Section 12(b), which lists prohibited subjects. In practice, unions and agencies have not bargained on these matters, which go to the essence of an agency's existence, structure and purpose and establish its place in the scheme of Federal governmental organization. Thus,

the shifting of these matters to Section 12(b) would make the enumeration of prohibited subjects in this section conform to what has been the practice.

While not a substantive change, this shift might be viewed by some observers as narrowing the scope of bargaining. This reaction may require consideration of moving to Section 11(a) or (b) some 12(b) matters which may not be essential to an agency's existence.

B. CONSULTING ON CENTRAL PERSONNEL POLICIES AND REGULATIONS

RECOMMENDATION:

Central personnel policies and regulations should be subject to a requirement to consult, on a systematic basis, through a bilateral National Personnel Policy Committee (NPPC) appointed by and advisory to the Administrator of the Federal Personnel Management Agency (FPMA).

Personnel policies and regulations issued by the central-management agencies -- primarily CSC, also GSA and others -- limit the scope of bargaining within the employer-agencies. To the extent they are prescriptive, these central policies and regulations are nondiscretionary with employer-agencies and restrict bargaining at levels of exclusive recognition. While the central agencies themselves, CSC in particular, may frequently or even regularly consult with unions and employer-agencies in developing personnel policies and regulations, these are ad hoc processes at the initiative of the central agencies. There is no requirement to consult on these matters, and no sanction for failure to do so. Also, there is no continuing mechanism for ensuring that consultation is systematic.

As a rule, the unions would like to have many central policies and regulations decentralized to agencies and thus made negotiable by moving them into the scope of bargaining at levels of exclusive recognition with the employer-agencies. (Exceptions to this rule involve central policies of high benefit to employees or great advantage to unions, where they see little to gain and something to lose if these are subjected to bargaining.) The central-management agencies note that many of their policies and regulations are themselves nondiscretionary -- i.e., implementing statutes or Presidential directives -- and may require uniform or prescriptive application across-the-board. While the employer-agencies agree that these matters must be determined centrally, they would like to have a more systematic and meaningful role in that process. Unions want similar rights to consult (although they would prefer negotiation).

A National Personnel Policy Committee (NPPC) should be established to provide such consultation. It should be composed of 15 members appointed by the Administrator of the FPMA: (a) an official of the FPMA, who shall serve as chairman of the Committee and shall be responsible for transmitting its recommendations to the FPMA; (b) seven members from among officials of the other executive agencies, who shall serve as members representing the employer-agencies; and (c) seven members appointed from among the unions which represent the greatest numbers of Federal employees under negotiated labor agreements. The FPMA should provide such personnel and administrative support and resources as the Chairman of the NPPC deems appropriate and necessary to carry out its functions.

The Administrator should consult with the NPPC and consider its views prior to issuing new or revised regulations which affect matters subject to bargaining in employer-agencies, to ensure that the scope of bargaining is not unnecessarily or undesirably restricted. The obligation of the Administrator of the FPMA to consult with the NPPC should be similar, in scope, nature, and enforcement, as the existing duty of an employer-agency to consult with a union holding national consultation rights. The obligation of the Administrator/FPMA to consult should also include general provisions related to position classification. A charge of failure or refusal to consult, however, should not operate as a stay to the Administrator taking such action as the FPMA considers necessary. If, upon review, the Federal Labor Relations Authority finds a violation of the obligation to consult, it should impose the same sanctions in like manner as it would in the case of an employer-agency violation under present national consultation rights.

This recommendation is designed to establish an appropriate balance between (1) the aspirations of unions and employer-agencies to have a meaningful and systematic role in determining central personnel policies and regulations and (2)

the needs of the Federal Personnel Management Agency for achieving the effective and timely execution of laws and Presidential directives. At the same time, it would preserve the primacy of merit principles in the Federal personnel system, continue established bilateral mechanisms for setting pay and basic economic fringes separately, and provide for continued incremental expansion in the scope of bargaining as it is impacted by central personnel policies and regulations at levels of exclusive recognition in the employer-agencies. It is a logical next step for the Administration to take at this time, consonant with other changes recommended in the Federal service labor-management relations program.

C. PRODUCTIVITY, QUALITY OF WORKING LIFE, AND LABOR RELATIONS.

With respect to Scope of Bargaining, two approaches to improvement of productivity and quality of working life are practiced:

- (1) Use of bilateral committees to work for improvements, and
- (2) Productivity Bargaining.

Productivity Bargaining, as technically defined, is generally out-of-place in the Federal Government because economic issues are not bargained at the plant or operating level and because restrictive work rules are not commonly the result of collectively-bargained rules.

Bilateral consultation committees with specific agendas on approaches to improvement of productivity and quality of working life are well-suited to the Federal labor-management relations program.

No change in laws or regulations is required to implement consultation. What is required is leadership by union and management representatives, with some clearer identification in government of who is management with responsibility to manage.

III. RELATIONSHIP BETWEEN GRIEVANCE AND APPEAL SYSTEMS; MAKE-WHOLE REMEDIES

A. GRIEVANCE AND APPEAL SYSTEMS

RECOMMENDATION:

The negotiated grievance and arbitration procedure should be the sole procedure, except for the ULP resolution system, available to bargaining unit employees for the resolution of all complaints and claims covered by that procedure regarding personnel policies and practices and matters affecting working conditions in the unit, including major discipline -- except that employee grievances related to implementation of the Fair Labor Standards Act, equal employment opportunity, classification of positions and jobs, and political activity should be subject to separate and exclusive statutory appeal procedures. It may also be necessary to exclude certain technical matters that are more suited to administrative review than to arbitration under the negotiated procedure. (See related recommendations of Task Forces 3 and 8.) Questions of grievability /arbitrability under the negotiated procedure should be determined by the arbitrator, with provision for limited review by the Federal Labor Relations Authority.

A recurring theme of the parties and commentators during this study -- a view upon which there was almost total unanimity -- was a desire to simplify and harmonize the grievance and appeal rights authorized by or pursuant to statute with those established through collective bargaining under Executive Order 11491, as amended. The dominant view on this subject favors broad-scope grievance handling and arbitration under negotiated procedures for bargaining unit employees, including coverage of matters related to, and affecting, most employee rights and protections currently reviewed under procedures which implement and enforce provisions of law.

In the course of its 1975 study of the Executive Order, the Federal Labor Relations Council concluded that it was in the best interest of the Federal labor relations program for the parties to be free to negotiate the fullest possible grievance and arbitration procedures in their contracts, consistent with the requirements of statute and the Order, with matters for which statutory appeal procedures exist being the sole mandatory exclusion

prescribed by the Order. In the Council's view, the application of this philosophy would give the parties greater flexibility at the negotiating table to fashion a contractual procedure which suits their particular needs. Consequently, Section 13(a) of the Order was amended to permit the parties to negotiate the scope and coverage of the grievance and arbitration procedure, instead of limiting it to grievances over the interpretation or application of the agreement. (Matters for which a statutory appeal procedure exists are still excluded, however, and the resultant procedure may not otherwise conflict with statute or the Order.) Moreover, the amended Order provides that the negotiated procedure is the exclusive procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage.

Despite the authorization to negotiate broader grievance and arbitration procedures provided under the 1975 amendments, Federal managers, unions and employees have continued to express concern over the question of what relationship is appropriate between statutory appeal procedures and negotiated grievance and arbitration procedures. While the parties are generally pleased with the operation of the grievance and arbitration procedures achieved through collective bargaining, criticisms have been heard that the range of issues which may be brought to impartial arbitration under the negotiated procedure is still unnecessarily limited. Specifically, labor organizations which have expressed an opinion on the problem point out that because of a multiplicity of grounds for statutory appeals, certain kinds of discipline are excluded from the negotiated procedure; that "make-whole" remedies are not available in some cases processed under the negotiated procedure; and that statutory systems are more complex and less credible for the resolution of some complaints than the negotiated procedure. Furthermore, the availability of alternative appeal and grievance systems means that Federal employees may be confused about forums for processing their complaints, and effectuation of their rights may often depend on their ability properly to classify the nature of their claims. These criticisms have been, in the main, supported by agency managers, who also assert that the Federal personnel system, including the labor relations program, would be better served by an expanded coverage of negotiated grievance and arbitration procedures. Federal managers indicate that they have been deterred from taking necessary and appropriate personnel actions by the complexity of procedural requirements which must be met before such actions may be sustained if and when a statutory appeal process is invoked by an affected employee.

Management and union representatives argue that negotiated grievance procedures (most of which terminate in binding arbitration), which now cover about 52 percent of the Federal civilian work force, have achieved more satisfying results insofar as the parties are concerned. While the record indicates that the statutory system may be more cost-effective and is demonstrably more expeditious -- e.g., it has taken an average of 5 1/2 months to resolve adverse actions which have involved a hearing in FEAA, compared to over 10 months in Federal sector grievance-arbitration -- strong and pervasive negative perceptions among unions, employees and managers with regard to statutory systems warrant serious consideration of permitting coverage of such matters under procedures established by the parties, for greater credibility.

Accordingly, consistent with the philosophy expressed by the Council in its 1975 review of the Order, a greater benefit to the Federal labor-management relations program will result from authorizing an expansion of the negotiated grievance and arbitration procedures into such areas as major discipline now exclusively within the purview of statutory appeal systems, than would be gained from a continuation of the present diversity. It is recognized, of course, that there are several crucial and sensitive areas within the Federal environment which would be inappropriate for review by someone, such as a private arbitrator, outside the Government structure. Such sensitivity clearly exists with respect to matters concerning the Fair Labor Standards Act, equal employment opportunity, position classification, and political activity.

It is in the public interest to have employee rights in these areas protected in separate and exclusive statutory appeal procedures. It may also be necessary to exclude certain technical matters that are more suited to administrative review than to arbitration under the negotiated procedure. With such exceptions, the parties should be allowed to negotiate their grievance process as the sole procedure available to bargaining unit employees for the resolution of all complaints and claims regarding personnel policies, and practices, and matters affecting working conditions in the unit -- including major discipline. This is

not intended to limit the availability of the unfair labor practice procedure where applicable, as an alternative route -- e.g., in cases of discipline that result from discrimination on the basis of union activity. Nor is it intended that arbitration awards serve as precedents for unfair labor practice determinations, or for determinations under statutory procedures.

For employees not represented in exclusive units and to the extent that parties to negotiated grievance arbitration procedures choose not to cover those statutory appeal issues that would be opened by this change to resolution under the contract, the statutory appeal protections would remain available to employees under an alternative system.

(It should be noted that an expansion of the scope of the negotiated procedure, coupled with the duty of fair representation, could mean greatly increased expenses for the unions in representing unit employees. Their claim to some form of union security or representation fee (see discussion elsewhere in this paper) might find greater support in such circumstances. Indeed, authorization of some form of representation fee would likely encourage unions to accept expanded responsibilities in this area.)

B. MAKE-WHOLE REMEDIES

RECOMMENDATION:

Legislation should be proposed to permit the Office of Labor Relations Commissioner and arbitrators to fashion meaningful "make-whole" remedies.

One of the more telling criticisms leveled at the current Federal labor relations program concerns the absence of "make-whole" remedies -- e.g., restitution of all monies lost because of the employer's unlawful action as well as reinstatement with no loss of seniority or benefits. The purposes of such remedies are to provide equity to the employee and to prevent a wrongdoing employer from enjoying a "windfall" as a consequence of illegal conduct.

Without such remedies, neutrals charged with remedying unfair labor practice violations or claims raised under the terms of the collective bargaining agreement (including contentions that the contract has been circumvented or ignored) are prevented from meaningfully resolving disputes within the system. Lack of such remedies, moreover, is contrary to a fundamental precept of law that rights should not be created without appropriate remedies to enforce them.

Under the present Federal program, arbitrators and the Assistant Secretary of Labor for Labor-Management Relations have encountered difficulties due to the existence of statutory and regulatory provisions, such as the Back Pay Act, in formulating complete "make-whole" remedies to redress grievances and unfair labor practices in such important areas as discipline, promotions, and reductions-in-force. Furthermore, these regulatory and legal requirements have barred or severely limited the fashioning of remedies which arbitrators and the National Labor Relations Board have found to be appropriate in the private sector. For example, the Board upon finding an unfair labor practice in a case arising from an unlawful reduction-in-force ordered by an employer, could compel the employer to cancel that personnel action and return the separated workers to their jobs with back-pay plus interest even if (in extreme cases) the employer's compliance will result in displacement of other innocent employees; the theory at operation in such situations is that the violation and the rights which are being enforced belong in the public and are not personal to the wronged employees. Similarly, an arbitrator could direct an employer to take similar action where the reduction-in-force is found to be a violation of the provisions of the applicable labor agreement. These kinds of remedies are commonplace in the private sector, because they are supported by equitable considerations and since experience has shown them to operate as effective deterrents to repeated violations of the contract or of the law.

Much of the rationale which furnishes the foundation for "make-whole" remedies in the private sector is equally applicable to the Federal labor relations program. Therefore, legislation should be proposed to permit the Office of Labor Relations Commissioner and arbitrators to construct appropriate "make-whole" remedies where they find violations of the unfair labor practice provisions or of labor agreements, respectively. Further, the legislation should authorize the expenditure of funds

to train arbitrators in the various laws, regulations, policies, and other Federal-wide directives which impact the operation of the labor-management relations program.

IV. MANAGEMENT ORGANIZATION AND UNIT DETERMINATION

A. ORGANIZATION OF THE EMPLOYER FOR MANAGEMENT EFFECTIVENESS

RECOMMENDATION:

A strong, management-oriented office of labor-management relations should be established in the central personnel agency. It should serve as the locus of authority for leadership and development of Executive Branch management policy on Federal labor-management relations, and have primary responsibility for providing technical advice and policy guidance to agency management on a day-to-day basis.

The ability of the Government as an employer to conduct an effective and productive labor-management relations program depends, to a large extent, on how it organizes for collective bargaining. Whether bargaining takes place on a centralized or decentralized basis is a key factor in the organization of management for maximum results from the bargaining process. The present framework suggests the need for several major structural changes. Such changes are vital if management is to increase its labor-management relations program effectiveness while at the same time carrying out its mission.

In an effort to enhance Presidential leadership in Federal-wide personnel management, it has been recommended that a central personnel agency be established which would have as its main function advising the President in the formulation and administration of, and providing staff assistance to, management on Government-wide personnel policy. Headed by an individual with Cabinet rank, the central personnel agency would serve as the principal contact point between the President and agency heads on personnel matters which affect the Federal workforce.

To carry out the special functions of the central personnel agency in relation to employees represented by unions, there should be established within this agency a high-level, management-oriented Office of Labor-Management Relations (OLMR). It would help to assure that Presidential policies and objectives are effectively and expeditiously communicated and implemented throughout the Federal establishment. The newly created OLMR should be similar in structure to the present OLMR located in the Civil Service Commission. It would differ, however, in that its single purpose would be that of exercising management leadership in the area of Federal labor relations. The current confusion and conflict of function caused by the Chairman of the Civil Service Commission also serving as Chairman of the Federal Labor Relations Council would be eliminated. Under the present system the CSC/FLRC Chairman is frequently required to render and review on appeal his own decisions. Not only has this arrangement come under severe criticism from both organized labor and some committees of Congress, but it has also enjoyed little support among agency managers.

A strong, management-oriented labor-management relations office, which would function as an arm of the central personnel agency, also has significant merit on basic management principles. Conceptually it would function like the private sector model of a corporate office of industrial relations: a strong central office geared to providing staff assistance to line management in both general personnel management and labor-management relations. It should be staffed with highly competent professionals with extensive knowledge in labor-management relations. It should be structured so as to render timely staff assistance and expertise to managers in a system which continues to operate on a largely decentralized basis. This would include providing experts to assist managers with local bargaining and contract administration, if requested. It should also, however, have the capability to serve, in conjunction with other Executive branch entities, as the lead office in conducting bargaining and/or consultation on a government-wide or national basis.

The OLMR should be the primary authority within the central personnel agency for all matters relating to labor-management relations; it should be the focal point for formal dealings with organized labor on a government-wide basis. Creation of an Office of Labor-Management Relations with clear and unmixed responsibilities for effective management in a central personnel agency would have a significantly beneficial impact on overall program operations.

This change can be accomplished through use of the President's reorganization authority.

B. UNIT STRUCTURE

RECOMMENDATION: The present method and criteria for determining bargaining units should be retained.

Unit structure, like other substantive issues relating to collective bargaining, is greatly influenced by the history and scope of bargaining. Existing units reflect the rapid growth of employee organization, the flexibility of standards permitting coordination, and the adaptation of bargaining forms to bargaining substance. The Task Force has recommended that the scope of bargaining under the present program should remain basically unchanged. Therefore no change in the present procedure for determining bargaining units seems warranted at this time.

To obtain exclusive recognition, a proposed unit must satisfy the following criteria as established in the Executive Order and applied by the A/SLMR: (1) There must be a community of interest; (2) the unit must promote effective dealings; and (3) it must promote efficiency of agency operations. Currently more than 3,500 exclusive bargaining units exist in the Federal sector; the average unit contains 334 employees. In spite of the large number of units and the relatively small average size, this part of the program has operated reasonably well. Moreover, during the last general review of the program, the FLRC amended the Order to permit an agency and a labor organization to agree bilaterally to consolidate, without an election, those bargaining units represented by the labor organization within the agency. Such consolidation of units could substantially expand the scope of negotiations as exclusive representatives would negotiate at higher authority levels in agencies. Thus far the results of this change have not been dramatic.

Although there is general satisfaction with the present procedure and no change is recommended, it is strongly suggested that as soon as practicable, within two years of implementation of this reorganization, the FLRA should initiate a review of the unit determination process to ensure that it is functioning compatibly with the new emphasis of the program.

V. UNION SECURITY

OPTIONS:

Consideration may be given to authorizing the negotiation of payment of a representation fee through payroll deduction by unit employees who are not union members, particularly if the obligation of fair representation is extended by placement of various statutory appeal rights under negotiated grievance procedures. Alternatively, if such authorizing legislation is not feasible at this time, consideration may be given to such other forms of union security as maintenance of membership, annual (in lieu of semi-annual) periods for revoking voluntary dues deductions, or a representation fee arrangement permitting employees to "opt out" and thereby waive the right to union representation in grievances and appeals.

Achievement of exclusive status means that a labor organization must represent all employees in the bargaining unit fairly and equitably, without regard to their membership or nonmembership in the organization--including negotiating agreements with the employer covering all unit employees and processing grievances. In the private sector, there is statutory authorization for the negotiation of arrangements which require, as a minimum, payment of union dues by all unit employees as a condition of employment, or lesser forms of union security (except in those states which expressly forbid such contracts). Thus the union receives financial support to defray expenses incurred in representing all employees.

While both the Executive Order and the Postal Reorganization Act prohibit union security agreements, numerous states now mandate or authorize such arrangements for the public sector. The "agency shop" is negotiable in the District of Columbia, but unit employees may elect not to pay the "representation fee" by waiving the right to representation by the union in grievances and appeals. Employees who waive these rights, however, are not excluded from overall benefits which are gained at the bargaining table.

Constitutional objections on the basis of the First Amendment to the payment of dues or fees to a private organization as a condition of employment have been rejected by the Supreme Court with respect to both the private sector and the non-Federal public sector. For example, the constitutionality of an agency shop requirement in the public sector was recently upheld by the U.S. Supreme Court in the case of Abood v. Detroit Board of Education. The Court held that no First Amendment bar to such agreements exists if an employee is not compelled to make certain payments (e.g., for ideological activities unrelated to collective bargaining).

In the Federal sector, however, it has been argued that a special regard for employment conditioned only on merit requires that employees have the right to refrain from union membership or assistance--i.e., that such requirements may not be imposed as a condition of Federal employment. The question is often presented as an issue of "free riders" versus "right to work", and of the right of "freedom of association". This is often a highly charged political issue.

On the other hand, the interests of employees and management may be served by making negotiable the deduction of a representation fee to help defray the costs of collective bargaining and contract administration. The obligation of the exclusive representative to represent all employees in the unit, whether or not they are union members, can be carried out effectively only by a union that has the stability of organization and financial resources to perform functions that are frequently expensive and lengthy, such as grievance handling and negotiations.

The negotiation of such arrangements, if authorized, should be subject to certain conditions designed to protect fundamental individual rights. First, of course, actual membership in the union would not be required. Further, a provision for charitable contributions in lieu of such payments should be made for individuals who hold bona fide religious or conscientious objections to joining or supporting labor organizations. This provision parallels the provision relating to health care institutions contained in Section 19 of the National Labor Relations Act (NLRA).

The amount of the representation fee, to be determined in accordance with regulations promulgated by the FLRA, should be related directly to the costs of representation, i.e., collective bargaining and contract administration. This would appear to meet the concerns expressed by the Court in the Abood case that compelling payments for ideological or political purposes with which the individual disagrees is not Constitutionally permissible.

Finally, it should be possible for unit employees, in accordance with a provision similar to Section 9(e) of the NLRA, to petition for an election to rescind the authority of the exclusive representative and management to negotiate a representation fee. Furthermore, consideration may be given to providing that a union which loses such a deauthorization vote could be relieved of its "fair representation" duty to represent non members in grievances.

Alternative forms of union security include authorization for unions to negotiate provisions: (1) requiring "maintenance of membership" -- i.e., continuation of dues deductions which have been initiated voluntarily by the employee for the term of the negotiated agreement; or (2) requiring employees to pay a representation fee unless they execute waiver forms releasing them from that obligation and releasing the union from its duty to represent them in grievances and appeals. A third option could involve a change in CSC regulations to permit the parties to negotiate an irrevocable dues withholding period of up to 12 months, in contrast to the present six-month limitation on such arrangements. Alternatives (1) and (2) might be achieved through regulation or Executive Order.

The issue of union security is one of the most controversial topics in Federal labor management relations. It may be decided, therefore, that the more effective functioning of the labor relations system that may result from the authorization of the negotiation of a representation fee must be subordinated to the desire for greater public acceptability of the program as a whole. In that eventuality, it may be necessary to consider other forms of union security or to continue the current prohibition on such arrangements.

TASK FORCE 3 REPORT

STAFFING PROCESS: ENTRY TO AND DEPARTURE

FROM THE CIVIL SERVICE

TASK FORCE 3: THE STAFFING PROCESS

Manager

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Senior Advisors

Medina, William Housing and Urban Development
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Members

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Catroppa, Frank	Interior
Cucinelli, Joseph	Transportation
Linsley, Arthur R.	Army
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Sherwin, Michael D.	Civil Service Commission
Smith, Gay	Federal Aviation Administration
Unger, Bernard	Environmental Protection Agency

SUBJECT: RESTRUCTURING STATUTORY APPEALS SYSTEM**PROBLEM:**

The present appeals system covers a wide variety of appeal rights, with great variations in procedures, and different appeal bodies. As a result, the process is often time-consuming, costly to appellants, and confusing to managers and employees, and both groups believe it is unduly burdensome and biased against them.

RECOMMENDATION:

1. The President should propose legislation which: restricts appeal rights to adverse actions only (termination of employment, suspension of 15 days or more, reduction in grade or pay, and similar actions resulting from reduction-in-force).
2. For adverse action appeals, permit agencies to negotiate an appeals procedure with employee organizations granted exclusive recognition. Final decisions on appeals would be by binding arbitration with a mutually agreed-upon outsider. Agency management and employee organizations would share the cost of arbitration.
3. For employees in units not covered by negotiated agreements, establish a separate appeals body for final decisions on adverse action appeals. Employees may take appeals to the independent appeal body after review and decision within the employing agency. The independent appeal body must hold a hearing before deciding the appeal.
4. There will be no appeal within the Executive Branch from a decision by the independent appeal body or by an arbitrator under a negotiated agreement.
5. For adverse actions resulting in termination of employment, the employing agency must keep the employee on the payroll until a decision is rendered by the appellate body or by the arbitrator, or until the time limit for filing an appeal expires.
6. Appeals of performance ratings and level of competence decisions should be defined as grievances and considered under agency grievance procedures.
7. Reduction in rank should be abolished as a concept and as an appealable matter.
8. In the general legislation establishing a revised Federal personnel system, language should be included placing a positive duty on agency management to take corrective action against marginally performing employees.

DISCUSSION:

Comments on the option paper supported establishing an independent appeals body outside the CSC. Employee organizations feel strongly about the need for the impartiality of outside binding arbitration. As there are many complex administrative problems in providing binding arbitration for employees not in units covered by negotiated agreements, we have proposed a two-part appeals system: a) for employees covered by recognized employee organizations, we are recommending outside, binding arbitration for the final decision on appeals; and b) for employees not covered by recognized employee organizations, we are recommending the establishment of an independent appellate body outside the CSC.

If we accept binding arbitration for decisions on appeals, we must ensure that nonmembers within the unit are fairly and responsibly represented by the employee organizations. Whether specific legislation or regulations are needed to guarantee this requirement, or whether existing labor legislation is sufficient needs to be examined thoroughly before adopting this recommendation.

In providing a distinct appellate body for employees not covered by negotiated agreements, it must be made clear that the avenue of appeal to an independent appellate body is available only to employees in units not covered by a negotiated agreement. Because of cost and other factors, some employee organizations may seek the privilege of choosing to take some appeals to the appellate body rather than to binding arbitration. Such an option is unacceptable as it removes the constraint on employee organizations against pursuing frivolous or groundless appeals, and may tend to overburden the independent appellate body, creating backlogs and delays.

The rationale for keeping employees on the rolls during their appeals is that termination is a severe punishment and management should be required to have its case in order and ready for outside scrutiny before it decides to take action against employees. This provision received mixed reaction among a limited number of managers; union representatives favor the approach and believe the present system is unfair to employees as it permits management to take severe action against employees without having proven its case beforehand.

If the employing agency believes that the employee is needlessly delaying the appeals process, the agency may ask the appellate body for an immediate opinion on the question of unnecessary delay, and if the appellate body or the arbitrator agrees, the employee may be terminated while the appeal proceeds. In those instances where agency management determines it cannot suffer the problems attendant upon having the appellant continue to report for duty during the appeal, the employee may be placed on administrative leave.

To encourage the speedy processing of appeals, internal agency procedures should be kept to a minimum. It would be futile to attempt to prescribe in detail how the employing agency should process an appeal. We recommend that CSC define minimum agency requirements and permit management to work out its own internal system. The minimum should require that: (1) the employee receive initial notice of the proposed action, with reasons from the immediate supervisor; (2) the agency must identify a higher level of management to whom the employee may request a reconsideration; (3) agency management gives such reconsideration whatever attention it deems necessary to ensure that the case is sound; and (4) management must notify the employee of its intention and reasons if it decides to proceed with the adverse action. Employees may take that second notice to arbitration or to the appellate body, as appropriate.

The provision for keeping the employee on the payroll until the appeal is decided alters the nature and purpose of the need for a second-level review within the agency before proceeding with an adverse action. The reason for the review is no longer primarily the need to protect the employee from harm, but rather to provide agency management with an opportunity to assure itself that it has sufficient grounds to proceed with the proposed action. Although the quality and fairness of the review is not without interest to the employee, it is not crucial to his or her protection, and therefore need not be circumscribed with detailed requirements for regulatory proceedings.

Of the present statutory appeals, the following would not be appealable to the appellate body, nor be subject to binding arbitration:

- Classification and job grading
- Restoration after military duty
- Retirement (except Hiss Act questions)
- Adverse suitability rating
- Denial of life insurance coverage
- Determination of exempt, nonexempt
- Examination ratings
- Health benefits decisions
- Reemployment/reinstatement eligibility
- Restoration after military service

Reduction in rank has been an ambiguous concept generating much conflict and contradictory opinions. For a classification and pay system in which duties, authority and responsibility are evaluated to arrive at a numerical grade level determining pay, it must be questioned whether there is any denominator of rank other than grade level. Because of the ambiguous meaning of the concept within the context of a grade-

structured, position classification system, we are recommending that reduction in rank be abolished as a concept.

The recommendation to use binding arbitration is not based on the assumption that this method would be less costly than the present appeals system. There are some studies and articles indicating that some experience has shown arbitration to be an expensive and time-consuming procedure. In evaluating such reports, one must distinguish between arbitration of disputes and mediation of contract negotiations; understandably, the latter may very well develop into a lengthy, expensive process at times. As for the difficulty of getting timely acceptance of an appeal by an arbitrator and of obtaining a decision within a reasonable period, some control could be exerted by stipulations in the contracts with arbitrators and by using local arbitrators who would be more readily available. The quantity of service to be requested should provide some leverage in this market.

There is not now any positive legal requirement for Federal managers to take action to correct poor performance by employees other than the general language which states that employees may not be removed from office except for such cause as will promote the efficiency of the Federal service. This does not define a positive duty to correct poor performance and we believe such affirmative language is necessary to demonstrate that when management takes adverse action against an employee, it is not acting on whim but is carrying out its duty.

SUBJECT: SIMPLIFYING NON-NEGOTIATED GRIEVANCES PROCEDURES

PROBLEM:

The present non-negotiated grievance regulations prescribe a complex procedure, distinguishing between informal and formal grievances, and requiring investigation, recommendation and decisions at various higher levels of management, depending on acceptance or rejection of the examiner's recommendations.

RECOMMENDATION:

CSC should change its regulations as follows:

- limit informal procedures to requests by employees to their immediate supervisors, who are responsible for responding to employees, either correcting the matter grieved or explaining the situation. If the matter is not within the supervisor's control, an explanation must be obtained or correction sought from the responsible official. The supervisor must respond within five days.
- If employees are not satisfied with the action or explanation of the supervisor, they may file a formal grievance with a management-designated official. If the designated official cannot resolve the grievance through discussion with the employee and the appropriate management officials, a grievance hearing board should be impanelled, (the composition of which shall be determined by management), or an examiner appointed to look into the grievance.

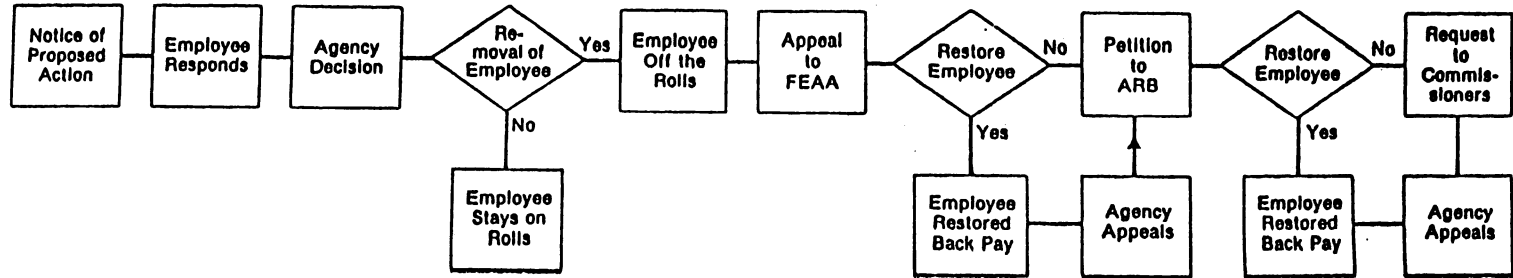
For grievances of performance ratings, a grievance hearing board should be required.

DISCUSSION:

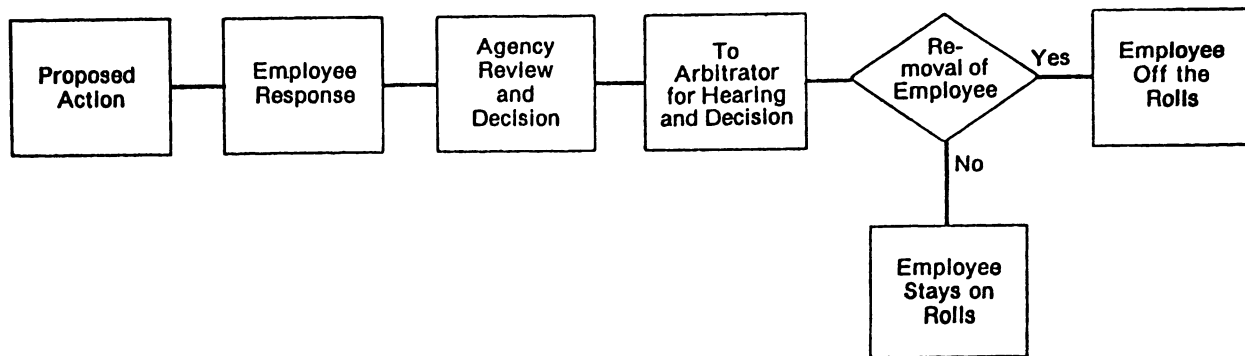
The basic problem with present non-negotiated grievance regulations is the requirement for an elaborate series of investigations, recommendations and higher level reviews. We think nothing is gained by detailing exact procedures; it is better to specify a few basic essentials and permit agencies to elaborate as they see fit.

Comments from agencies on the option paper were split, some believing current procedures were satisfactory and some wanting some changes. We believe modest changes proposed will be acceptable.

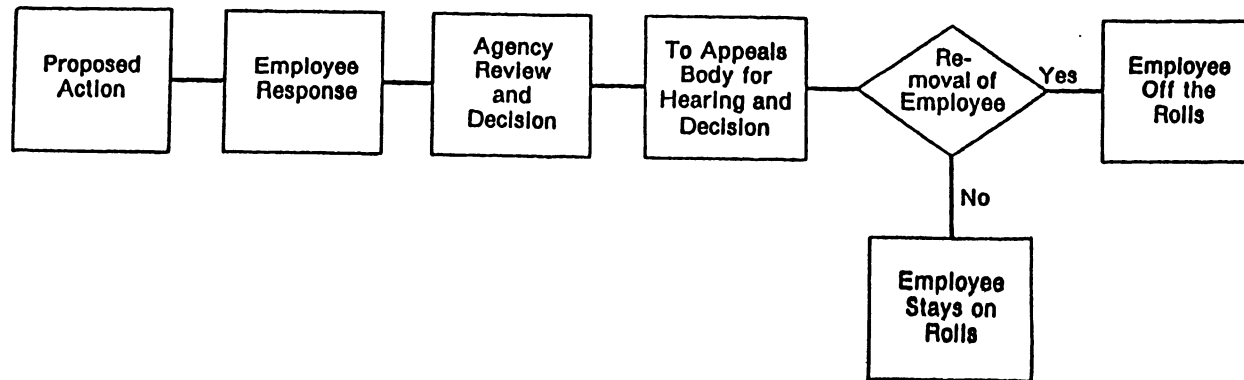
Adverse Actions — Present System



Proposed Adverse Actions — Negotiated Procedures



Proposed Adverse Actions — Non-Negotiated Procedures



PRESIDENT'S REORGANIZATION PROJECT

PERSONNEL MANAGEMENT PROJECT

A comprehensive review of Federal personnel management principles, policies, processes, and organization to determine what improvements are required and to recommend appropriate legislation, policies, rules, regulations, processes, and organizational solutions.

VOLUME 1

FINAL STAFF REPORT

DECEMBER 1977



PRESIDENT'S
REORGANIZATION
PROJECT

WASHINGTON, D.C. 20503

FEDERAL PERSONNEL MANAGEMENT PROJECT
C/O U.S. CIVIL SERVICE COMMISSION
1900 E STREET, N.W.
WASHINGTON, D.C. 20415

December 20, 1977

Alan K. Campbell,
Chairman

Wayne Granquist
Vice-Chairman

Dear Scotty and Wayne:

President Carter established the Personnel Management Project in June, 1977, under your leadership as a key part of his bold reorganization efforts. Those of us on the staff have greatly appreciated the opportunity to serve you and the President on this important and exciting project. We are also very appreciative of the help provided by Jule Sugarman and Howard Messner, particularly in co-chairing the important Working Group.

Through this report we are forwarding a compilation of our staff recommendations for reforming the civil service system. These recommendations were developed and submitted to you between August and mid-November. Although the system is too massive for us to have covered every aspect in the limited time available, we have nonetheless carried out your assignment of making the most comprehensive review of the Federal civil service system ever undertaken. We are pleased that these recommendations are receiving serious consideration by you and the President in determining those reforms which are needed.

In organizing the nine task forces that comprised this Project, we drew primarily upon Federal careerists with extensive diversified public experience, although several of the task force managers were from outside the executive branch. This avoided the process of relying solely on outside "experts" who might have had to spend most of the study period learning the problems with little time left for solutions. Further, the heavy involvement of careerists means that there are a number of people in the system who understand the reasons for the recommendations and can help implement whatever recommendations may be approved by the President and Congress.

Although the people carrying out the study were largely from the public service, people were drawn from outside Government into the reorganization process on an extensive scale, beginning with a review of the proposed basic principles and objectives. Each of the Personnel Management Project task forces studying separate aspects of the personnel system developed detailed option papers which discussed the problems and suggested a wide range of alternative solutions. These were circulated for comment among as many as 1500 individuals and groups in and out of Government, including: Federal agencies, citizen's groups, organizations representing minorities and women, veterans' organizations, Congress, major business and industry groups, taxpayer organizations, employee unions, State and local governments, professional management associations, and members of the academic community. Further, you and the rest of the Project leadership held numerous meetings in Washington, D.C. and around the country to get an additional cross section of face-to-face comment from citizens, Federal employees, and members of diverse organizations. The comments drawn from all these efforts were incorporated into the decision making process before formulating the final recommendations.

Most of the recommendations in this report have been drawn from the more detailed papers of the task forces (which are in a separate Appendix volume). The major recommendations presented here which have been changed significantly from those submitted by the task forces have been so noted. I assume responsibility for the contents of this report.

I would like to express special appreciation for the amount of valuable time and effort devoted to this Project by the staff of the Civil Service Commission. Some of them served as members and managers of the task forces. Others, including the Executive Director, Bureau Directors, and Regional Directors, lent key staff members, briefed and advised the task forces, and provided highly constructive comments on the option papers on very short notice.

On behalf of all those involved in the Project, I want to express our appreciation for the very effective and imaginative leadership you and the President have provided to us and for the complete independence afforded us in developing our recommendations. We hope our efforts will prove to be useful to you in your task of reforming the civil service system to make the Federal Government more effective and more responsive to the critical needs of our citizens.

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PERSPECTIVES

The Civil Service System is a product of earlier reform. It emerged as a protest against the 19th Century "spoils system" with its widespread political patronage and mass influx of unqualified employees with each change of Administration. The new civil service concept promised a competent, continuing workforce, in which employees were selected and advanced on the basis of what they knew, rather than who they knew.

To a large extent the system has successfully achieved this goal. As the Federal Government has assumed increasing responsibilities in meeting critical needs of a dynamic society, the merit system has added many processes, but not enough major changes have emerged to adequately meet these new demands. And with the evolution and expansion of this system over almost a century, there have been frequent and determined attempts to circumvent merit principles, some of which have been painfully successful in recent years.

To counter these assaults, there has gradually developed a bewildering array of complex protective procedures and additional checks and balances. Complexity has also been increased through procedural safeguards for various disadvantaged groups where rights have been too long ignored. The resultant time-consuming and confusing red tape undermines confidence in the merit system. Managers and personnel officers complain that it stresses form over substance, and that the procedures intended to assure merit and to protect employees from arbitrary and capricious management actions have too often become the refuge and protection of the incompetent and the problem employee.

Ironically, the entangling web of safeguards spun over the years often fails to protect against major political assaults and cronyism. With each new protective measure, there seems to have emerged new techniques to manipulate the system, as best illustrated by the so-called "Malek Manual" compiled for an earlier Administration. Further, any system which is too unwieldy to work tends to breed contempt and invites political abuse. Also, many well-intentioned managers and personnel officers who are earnestly trying to attain legitimate objectives believe that strict adherence to the procedures makes timely personnel actions very difficult if not impossible. Those who are credited with being action-oriented and successful are often those who have become skilled in short-cutting the procedures.

The Federal personnel system has grown so complicated that neither managers nor employees understand it. Both have been forced to rely on highly trained personnel technicians to interpret it for them. As a result, personnel management has frequently become divorced from the day-to-day supervisor-employee relationship. This separation hurts employees and managers alike. The system's rigid, impersonal procedures make it almost as difficult to adequately reward the outstanding employee as it is to remove the incompetent employee. Excessive delays in filling positions frustrate both the employees applying for these jobs and the managers trying to fill them. Most importantly, when incompetent and unmotivated employees are allowed to stay on the rolls, it is the dedicated and competent employees who must carry more than their share of the load in order to maintain service to the public.

The personnel officer occupies the untenable position of simultaneously trying to serve both the manager and the employee while trapped in a maze of red tape. Personnel officers are increasingly squeezed out of the mainstream of departmental management, and these positions no longer hold the attraction they once did for young men and women with imagination and outstanding talent for public service.

Confidence in the civil service system has been so low at points in the past that several large agencies with programs of high public urgency, most notably the National Aeronautics and Space Administration and the Atomic Energy Commission, were wholly or partially excepted from the system in order to provide their managers the flexibility needed to get the job done. The record in these organizations indicates that agencies can maintain sound merit principles without having to impose rigid procedural barriers.

It is the public which suffers from a system which neither permits managers to manage nor provides employees adequate assurance against political abuse. Valuable resources are lost to the public service by a system increasingly too cumbersome to compete effectively for talent. The opportunity for more effective service to the public is denied by a system so tortuous in operation that managers often regard it as almost impossible to remove those who are not performing. It is families everywhere who suffer from mismanagement of social programs caused by incompetent and inexperienced executives appointed on the basis of personal friendships rather than managerial qualifications. It is hardpressed neighborhoods and communities across the nation who are discriminated against on a massive basis by managerial decisions which divert grants elsewhere because of the influence of a mayor, governor, or member of Congress.

The staff recommendations in this report are based on the premise that jobs and programs in the Federal Government belong neither to employees nor to managers. They belong to the people. The public has a right to have an effective Government, which is responsive to their needs as perceived by the President and Congress, but which at the same time is impartially administered.

Managers have no right to impose new spoils systems under the guise of flexibility. Neither do they have a right to mismanage public programs by hiring incompetent cronies. They must, however, be free to manage, or there will be little accountability and citizens will be deprived of the effective Government they have a right to demand. Employees have no right to place their personal gain above the ability of the Government to meet public needs. Neither should they have the right to cling to jobs in which they cannot, or will not, perform adequately. They do, however, have a right to work in a public service that is free of discrimination and partisan political influence, and they have a right to expect advancement to be determined on the basis of merit.

We are proposing a number of reforms which we believe will help restore an appropriate balance between these sometimes competing needs for flexibility and efficiency on the one hand, and adequate safeguards on the other, in order to foster effective, fair management in the Federal Government.

To be meaningful, however, their adoption must be accompanied by the assignment of a higher priority to sound and equitable personnel management by the White House, agency heads and members of Congress.

The Executive Director

SECTION 1

HIGHLIGHTS OF THE REPORT

This is the final staff report of the Personnel Management Project of the President's Reorganization Project. It compiles the reforms in Federal civilian personnel management and in Federal programs affecting personnel management in State and local governments that were proposed by the staff as a result of a comprehensive study begun in July 1977. If these recommendations are approved, it will take a combination of reorganization plans (under the President's reorganization authority), new legislation, and new Executive orders as well as changes in present rules, regulations, policies, and procedures to put them into effect.

The recommendations are a complex and interrelated unit. Many are based on the assumption that other recommendations--particularly the division of the U.S. Civil Service Commission into an "Office of Personnel Management" and a "Merit Protection Board" (see section 11, recommendations no. 117 and 118)--will be effected. A number of key recommendations are summarized in this section.

Section 2--Cutting Red Tape in Hiring, Promoting, and Separating Employees

Staffing is the essential function on which the success of the entire personnel activity of the Federal Government depends. This section of the report deals with hiring, promoting, and separating employees in the career service, and with the relationship of career service employment to employment in alternative merit systems and other "excepted services." It deals with the most basic requirements for both employee equity and management effectiveness. The major themes of the section are:

- Streamlining a highly complex personnel system to facilitate faster action and to make it more understandable and useful.
- Decentralizing personnel management authorities and operations to levels as near as possible to program operations in the agencies of the Government to help improve management.

Hiring and Promoting Employees In The Career Service

Authorize the President to assign examining responsibility to agencies as well as to the Office of Personnel Management. (Recommendation no. 1)

Change the law that now requires selection from among the top three numerically-ranked candidates to allow supervisors to select candidates ranked within broader categories. (Recommendation no. 2)

Limit veterans' preference in the selection process to a period sufficient to provide adjustment after military service. (Recommendation no. 5)

- Provide extra help for Vietnam and disabled veterans. (Recommendations no. 6 and 7)
- Simplify instructions to agencies on promoting employees. (Recommendation no. 10)

Removing Employees from the Career Service

The main reasons for discharging Federal employees are cutbacks in the amount of work or in the number of employees needed; employees refusing to relocate when their jobs are moved; disruptive conduct on the job; and unacceptable work performance that cannot be improved. Rather precise procedures apply in each of these situations.

Aside from those who quit or retire, the largest number of Federal employees removed leave because of reductions in force and transfers of functions. The laws, regulations, and derived procedures for reductions-in-force are complicated. Recommendations for simplifying them are included in section 5 (recommendations no. 43, 44, and 45).

The next largest group of discharged employees is comprised of those who are separated during their probationary period (first year of service). It is relatively easy to discharge an unsatisfactory employee during the probationary period, and no recommendations for change are presented.

After the probationary period, a career employee may be discharged only to promote the efficiency of the service. The civil service laws and regulations prescribe procedures designed to protect employees from dismissal due to partisan politics; discrimination based on race, color, sex, religion, age, or national origin; or other factors not related to the work. No changes are recommended for this basic process, which is designed to give employees a fair chance to be heard while still giving agencies a means to discipline or discharge employees whose conduct or performance is unacceptable. The staff concluded that the basic problems lie in the appeals processes, which are so long and complicated that employees are confused by them while managers are intimidated and often hesitate to initiate action to remove the incompetent. Recommendations for improving the appeals process are given in section 3.

Establishing More Rational Ties Between the Excepted Services
and the Career Service

- Establish criteria for personnel systems to be excepted from the competitive career service, make a comprehensive review of all excepted personnel systems, and bring those which do not meet criteria into the basic career service. (Recommendations no. 11, 12, and 13)
- Provide greater opportunity for employees to move among personnel systems within the Federal service. (Recommendation no. 14)

Combine positions now excepted from the competitive civil service in Schedules A and B into a single category of excepted positions, and move attorneys into the competitive service. (Recommendations no. 15, 16, and 17)

Section 3--Protecting Merit Principles and Protecting Employees

The Government needs strong safeguards for merit principles if they are to withstand strong political pressures. The staff believes that these safeguards can be obtained only by a fundamental reorganization, as described in section 11. In addition, individual employees need strong protection from arbitrary or capricious personnel actions and from discrimination based on politics, race, color, sex, religion, national origin, age, marital status, or handicap. A clear place must exist for employees to take individual complaints to be heard and to get appropriate corrective action.

Additional procedures will add little in the way of protection, and will result primarily in more red tape. In lieu of more process, the staff has concluded that more meaningful safeguards can be provided by greater organizational insulation of the appeals and investigative functions.

Employees with complaints now face a confusing array of possibilities --appeal vs. grievance vs. discrimination complaint. They also face a bewildering tangle of rules, regulations and procedures as well as deadlines to be met to avoid losing an appeal on procedural grounds. Reforms proposed here do two things:

Transfer the authority to decide appeals and discrimination complaints to an independent agency that does not advise management on personnel matters at the same time it is considering appeals, and is less subject to pressure from the White House, agency heads, and members of Congress.

Clarify and simplify the procedures for appeals, grievances, and discrimination complaints to make them easier to understand and to use.

These changes will also lead to faster resolution of matters in dispute between employees and the agencies that employ them, resulting in more expeditious enforcement of individual rights.

Organizing to Protect Merit Principles

The keystone of the proposed safeguarding of merit principles is the Merit Protection Board, which will have the capacity, by law, to protect the public's interest in merit and the employee's rights to justice. Without establishment of the Board to perform these functions, the staff would not recommend some of the steps suggested in this report to increase managerial flexibility and efficiency that are needed to make Federal programs more effective. (For a full discussion of the Merit Protection Board, see section 11.)

The elements of the organization proposals which relate to protecting merit principles are:

The Merit Protection Board will become the main overseer for the protection of merit principles, with responsibility for merit investigations and appeals, and for serving as an ombudsman for employees in personnel matters.

The Office of Personnel Management, as the central personnel management agency of the Government and sensitive to the legitimate needs of the President and of department and agency heads, will provide personnel management leadership in the executive branch, including a more vigorous program of personnel management evaluation in Federal agencies.

The General Accounting Office, through its independent audits of personnel management, will help to spot aspects of personnel operations that are not in line with merit principles.

Protecting Employees through Appeals, Grievances, and Discrimination Complaints

- Clarify the lists of personnel actions (1) which all employees may appeal to the Merit Protection Board, (2) which are settled by negotiated grievance procedures as opposed to statutory appeals processes, and (3) which are settled by other procedures established by the Office of Personnel Management. (Recommendation no. 18)

Reimburse the employee's costs of a successful appeal. (Recommendation no. 20)

Simplify the procedure for settling grievances of employees not covered by a negotiated procedure. (Recommendation no. 22)

Make negotiated grievance procedures that are available to employees covered by labor-management agreements the full equivalent of the appeals processes that are available to employees not covered by labor-management agreements. (Recommendations no. 23, 24, and 25)

Shorten and simplify the discrimination complaint process. (Recommendation no. 26)

Provide to handicapped persons and older workers the same equal employment opportunity rights and complaints procedures now given to other Federal employees and applicants for jobs. (Recommendation no. 27)

- Provide the same equal employment opportunity rights to Federal employees as to employees in the private sector. (Recommendation no. 28)

Publish and index decisions made on discrimination complaints. (Recommendation no. 28)

Provide access to low-cost, expert representation for Federal employees with discrimination complaints. (Recommendation no. 28)

Improve the procedures for class action complaints. (Recommendation no. 28)

Afford full due process to named alleged discriminatory officials prior to a decision on a discrimination complaint. (Recommendation no. 28)

Section 4--Improving Opportunities for Women and Minorities

There is now a lack of agreement on the criteria for making an objective, meaningful, and dispassionate evaluation of progress in equal employment opportunity for minorities and women in the Federal service. Therefore, the recommendations for assuring and improving Federal equal employment opportunity emphasize:

Setting and clearly articulating the equal employment opportunity goal of the Federal service.

Establishing a coordinated Federal management strategy for achieving that goal.

Taking action on additional proposals to move toward equal employment opportunity.

Federal Equal Employment Opportunity Goal

- Set a goal of a Federal workforce with minorities, women, and handicapped workers integrated at all levels, across all organizational units and occupations, and in percentages substantially similar to their percentages in relevant job markets, but without the use of quotas. (Recommendation no. 29)

Coordinating Management Strategy to Achieve the Goal

Require agencies to:

- o Make substantial progress each year toward the goal.

- o Make the agency personnel office and top management offices models of integration.
- o Develop equal employment opportunity plans covering several years, outlining actions to correct deficiencies in all employment practices.
- o Give greater weight to equal employment opportunity accomplishments in making selections, promotions, and managerial awards.

(Recommendation no. 30)

Direct the Office of Personnel Management to:

- o Become a model for accomplishment of equal employment opportunity program planning and implementation at all levels.
- o Set up a data system to show the status of minorities, women, and handicapped workers in job markets and at all stages of the hiring process and employment.
- o Expand recruiting efforts for minorities and women where they are under-represented.
- o Make agreements with agencies to use existing staffing flexibilities and exceptional hiring authorities to correct hiring practices which adversely affect minorities, women, and the handicapped.

(Recommendation no. 31)

- o Include equal employment opportunity plans and accomplishments in the planning and budget processes. (Recommendation no. 32)

Other Actions to Achieve the Goal of Equal Employment Opportunity

Set up a Federal scholarship program for fields of study in which minorities, women, and handicapped persons are greatly under-represented in the Federal service. (Recommendation no. 33)

Authorize conversion of American Indians and Alaskan Natives to competitive civil service status after two years of satisfactory service. (Recommendation no. 34)

Establish a new Government-wide upward mobility program and require agencies to establish specific positions for upward mobility trainees. (Recommendation no. 35)

Section 5--Helping Managers Manage Well

This section presents recommendations for creating an environment which will encourage managers and employees to do their jobs better, provide them with necessary support systems, eliminate counter-productive constraints, and reward success. Pilot testing to demonstrate the workability and usefulness of some proposals is also recommended.

Removing or Reducing Barriers to Good Management

- Eliminate those centrally-mandated management controls, such as personnel ceilings, which inhibit rather than encourage good management, in those agencies which have adequate accounting and other management systems to use more effective approaches. (Recommendation no. 36)

Clarify current policy on contracting out and integrate review of contracting out practices into the annual budget review process for consideration along with other resource allocation decisions. (Recommendation no. 37)

Providing New and Improved Systems for Good Management

Institute systematic workforce planning. (Recommendation no. 38)

Strengthen programs to measure and enhance productivity. (Recommendation no. 39)

Reduce the negative impact of adjustments in the workforce caused by reductions in force. (Recommendations no. 43, 44, and 45)

Authorize pilot-project testing of new administrative management techniques and programs by well-managed agencies. (Recommendation no. 46)

Expand basic and applied personnel research Government-wide. (Recommendation no. 47)

Developing Executives

Establish executive development programs in departments and agencies. (Recommendation no. 48)

Developing Managers and Employees

Initiate a new Presidential-level, Government-wide effort to strengthen the systems within agencies for developing employees, both to improve their current job performance and to prepare them to fill positions of greater responsibility and complexity in the future. (Recommendation no. 49)

Improve the procurement of training programs and services from outside contractors by placing greater emphasis on assuring the competence of the individuals providing the service, and clarify the role of the Office of Personnel Management in determining the criteria and processes to be used in contracting for training services. (Recommendations no. 50 and 51)

Authorize agencies which cannot find vacancies for employees facing "no-fault" job losses to give these individuals training to help prepare them for jobs in other Federal agencies. (Recommendation no. 53)

Develop standards and training programs in public service ethics to provide a better understanding to all Government employees of their responsibilities to the public. (Recommendations no. 54 and 55)

- Broaden managers' understanding of their role and the impact of their actions both at agency headquarters and field levels by removing the existing financial and other barriers which discourage geographic mobility. (Recommendation no. 56)

Establish a probationary period for initial assignments to a supervisory or managerial position. (Recommendation no. 58)

Improving Systems for Evaluating Performance and Motivating Managers and Employees

- Replace current complex, centrally-mandated performance rating procedures with broad guidelines allowing for streamlined evaluation and appeals processes. (Recommendation no. 60)

- Relate awards for exceptional performance more closely to the performance. (Recommendation no. 62)

Section 6--Improving Pay and Benefit Systems

The recommendations presented in this section are aimed at providing Federal employees compensation--pay and benefits--which (1) is fair and equitable to both the employees and the taxpaying public and (2) will attract, retain, and motivate a competent and qualified work force. The principle of comparability is endorsed as the single, best, stable, long-term policy for setting Federal civilian pay, and proposals are presented for improving the process of setting pay on the basis of comparability with pay outside the Federal Government. Recommendations concerning variations from the general pay system are also presented.

Improving the Pay Comparability System

- Reaffirm the concept of comparability as the policy guide for setting Federal civilian pay and extend the concept to include total compensation, or pay plus benefits. (Recommendation no. 63)
 - Authorize the Office of Personnel Management to adjust benefits for white- and blue-collar employees in the way General Schedule pay is now adjusted, consistent with existing controls exercised by Congress. (Recommendation no. 66)
- Survey State and local government employee pay for pay comparability purposes. (Recommendation no. 67)

Variations from the General Pay System

Divide the General Schedule job evaluation and pay systems into two or more homogeneous occupational groupings of employees with national pay rates for some occupations and local rates for others. (Recommendation no. 68)

- Test a merit pay system to improve and reward performance of managers below the level of the Executive Service (described in section 8), with the following features:
 - o Give managers broad discretion to reward subordinate managers based on overall contributions.
 - o For managers below the Executive Service, establish minimum and maximum pay rates for each grade level, without step rates.
 - o Grant pay increases to managers above the minimum rate of the grade solely on the basis of merit.
 - o Take into consideration in evaluating managerial success the manager's accountability for properly applying the job evaluation and pay systems in their organizations.
 - o Provide no formal appeal rights for managers who are dissatisfied with their merit increases.

(Recommendation no. 69)

Enact the Federal Wage System legislative reforms which have been transmitted to the Congress in order to control the changing relationship between blue- and white-collar pay rates. (Recommendation no. 70)

Section 7--Improving Labor-Management Relations

The Federal service labor-management relations program has evolved under Executive orders for 15 years. Fifty-eight percent of the work force has been organized into exclusive bargaining units, and agreements have been negotiated covering 89 percent of those organized. The purpose of the program has been to promote worker morale and Government efficiency by giving employees a voice in personnel processes. The approach has been through a modified form of collective bargaining which does not include negotiation of pay and benefit issues.

This section deals with a variety of organizational and substantive issues under the labor-management relations program. Because collective bargaining exists within the framework of Federal personnel management, the recommendations and proposed changes in these areas should not be considered in isolation, but as part of a comprehensive reordering of the existing structure and system for managing the Government's personnel resources.

The question of exclusions from the labor-management relations program, such as the Foreign Service under Executive Order 11636, and exclusions such as the national security agencies, is not discussed. We expect this issue to be raised and resolved at a future date in connection with decisions concerning the continuing need for exclusions in light of the increased flexibility and other changes to be made in the career service.

Administering the Labor Relations Program

Set up an independent organization to administer the labor-management relations program, to include functions now performed by the Federal Labor Relations Council, the Assistant Secretary of Labor for Labor-Management Relations, and the Federal Service Impasses Panel. (Recommendation no. 71)

Organizing the Employer for Management Effectiveness in Labor Relations

- Set up a strong office of labor relations within the Office of Personnel Management to provide leadership in representing management interest in labor relations. (Recommendation no. 74)

Defining the Scope of Bargaining

- Set up a National Personnel Policy Committee, representing both unions and management, to consult on central personnel policies and regulations, in an advisory capacity to the Office of Personnel Management. (Recommendation no. 75)

Additional Issues in Labor-Management Relations

Consider authorizing the negotiation of representation fees for employees who are not union members to pay unions to represent them. (Recommendation no. 76)

Support consultation committees, representing unions and management, to discuss improving the quality of working life and productivity. (Recommendation no. 77)

Section 8--Establishing an Executive Service

All of the recommendations in this section are part of a comprehensive proposal for legislation creating a wholly new personnel management structure for selecting, developing, and managing top level Federal executives. The new Executive Service is intended to try to balance

the need for flexibility in the use of executive resources and employee needs for career opportunities and protection. It will give special attention to the rights of the public for effective, efficient, and impartial administration of Federal programs.

- Bring all executive branch personnel systems and agencies into the Executive Service, but provide for Presidential exceptions. (Recommendation no. 79)

Include all managerial positions at the present GS-16, 17, 18 supergrade levels and in Executive Levels V and IV. (Recommendation no. 80)

- Identify and reserve for career employees positions which should be non-partisan; permit all other positions to be filled by career or noncareer managers at the discretion of the agency head. Legislatively limit, to current levels, the total proportion of noncareer managers. (Recommendation no. 83)

Shift from the current rank-in-position to a rank-in-personnel system, with limitations to prevent all members of system from rising to top of scale. (Recommendation no. 84)

Establish a system of accountability for organizational performance linked with both compensation and tenure of executives. (Recommendation no. 86)

Protect career executives against capricious, improperly motivated, or illegal discriminatory actions. Except for misconduct, prohibit a newly-appointed noncareer executive from moving subordinate career executives out of their positions until at least 120 days after the noncareer executive is appointed. (Recommendation no. 87)

- Eliminate longevity pay increases and substitute one-time incentive payments based on excellence of performance and not subject to pay ceilings. (Recommendation no. 88)

- Require systematic executive development with full attention to necessity of bringing women, minorities, and other excluded groups into the managerial mainstream. (Recommendation no. 89)

Give present incumbents of positions included in the Executive Service the option of being "grandfathered" into the Service or of remaining in their present positions, retaining all the rights, compensation, and benefits to which they are presently entitled. (Recommendation no. 91)

Section 9--Improving Personnel Management in Departments and Agencies

The work of this project was directed primarily toward the need for change in Government-wide personnel management. However, in the course of this review, the staff found that agency-initiated actions and procedures are as much responsible for the complexities, inflexibilities, and delays that characterize civil service employment as are the requirements imposed by the central system. This brief section describes some agency problems identified by the staff--including delegations of authority to act on personnel matters, agency personnel practices, and the quality of work life--and proposes general improvement approaches.

Delegating Personnel Authority

- Delegate authority to act on all personnel matters in agencies to the fullest extent and to the lowest organizational levels practical, remove redundant and non-essential procedural requirements and paperwork, and strengthen internal personnel management evaluation programs. (Recommendation no. 92)

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Improving Personnel Practices in Agencies

- Permit agency personnel offices to hire within established personnel ceilings without verifying each vacancy in advance with the agency budget office. (Recommendation no. 94)

Allow personnel actions initiated before new policies and procedures are implemented to be completed under the old procedures. (Recommendation no. 95)

- Integrate manpower planning and recruitment efforts. (Recommendation no. 97)

Train supervisors for early identification and handling of significant employee problems. (Recommendation no. 98)

Improving Labor Relations in Agencies

- Develop union-management collaboration in bilateral consultation committees which meet regularly to plan improvements in the quality of working life, productivity, and general labor-management relations in the agency. (Recommendation no. 99)

Improving the Quality of Working Life

- Make greater use of approaches to improving the quality of working life, such as job redesign, bonus pay plans, flexitime, and improved support services to increase job satisfaction and productivity. (Recommendation no. 100)

Agency Personnel Management Evaluation

- Undertake internal departmental personnel management reviews that include determining ways to cut unproductive red tape, provide greater help to employees in their career development, and ensure maximum equity in personnel actions. (Recommendation no. 101)

Section 10--Improving Federal, State, and Local Interaction in Personnel Management

Federal, State, and local governments are partners in carrying out many important national programs, funded in large part by Federal grants. Federal grant agencies generally impose personnel management and general management requirements on their grant recipients with the purpose of improving the effectiveness of these Federally-assisted programs. Unfortunately, these requirements often have the reverse impact of posing obstacles for good State and local personnel management.

This section covers the Federal role in providing general management assistance to State and local governments, the imposition of specific requirements as a condition of grant awards, and Federal mandating of State and local personnel practices.

While it is necessary that grant-assisted programs have some personnel guidelines or requirements, efforts by diverse Federal agencies to exercise detailed control conflict with the constitutionally-based view of intergovernmental partnership and, also, often result in overlapping, duplicative, or multiple requirements on State and local management. Federal intervention in State and local personnel affairs should be minimal.

Adopt the merit principles of the Intergovernmental Personnel Act as the basic personnel requirement for Federal grants, to be administered by the Office of Personnel Management, with sanctions for noncompliance to be applied by the agency making the grant. (Recommendation no. 102)

Continue Federal grants under the Intergovernmental Personnel Act, but put more funds into the program and increase the Federal share of the grants. (Recommendation no. 109)

Continue grants for research on State and local personnel management; set up a program to facilitate temporary exchanges between jurisdictions of people with needed personnel management expertise. (Recommendation no. 112)

Set up a clearinghouse on temporary mobility assignments to match people with job assignments. (Recommendation no. 113)

- Establish pilot programs of grants to State and local governments to improve general management. (Recommendation no. 116)

Section 11--Organizing for Personnel Management

This section contains recommendations for organizing the central Government-wide responsibilities for personnel management and labor-management relations; considers alternative organizational patterns for administering the equal employment opportunity and affirmative action programs in the Federal sector and presents conclusions and recommendations; and focuses on decentralizing personnel management functions and coordinating personnel management between the central personnel agency and operating agencies, and between headquarters and field levels.

Dividing Responsibilities and Authorities for Personnel Management at the Government-Wide Level

- Change the organization of the Government for personnel management:
 - o Abolish the present U.S. Civil Service Commission and divide its functions and authorities between an independent administrative agency, to be called the "Office of Personnel Management," and an independent "Merit Protection Board."
 - o Place the Office of Personnel Management under the leadership of a single director and assign to it the personnel policy-making and central management staff functions currently assigned to the Civil Service Commission.
 - o Provide that the Director of the Office of Personnel Management be appointed by the President, confirmed by the Senate, and serve at the President's pleasure.
 - o Make the Director an immediate advisor to the President and provide that the Director shall be the principal contact point between the President and agency heads on personnel management matters.

(Recommendation no. 117)

With regard to the Merit Protection Board:

- o The Merit Protection Board should be composed of three members, appointed by the President on a bipartisan basis, and confirmed by the Senate, with overlapping, non-renewable terms of seven years each. The members would be removable only for cause.
- o Assign the current authority of the Civil Service Commission to adjudicate appeals to the Merit Protection Board, except as otherwise noted in this report.

- o Expand the Board's jurisdiction to cover additional forms of merit system abuse, Federal merit systems now outside the competitive service, and a personnel ombudsman role.

(Recommendation no. 118)

- Increase the role of the General Accounting Office in Federal personnel management; place greater emphasis on reviewing the soundness of the Federal personnel management system. (Recommendation no. 119)

Establish a Federal Labor Relations Authority as a separate, independent agency to administer the Federal labor-management relations program and to perform third party functions required by the program. Assign the leadership role in the executive branch for the development and coordination of management policy in Federal labor-management relations to the Office of Personnel Management. (Recommendation no. 120)

Organizing for Equal Employment Opportunity

- Transfer all equal employment opportunity functions assigned to the Civil Service Commission to the Office of Personnel Management, except resolution of discrimination complaints. Transfer responsibility for investigating and adjudicating discrimination complaints to the Merit Protection Board. (Recommendation no. 121)

Decentralizing and Coordinating Personnel Management Functions and Responsibilities

Assign "lead" agencies responsibility for developing and delivering training for Federal employees. (Recommendation no. 122)

Assign agencies a larger role in evaluating personnel management and assign the Office of Personnel Management responsibility for quality control of agency work, training agency staffs, and increased management assistance to support agency evaluation systems. (Recommendation no. 123)

SECTION 3

PROTECTING MERIT PRINCIPLES AND PROTECTING EMPLOYEES

INTRODUCTION TO SECTION 3

This section of the report covers two closely related subjects:

Protecting merit principles from partisan political attacks.

- Protecting employees from improper application of personnel authorities.

Protecting Merit Principles

The main idea of the merit system is to hire people into the civil service on the basis of their qualifications, and to advance people

and retain them in the service on the basis of their relative performance on the job and their ability to take on more responsible work. No other considerations should apply in hiring, promoting, or retaining career employees--not political party, race, color, sex, religion, national origin, marital status, age, handicap, or other factors unrelated to the job. No better way has yet been devised to assure high professional competence in carrying out Federal programs, continuity of service through changes of political leadership, and equal treatment of citizens without regard to their political affiliation.

Yet recent history has forcefully demonstrated how easy it is to undermine merit principles and to disguise significant merit violations as legitimate actions. While known violations in the Federal service have been relatively limited, these have been enough to undermine essential confidence in the integrity of the merit system. Over the years, heavy pressures to subvert merit principles have been exerted from time to time from the White House, Members of Congress, agency heads and many special interest groups. Deliberate and large-scale schemes to subvert merit principles have operated in a few agencies to promote partisan political interests. In other instances, individual violations have occurred.

The Civil Service Commission has not been able to provide adequate protection against these abuses, in part because of its organizational vulnerability. It is essential to reorganize Federal personnel administration in a way which will better withstand assaults on merit principles.

Government by patronage tends to result in government for the politicians rather than government for the people. Further, administrators who are sponsored by mayors, governors, or Members of Congress often owe their loyalty to their sponsor rather than to their agency head and the President. Similarly, employees who secure their positions as a pay-off to influential special interest groups owe their loyalty to these special interests rather than to the public as a whole.

In each such case, public accountability of the agency head and the President is undermined. Subversion of merit principles is one very important way in which the public confidence in our government is weakened.

Appointments and promotions on the basis of who one knows, rather than on the basis of what one knows, tend to result in favoritism, waste, and conflicts of interest, particularly in the award and administration of grants and contracts, thereby adversely affecting citizens throughout the Nation.

This report discusses at many points the need to provide greater flexibility to managers in making choices and judgments about people and the need to simplify and speed up personnel management processes. Some of these reforms may have the effect of making basic merit principles vulnerable to attack. At the same time, it should be recognized that the complexity and red tape which now surround personnel management processes may serve as a refuge for the incompetent and yet do little to prevent abuses motivated by politics, cronyism, or special interests. What is needed is a reorganization which will reduce the red tape on the one hand and which will provide strong and effective merit protection on the other.

In short, the Government needs strong protection for merit principles if they are to survive as the central precepts underlying personnel management in the civil service. Rather than adding to the existing mountain of red tape, that protection requires a fundamental reorganization: creation of an independent agency--a Merit Protection Board--with the mission of enforcing vital merit principles. Through the method of appointment of Board members and the authorities assigned to the Board, it must be insulated from partisan political influence to make it effective in its mission.

Protecting Employees

As a fundamental part of protecting merit principles, employees individually need strong protection from arbitrary or capricious personnel actions and from discrimination based on politics, race, color, sex, religion, national origin, age, marital status, or handicap. A clear place must exist for employees to take individual complaints to be heard and to get appropriate corrective action.

Employees with complaints now face a confusing array of possibilities-- appeal, grievance, or discrimination complaint. They also face a bewildering tangle of rules, regulations, and procedures as well as deadlines to be met to avoid losing an appeal on procedural grounds. In the present organizational structure for Federal personnel management, employee appeals go to the agency which also instructs and advises managers on how to deal with all types of personnel management matters. This situation leads many employees to feel that the existing system is biased against them.

Reforms proposed here do two things:

Transfer the authority to decide appeals and discrimination complaints to an independent agency that does not advise management on personnel matters at the same time it is considering appeals, and that is better insulated from partisan politics.

Clarify and simplify the procedures for appeals, grievances, and discrimination complaints to make them easier to understand and to use.

These changes will also lead to faster resolution of matters in dispute between employees and the agencies that employ them, resulting in more expeditious enforcement of individual rights.

ORGANIZING TO PROTECT MERIT PRINCIPLES

Section 11 of this report presents recommendations concerning organization of the Federal Government for personnel management. It proposes the splitting of the functions now performed by the Civil Service Commission between two new agencies--a Merit Protection Board and an Office of Personnel Management--as well as changes in several boards and committees.

With respect to protecting merit principles, the key points are these:

- The Merit Protection Board will become the main protector of merit principles, through both a merit investigation function and an appeals function.
- The Office of Personnel Management, as the central personnel management agency of the Government, will conduct a strong program of personnel management evaluation in Federal agencies.
- The General Accounting Office, through its expanding management audits of personnel administration, will help to spot areas of personnel operations that are not in line with merit principles for the attention of both the Congress and the Executive branch.

The central mission of the Merit Protection Board will be to protect merit principles. The Board's strength and independence will derive from the way its members are chosen, from the functions and powers assigned to it, and the lack of conflicting roles with which the Civil Service Commission is now burdened.

MEMBERSHIP OF THE MERIT PROTECTION BOARD

The Merit Protection Board will have three members, no more than two of the same political party. They will be appointed by the President and confirmed by the Senate. They will serve staggered, seven-year terms that overlap. Thus a particular President will have, at most, two opportunities to appoint members to the Board during a four-year term of office, and a President may have only one opportunity. The President may remove a member only for cause, not for partisan political reasons.

Members will not be able to serve more than one term on the Board. This restriction makes the members even more independent of political influence, and provides an additional, important source of protection for merit principles. Civil Service Commissioners, by comparison, may be vulnerable to partisan pressures during extended portions of their terms of office when they are seeking renomination.

With these provisions, the Merit Protection Board, plus a more involved General Accounting Office, is the keystone of this entire reorganization proposal. It is essential to strengthen the capacity, by law, to protect the public's interest in merit and employees' rights to justice. Without the Board to perform these protectionist functions, it will not be possible to assign to the proposed Office of Personnel Management the authority to meet the Government's need for economy, efficiency, and effectiveness in management.

FUNCTIONS OF MERIT PROTECTION BOARD

Functions of the Merit Protection Board will include:

Investigating complaints against prohibited political activities and partisan intrusions into personnel decision making, and ordering corrective actions.

Adjudicating appeals from employees related to virtually all types of personnel actions.

Investigating and deciding complaints of discrimination based on race, color, sex, religion, national origin, age, marital status, or handicap.

- Reviewing the career service, the Foreign Service, the Postal Service, and other alternative merit systems outside the basic career service for the purpose of reporting to the President and Congress whether their procedures and practices conform to merit principles, keeping in mind operational needs.

OMBUDSMAN ROLE FOR PERSONNEL MATTERS; WHISTLE-BLOWERS

An additional function of the Merit Protection Board will be to serve as an ombudsman for personnel matters. The ombudsman concept, developed in Scandinavia, has now been applied in a number of local government systems and even in some university systems. Its rationale is quite simple. Numerous other elements of the system (internal administrative appeals and grievance procedures, the courts, collective bargaining, Congressional offices, and the news media, among others), have important roles in responding to employee and citizen complaints. However, sometimes a different kind of access to government, the kind encompassed by the independent and high level official able to investigate and make recommendations, is needed to secure expeditious redress.

In most organizations where an ombudsman position has been established, the ombudsman's weapons have been limited to the ability to publicize, criticize, persuade, and bring administrative pressure to bear on the public official involved. In this case, the Merit

Protection Board, through its Special Counsel, would have the authority to go even further and order the reversal of administrative actions taken by Federal agencies. This power and the special role of the Special Counsel are outlined in Section 11 of this report.

The Board may serve this role with respect to all employees, including cases of alleged retaliation against whistle-blowers. "Whistle-blower" is a term of recent coinage. It describes an employee who believes an agency's actions violate the fundamental laws and principles which govern its operations--laws related either to substantive programs, or to administrative functions such as procurement and personnel. Generally speaking, such an employee feels deeply that the agency is jeopardizing vital national interests and that its actions must be publicized, or at least brought to the attention of those who can look at the employee's concern objectively.

Such employees sometimes take their charges to Congress or to news media and hope for vindication. On many occasions, such employees have been disciplined, directly or subtly, for reasons ranging from unauthorized disclosure of privileged information to violation of one or more regulations. Unfortunately, many frivolous and self-serving charges are also made, alongside those which have merit, and it is often difficult to distinguish the valid charge from the invalid. Further, some employees fail to bring these problems to the attention of management in any meaningful way before "going public." Hence, this area of employee redress requires the careful and thoughtful weighing of facts which will be afforded by the Board.

Congress is presently considering legislation to define whistle-blowing and to establish the rights and obligations of whistle-blowers. Whether or not that legislation passes, the proposals in section 11 of this report provide a place within the executive branch for whistle-blowers to take their personnel complaints on direct appeal when they suffer retaliation.

CONCEPT OF A CIVIL SERVICE COURT

In making the recommendations in section 11, consideration was given to assignment of merit and employee protection roles to a specialized court created for that purpose. While a "Civil Service Court" might bring an image of dignity and impartiality to the undertaking, we believe that the arguments against it outweigh the arguments for it.

First, changing a quasi-judicial activity to a judicial process with a more deliberate pace would not serve the interests of prompt, procedurally simple dispute-resolution; delay is already a serious problem for employees and managers alike, and the need is to reduce it. Second, assigning employee appeals to a specialized court would invite premature and, therefore, inappropriate judicial intrusion into the operational responsibilities of the executive branch. It is preeminently the responsibility of the executive branch to see that the laws are faithfully executed, and that includes laws that apply to the executive branch itself. Once administrative processes are exhausted, the courts of course remain available as the detached interpreters of constitutional rights of individuals. And finally, it might be difficult to develop within a judicial framework the necessary diversified and highly technical expertise required for this role.

PROTECTING EMPLOYEES THROUGH APPEALS, GRIEVANCES, AND DISCRIMINATION COMPLAINTS

Government employees may appeal a wide variety of management actions and determinations, ranging from issues such as termination and suspension to the denial of life insurance coverage and the classification of positions. Many of these actions are more truly administrative reviews of technical decisions, while others involve quasi-judicial proceedings concerning the property interests of tenured Federal employees in their jobs.

Employee appeals and complaints are resolved through a wide range of appeals procedures and by several appeals bodies. The result is a system that is confusing, complex, and time-consuming. The chart on page 59, which depicts present appellate channels, indicates the complexity of the overall system. While many managers think that it is nearly impossible to remove incompetent employees because of the procedural and other protections afforded by laws, regulations, and court decisions, many employees believe that the present appeals systems are biased in favor of management and provide neither equity nor due process.

The sources of complexity in the appeals, grievance, and discrimination complaints processes are:

- The wide range of personnel actions that employees may appeal in one way or another.
- The large number of organizational units involved in deciding appeals and the confusing patterns of jurisdiction between them.
- The possibility in some kinds of cases of pursuing an issue in more than one forum.

An employee with one particular complaint may have an informal grievance to be settled within the work unit, an appeal under a law or regulation to submit to the Federal Employee Appeals Authority, a grievance to take to arbitration under an agreement between a union and the agency, a discrimination complaint to try to settle in the agency, an unfair labor practice, or one of many kinds of technical appeals for a special purpose appeal office within the Civil Service Commission to decide under special procedures. A specific issue involved in this complaint, or parts of a large overall issue, may sometimes be pursued through more than one of these processes simultaneously or in sequence. The employee may follow more than one of these tracks to get the issues settled at the same time and may get different results from alternative procedures. The whole process takes a long time, may cost an employee a lot of money, and confronts the employee with a great profusion of rules, regulations, and procedures.

REFORMING APPEALS, GRIEVANCES, AND DISCRIMINATION COMPLAINT PROCESSES

Main avenues for speeding up and simplifying appeals processes are to:

- Reduce the array of alternative procedures available.
- Reduce the number of organizational elements involved in the various appeals processes.
- Simplify the procedures for filing and resolving each type of complaint.

RECOMMENDATION NO. 18

Provide the following avenues of appeal for individual complaints, with restrictions as noted:

For employees covered by agreements negotiated between unions and agencies:

- o Negotiated grievance procedures, with final stage arbitration.
- o Negotiated grievance procedures should be the exclusive appeals route on covered rights, but they should not cover classification, equal employment opportunity, political invasions of merit, Fair Labor Standards, or strictly administrative matters. Those rights would be protected by other procedures below, with employee rights to appeal under Merit Protection Board procedures.

For employees not covered by agreements negotiated between unions and agencies, and for all employees with respect to rights not within the scope of negotiated procedures:

- o Informal grievances under non-negotiated grievance procedures (settled within the agency); and
 - o Appeals (settled by the Merit Protection Board).
- Discrimination complaints, for all employees who feel they have been the victims of discrimination based on race, color, sex, national origin, religion, age, marital status, or handicap. Filing a discrimination complaint forecloses the option to file another type of grievance or appeal on the same issues.

(Implementation: President, by sending a reorganization plan to Congress, to transfer appellate authority to the Merit Protection Board, and by proposing legislation to allow negotiated grievance procedures to cover certain matters for employees in exclusively represented units. Office of Personnel Management, by issuing regulations.)

This recommendation clarifies the avenues available for resolving individual complaints by giving the employee one clear avenue for a particular complaint. It recognizes the development of the negotiated grievance processes, generally including arbitration, in the field of labor-management relations, alongside the appeals system based on laws and regulations. It also continues a separate system for resolving discrimination complaints. This recommendation alone will greatly simplify complaint processes and reduce delays.

SIMPLIFYING AND SPEEDING UP THE APPEALS PROCESS

With respect to all appeals from employees in units that are not covered by agreements negotiated between unions and agencies (and for all employees on some matters), two proposals will simplify and speed up the process. The first is to establish the Merit Protection Board as the single organizational unit for deciding appeals from Federal employees, as recommended in section 11 of this report. The second is to clarify which of the many types of matters now appealable may go to the Board.

Under the present appeals structure, there are three organizational levels for deciding appeals on major adverse actions such as removal, reduction in grade or pay, suspension for more than fourteen days, or reduction in force. The employee who wishes to appeal goes first to the Federal Employee Appeals Authority, an organization within the jurisdiction of the Civil Service Commission, but not directly under the supervision of the Commissioners. When that Authority issues its decision, the employee may, in many instances, seek to have it reconsidered by the Appeals Review Board, a second quasi-independent body within the framework of the Civil Service Commission. It was originally intended that the Board would apply criteria which would sharply limit cases already decided by the Authority which could be reopened. But the Board has become involved in more and more types of issues, and the Authority is tending to become merely a step in the process.

When the Appeals Review Board issues its decision, the employee may, in some instances, ask the Civil Service Commission itself to consider the case again. This, in effect, allows a third level of review within the executive branch.

The chart illustrates this full process in the case of removal of an employee. The process begins with the first notice to the employee, then continues through the employee's response and the agency's reconsideration and decision. From that point, if the employee elects to appeal to the Federal Employee Appeals Authority, then to the Appeals Review Board, then to the Civil Service Commission, the process is complicated and stretched out for an extremely long time--months in the best of circumstances, years in some cases.

Switching to a single agency to decide appeals will greatly simplify the process and, if the agency is adequately staffed, will speed it up. The chart on page 65 illustrates that condition. Note that the action steps within the agency before the removal of the employee are the same--first notice to the employee, employee's response, agency's reconsideration and decision. But when the employee decides to appeal the action, the appeal process is much clearer under the organizational changes recommended in section 11.

With respect to clarifying which of the many appealable matters are to go to the Merit Protection Board, appeals from major adverse actions--including separation, lengthy suspension, and reduction in grade or pay--will be sent to the new Board. These matters will comprise the bulk of the Board's workload.

Less clear are all the other kinds of agency actions that employees may now appeal in one way or another. These include classification of position, examination rating, pay status under the Fair Labor Standards Act, restoration after military duty, retirement matters, denial of insurance coverage (health or life insurance), and a long list of additional matters.

Many of these additional matters lend themselves to narrow technical decisions of a "yes" or "no" type. The decision on these, based on comparison of a set of facts with a set of reasonably precise rules and standards, is whether the employee is entitled to the specific benefit or right claimed. By contrast, decisions on major adverse actions require broad use of judgment under laws or rules that may be applied differently in different circumstances.

The key question is what division of these types of complaints will best speed up the appeals process, be fair to both employees and managers, and contribute to the efficiency of the service.

RECOMMENDATION NO. 19

Transfer all appealable matters currently within the jurisdiction of the Civil Service Commission to the jurisdiction of the Merit Protection Board, except such technical matters as appeals of position classification, examination rating, and pay status under the Fair Labor Standards Act which should be referred to the Office of Personnel Management.

(Implementation: President, by sending a reorganization plan to Congress.)

This recommendation goes beyond the recommendation of the project's Staffing Process Task Force, which studied this subject. That Task Force proposed to limit appeals going to the Merit Protection Board to removal, suspension for more than fourteen days, reduction in grade or pay, and reduction in force. The Task Force proposed sending all other appealable matters to the Office of Personnel Management for a review and decision on the technical points involved. The Task Force believed it would be wasteful to burden the Merit Protection Board with appeals on matters that are largely technical or regulatory in nature and would dissipate the resources of the Board.

This is a valid point, but it is believed even more important to establish the Merit Protection Board as the single organization, with minimal exceptions, for deciding employee appeals. Referral of

employee appeals to the new Office of Personnel Management should be avoided as much as possible, because it will be perceived as, and will become, a strong entity on the side of management. The more firmly it shifts in that direction, the less acceptable it will be (to employees, to unions, and to Congress) for it to function in an adjudication role, even if that role is limited to administrative review of technical issues currently included in the appeals program.

At the same time, a few matters related to appeals require such a high level of specialized technical skill that they should remain in the Office of Personnel Management as recommended by the Task Force. These are appeals related to classification of positions (the position classification structure is at the heart of virtually all personnel management functions), to examination ratings (the examination process is the foundation of the merit system), and to coverage and pay under the Fair Labor Standards Act. The Office of Personnel Management should retain these matters in its jurisdiction.

ADDITIONAL CHANGES IN THE APPEALS PROCESS AND SUBJECTS OF APPEALS

Following are two additional recommendations to improve employee appeals procedures.

RECOMMENDATION NO. 20

Keep employees who are to be removed for cause on the payroll (but not necessarily in the same position), until the 15-day deadline for appealing passes. When an employee wins an appeal, reimburse the employees' actual costs of appealing.

(Implementation: President, by proposing legislation to Congress.)

The rationale for keeping employees on the rolls until the appeal deadline passes is that termination is a severe punishment which places a heavy financial burden on employees. In cases in which an employee wins an appeal, the Government should pay the actual costs incurred by the employee in the appeal process. These costs are sometimes very high, and represent a tremendously difficult burden for an employee who has been wronged.

This provision received mixed reaction from the limited number of managers who commented on it. Union representatives favor this approach, and also supported the additional recommendation of the Staffing Process Task Force to keep employees who are to be removed for cause on the payroll until a decision is reached by the Merit Protection Board or an arbitrator, or for 60 days, whichever is shorter. They believe the present system is unfair to employees as it permits them to suffer sometimes irreparable harm before anything has been proven against them.

RECOMMENDATION NO. 21

Abolish reduction in rank as a concept in Federal personnel management and as a matter that employees may appeal.

(Implementation: President, by proposing legislation to Congress.)

The concept of reduction in rank appears in the law that specifies that veterans within the civil service may appeal reduction in rank or pay (5 U.S. Code 7511). Executive orders have extended the same appeal rights to non-veterans.

The meaning of reduction in pay or grade is clear and easily discerned in practice. However, reduction in rank is an ambiguous concept that has generated much conflict and many contradictory definitions. Employees and agencies have spent enormous amounts of time and resources over the years trying to pin down what a reduction in rank

is and whether an employee has suffered one. An example of this difficulty is the case of an employee who is reassigned from one job to another with a different supervisor and, without any change in pay or grade, is farther down in the organizational structure than before. Is this a reduction in rank? In a classification and pay system in which duties, authorities, and responsibilities are evaluated to arrive at a numerical grade level which determines pay, there is no denominator of rank other than grade level. Because of the ambiguous meaning of the concept within the context of a grade-structured, position classification system, reduction in rank should be abolished as a concept and as a matter that may be appealed.

SIMPLIFYING NON-NEGOTIATED GRIEVANCE PROCEDURES

Labor-management agreements at the agency level must contain procedures for hearing and resolving employee grievances. However, a substantial number of employees are not covered by such agreements. Regulations which govern the resolution of grievances by non-negotiated procedures prescribe a complex procedure that distinguishes between informal and formal grievances, and requires inquiry, recommendation, and decision at various higher levels of management, depending on whether the examiner's recommendations are accepted or rejected. These requirements create delays for both employees and managers.

RECOMMENDATION NO. 22

Limit informal procedures to complaints by employees to their immediate supervisors, who are responsible for responding to employees and either correcting the matters in question or explaining why the situation must continue. If the matter is not within the supervisor's control, the supervisor must get an explanation or correction from the responsible official. Require the supervisor to respond within five working days.

Allow employees who are unsatisfied with the action or explanation of the supervisor to file a formal grievance with a management-designated official. If the designated official cannot resolve the grievance through discussion with the employee and the appropriate management officials, impanel a grievance hearing board or appoint an examiner to look into the grievance.

For grievances of performance ratings or of level of competence decisions, require a review by a higher level of management.

(Implementation: Office of Personnel Management, by issuing regulations concerning administrative grievance systems. President, by proposing legislation to Congress to make performance ratings and level of competence determinations subject to grievance and arbitration procedures.)

The requirement for multiple levels of review is the primary drawback of the current administrative grievance procedure. Replacing these cumbersome procedural requirements with a few simple steps will make it possible for agencies to streamline their internal procedures.

Comments from agencies on this proposal were split, some arguing current procedures were satisfactory, others supporting change. The modest changes proposed should be acceptable.

SCOPE OF NEGOTIATED GRIEVANCE PROCEDURES AND ARBITRATION

Under recommendation no. 18 above, the major avenue available to employees for resolving complaints in work units covered by labor-management agreements will be negotiated grievance procedures. Those employees--over half of the Federal workforce--will have access to those processes in lieu of the statutory appeals processes that now serve for most issues. In short, for covered employees, the

negotiated grievance procedure will serve as the exclusive process for handling all employee grievances and appeals except on matters of position classification, equal employment opportunity, political activities, Fair Labor Standards, examination ratings, and strictly technical administrative reviews.

Negotiated grievance procedures nearly always provide for arbitration as the final process for deciding unresolved grievances. Arbitration now deals essentially with the terms of contractual agreements as they relate to individual disagreements between employees and management.

The process for resort to arbitration is set by mutual agreement of the union and the agency and may be as simple or as complicated as they wish to make it. The process in one agency may not be the same as that in another agency. In contrast, appeals processes are governed by regulations which apply to all civil service agencies, and both the employee and the agency have to abide by these rules with respect to filing and processing an appeal.

To decide appeals, there is a permanent organization with a continuing staff. There is no comparable organization for arbitration. When a union and an agency are unable to resolve a grievance and agree to submit the issue to arbitration, they select an arbitrator from a variety of sources. The arbitrator settles the particular dispute and is paid for just that case and is then not further involved with the union or the agency (unless called upon later to arbitrate a different dispute).

The negotiated grievance procedures and associated arbitration processes under labor-management agreements are not now fully equivalent to the appeals process under laws and regulations, because of limits on the range of subjects and scope of issues that may now be covered by them. The objective of the following recommendations is to make negotiated grievance procedures the full equivalent of the appeals process.

RECOMMENDATION NO. 23

Extend the negotiated grievance and arbitration process under agreements between unions and agencies to the same kinds of complaints as the appeals process under laws and regulations, including removal, suspension for more than fourteen days, reduction in grade or pay, and reduction in force, but specifically excluding position classification, equal employment opportunity, political activities, Fair Labor Standards, examination ratings, and strictly technical administrative reviews.

(Implementation: President, by proposing legislation to Congress.)

This recommendation will make the subject-matter coverage of negotiated grievance procedures and arbitration under agreements between unions and agencies nearly the same as the subject-matter coverage of the appeals process. In 1975, Executive Order 11491, which governs Federal labor-management relations, was amended to allow unions and agencies to negotiate the scope and coverage of their grievance and arbitration procedures, excluding only matters for which a statutory appeal procedure exists, so long as the resultant procedures do not otherwise conflict with laws or the order. Under these amendments, the negotiated procedure may be made the exclusive procedure available to the parties and employees in the unit for resolving grievances which fall within its coverage. Despite the relative freedom to negotiate grievance and arbitration procedures under the 1975 amendments, Federal managers, unions, and employees have continued to express concern about what relationship is

appropriate between appeals procedures and negotiated grievance and arbitration procedures. While unions and agencies are generally pleased with the operation of the negotiated grievance and arbitration procedures, criticisms persist that the range of issues which can be brought to impartial arbitration under negotiated procedures is unnecessarily limited.

The alternatives considered were: (a) continue the current system (excluding statutory rights from negotiated grievance procedures), (b) permit negotiation of procedures to cover all but certain specified appeals (with the unfair labor practice procedure also available, where applicable), or (c) permit the employee to elect the appeal route (grievance procedure, appeal procedure, or unfair labor practice).

This recommendation is essentially alternative (b) above. Consistent with the philosophy expressed in the 1975 amendments of Executive Order 11491, an incremental expansion of the negotiated grievance and arbitration procedure into areas now exclusively within the appeals system would be of greater benefit to the Federal program than a continuation of the present limits on grievances and arbitration.

There are, however, some exceptions to the general rule outlined in this recommendation. Employees who are covered by the grievance and arbitration process will still be able to file discrimination complaints. As in the case of the appeals process under recommendation no. 19 above, the grievance and arbitration process will not apply to complaints about position classification, examination ratings, or pay status under the Fair Labor Standards Act. These will be referred to the Office of Personnel Management. Additionally, appeals relating to alleged violations of the prohibitions on political activity (Hatch Act) will be excluded from negotiated procedures. Unions (or agencies or individuals) will still be able to file charges of unfair labor practices as presently occurs under the labor-management relations program.

RECOMMENDATION NO. 24

Allow arbitrators to settle disagreements on whether particular issues may be arbitrated under an agreement, subject to limited review of arbitrability by the Federal Labor Relations Authority.

(Implementation: President, by issuing an Executive order.)

Occasionally, when employees file grievances on some issues, the union and the agency disagree on whether they are indeed issues that may be subjects of grievances and arbitration at all under the terms of the union agreement. Under the present Executive Order, that question has to be settled before the union and agency may seek arbitration on the substance of the issue. Questions of "arbitrability" are generally settled by taking them to the Assistant Secretary of Labor for Labor-Management Relations with some arbitration of that question in advance or as a part of the arbitration on the issues.

Under this recommendation, the question of arbitrability probably will be settled by the same arbitrator who settles the issue itself and as part of the same arbitration. This will shorten the process and cost less for both unions and agencies.

RECOMMENDATION NO. 25

Allow arbitrators to order corrective actions to the full extent necessary to place employees who file and win grievances against agency actions in the position they would be in if the agency action had not occurred.

(Implementation: President, by proposing legislation to Congress.)

In the parlance of labor-management relations, this recommendation refers to "make-whole remedies." The concept is that in the case of an employee who suffers from an agency personnel action, files a grievance, and then is judged to have suffered improperly, the arbitrator must have the power to order corrective action. An example is an employee who is incorrectly demoted. The arbitrator should be able to order the agency to promote the employee back to the level from which demoted and to provide back pay. Similarly, if an arbitrator finds that an employee was incorrectly denied a promotion, the arbitrator should be able to order the agency to promote the employee and to provide back pay.

The absence of "make-whole remedies" prevents a meaningful resolution of disputes and is contrary to the fundamental precept of law that rights should not be created without appropriate remedies to enforce them. These problems will be solved by enacting legislation to permit arbitrators to set up appropriate make-whole remedies, except in those areas where appeals procedures other than the negotiated grievance process are exclusive.

IMPROVING THE DISCRIMINATION COMPLAINT PROCESS

Under recommendation no. 18, all Federal employees and people who apply for Federal jobs, who feel they are victims of discrimination based on race, color, sex, national origin, religion, age, marital status, or handicap, will be able to file discrimination complaints. As proposed in section 11 of this report, discrimination complaints would go to the Merit Protection Board.

(This runs counter to the views of the project's Task Force on Equal Employment Opportunity and Affirmative Action. That Task Force proposed referring discrimination complaints to the Equal Employment Opportunity Commission and stated its reasons forcefully in Appendix IV to this report. In section 11, however, we recommend giving the Merit Protection Board jurisdiction over discrimination complaints as well as other types of appeals, in order to establish a single organizational unit to resolve virtually all types of complaints from Federal employees.)

The current discrimination complaint process is lengthy, cumbersome, and costly in terms of resources and emotional expenditures, and is frequently used for non-discrimination problems. Employees perceive it as management-controlled and based on policies that reflect a conflict of interest in the Civil Service Commission. Conversely, managers see the system as conducive to abuse and as destructive, rather than helpful, to the resolution of legitimate complaints at the agency level.

Study revealed general agreement among groups and individuals concerned with equal employment opportunity that:

- The discrimination complaint process is too complex and time-consuming. Procedure overshadows substance.
- Equal employment opportunity counselors within agencies are relatively ineffective in resolving complaints and the conditions that bring them about.
- An organization of proven independence and impartiality is needed to hear discrimination complaints.

RECOMMENDATION NO. 26

Shorten and simplify the discrimination complaint process as follows:

- Employee, or job applicant, files complaint with the agency director of equal opportunity.

Director of equal opportunity carries out factfinding and conciliation process.

- Director of equal opportunity issues an agency decision.

Employee, or job applicant, may then appeal directly to a U.S. District Court or to the Merit Protection Board and then to court.

Merit Protection Board holds a hearing, in which employee and agency may:

- o Be represented.
- o Call, examine, and cross-examine witnesses.
- o Introduce evidence beyond that obtained in previous factfinding.
- o Secure a verbatim transcript.

(Implementation: Merit Protection Board, by regulation.)

The process for resolving discrimination complaints as it now stands, appears at the top of the chart on page 76. The chart shows the process in five phases, not counting appeal to a court. The table on page 77 indicate that the process may take up to 621 days to complete.

To simplify the process and to reduce the time involved, the earliest informal counseling stage should be eliminated. This is the step that most observers regard as ineffective. The person filing the complaint will simply move to the formal process within the agency; then, if not satisfied, to the court or the Merit Protection Board. In theory, this will reduce the process to a maximum of 225 days.

The proposed process is significantly different from the present process at the appeal stage. Under the present rules, when a discrimination complaint goes to the Appeals Review Board (phase 4 on the chart of the present process on page 76), the Board reviews only the record compiled at the agency before delivering its decision. Under this recommendation, the Merit Protection Board will conduct much more of a new proceeding, with new or additional evidence if necessary, witnesses, cross-examination, and a new written record. This change alone will greatly increase the confidence of both employees and managers involved in the hearings.

All major studies of discrimination complaints since 1971 have concluded that a serious imbalance exists in the rights afforded Federal employees and those covered by the Civil Rights Act in the private sector. Civil rights, legal, and special emphasis groups generally concur that the present system is heavily management-oriented.

At the same time, individual managers feel that they may be unfairly charged in discrimination complaints. A particular point of objection by managers in the present process is the requirement to name an alleged discriminating official in the complaint. Managers find the present process especially unfair because they are not afforded the normal elements of due process--the right to be present at the proceeding, to call witnesses, and to cross-examine witnesses for the employee who is complaining.

RECOMMENDATION NO. 27

Provide to handicapped Federal employees and applicants, and to employees and applicants protected against age discrimination the same substantive and procedural rights now given to other Federal employees under the Civil Rights Act of 1964, as amended.

(Implementation: President, by proposing legislation to Congress.)

RECOMMENDATION NO. 28

Improve the discrimination complaint process as follows:

Provide the same substantive and procedural rights in Federal employment that apply to the private sector in discrimination complaints in addition to the rights now provided to Federal employees and applicants in Section 717 of the Act.

Publish and index Federal administrative decisions on discrimination complaints and precedents set by the courts.

Provide access to low-cost, expert representation during the administrative phase of the process for Federal employees who file discrimination complaints.

- Improve or replace the present Federal administrative class action mechanism.

Provide to the Federal sector an administrative third-party mechanism for cases related to patterns and practices.

Afford full due process to named alleged discriminating officials prior to a decision.

(Implementation: Merit Protection Board, by regulation. Providing subsidized counsel will require congressional approval since appropriated funds will be involved.)

The reforms outlined in these recommendations will, first, assure that handicapped employees and applicants, and employees and applicants over age 40 will have the same rights as other classes of employees already protected by the Civil Rights Act. Second, all classes of Federal employees and applicants protected under the law will have the same rights as comparable employees in private industry. The additional procedural reforms--publishing decisions, providing low-cost representation, improving the process of class-action complaints, and provision of due process rights for managers--will greatly improve the discrimination complaint process in the eyes of both employees and managers.

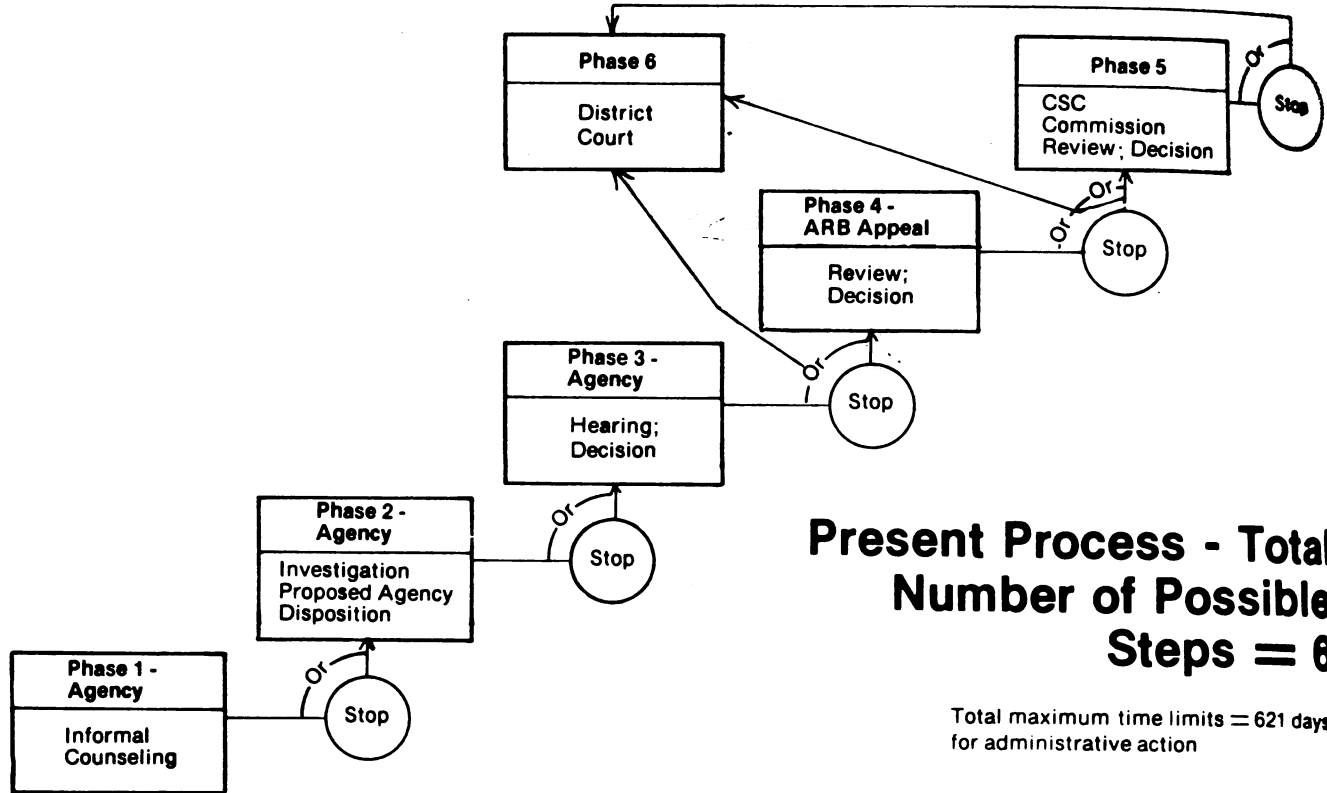
RECOMMENDATIONS IN OTHER SECTIONS OF THIS REPORT WHICH PROVIDE
GREATER PROTECTION FOR EMPLOYEES

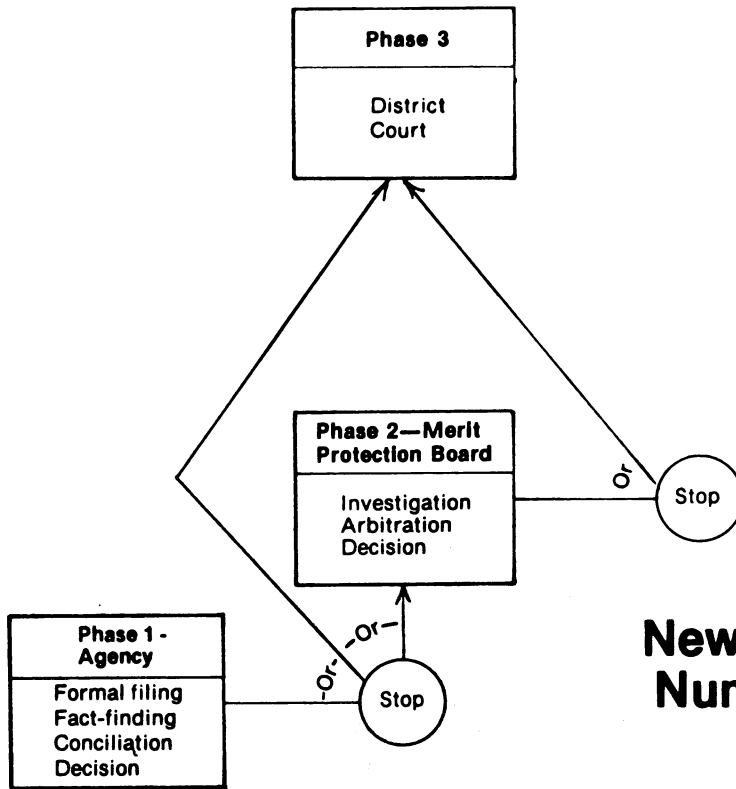
Recommendation No.

- 13 - Legislation to bring into the basic career service all alternative services for which there is found no compelling need to keep separate.
- 14 - Make it easier for Federal employees to move between alternative services and the basic career service.
- 17 - Move most attorney positions into the career service.
- 29 - Establish a national equal employment opportunity goal.
- 30 - Assign responsibility and accountability to agency heads for achievement of their part of the equal employment opportunity goal.
- 31 - Actions by the Office of Personnel Management which facilitate and assist agency achievement of equal employment opportunity goals.
- 32 - Actions by the Office of Management and Budget to strengthen the equal employment opportunity program.
- 35 - Improve the Upward Mobility program.
- 52 - Remove potential employee tax liability in training costs paid by the Government.
- 38 - Establish workforce planning systems, and improve planning & to reduce the number of avoidable reductions in force.
- 42 - (Among other things, should reduce sudden adverse impacts on employees.)
- 44 - Permit earlier retirement for employees separated under reductions in force.
- 45 - Require agencies to fill bona fide vacancies with qualified employees being released or demoted because of reductions in force.
- 53 - Amend the law to permit agencies to train employees facing "no-fault" job loss for jobs in other agencies.
- 60 - Amend the law so that better performance evaluation systems can be developed.

Recommendations in Section 7 for improvement of the Federal labor-management relations program.

DISCRIMINATION COMPLAINTS PROCESS





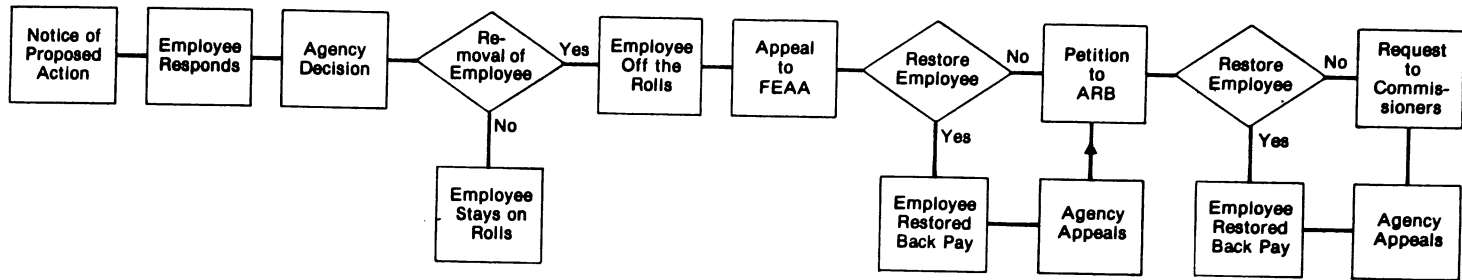
**New Process - Total
Number of Possible
Steps = 3**

Total maximum time limits = 285 days
for administrative action

COMPARISON OF MAXIMUM TIME LIMITS
PRESENT AND PROPOSED
DISCRIMINATION COMPLAINTS PROCESS

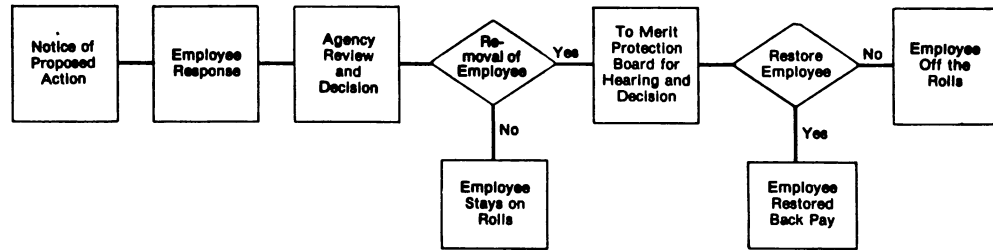
Present System		Proposed System	
Action	Time	Action	Time
1. EEO Counseling	21	1. Eliminated	0
2. Time for filing formal complaint after counseling	15	2. Eliminated	0
3. Time for entire administrative process (filing to decision)	180	3. Time for entire administrative process (filing to agency decision)	30
4. Time allowed for appealing to ARB	15	4. Time allowed for appealing to Merit Protection Board	15
5. Time allowed to reach appeals decision	180	5. Time allowed to reach appeals decision	180
6. Time allowed to request reopener; review by CSC	30		
7. Time allowed for Commissioners' decision (not specified, but it appears that filing in court could take place in 180 days if no decision issued)	<u>180</u>		
TOTAL MAXIMUM TIME LIMITS FOR ADMINISTRATIVE PROCESS	621 days	TOTAL MAXIMUM TIME LIMITS FOR ADMINISTRATIVE PROCESS	225 days

Adverse Action Appeal—Present System



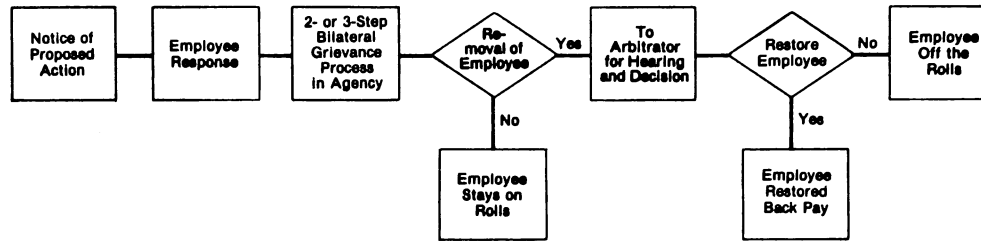
Adverse Action Appeal—Proposed System

(For employee in unit not covered by agreement negotiated between union and agency)



Typical Negotiated Grievance Process With Arbitration

(For employee in unit covered by agreement negotiated between union and agency)



TOPICAL INDEX

This topical index contains detailed citations to the Federal Service Labor-Management Relations Statute contained in Title VII of the Civil Service Reform Act of 1978. Since the user may have occasion to consult other portions of the Act itself and the conference report, additional references to these documents are included. However, only labor-management provisions from the bills, debates and other reports are indexed.

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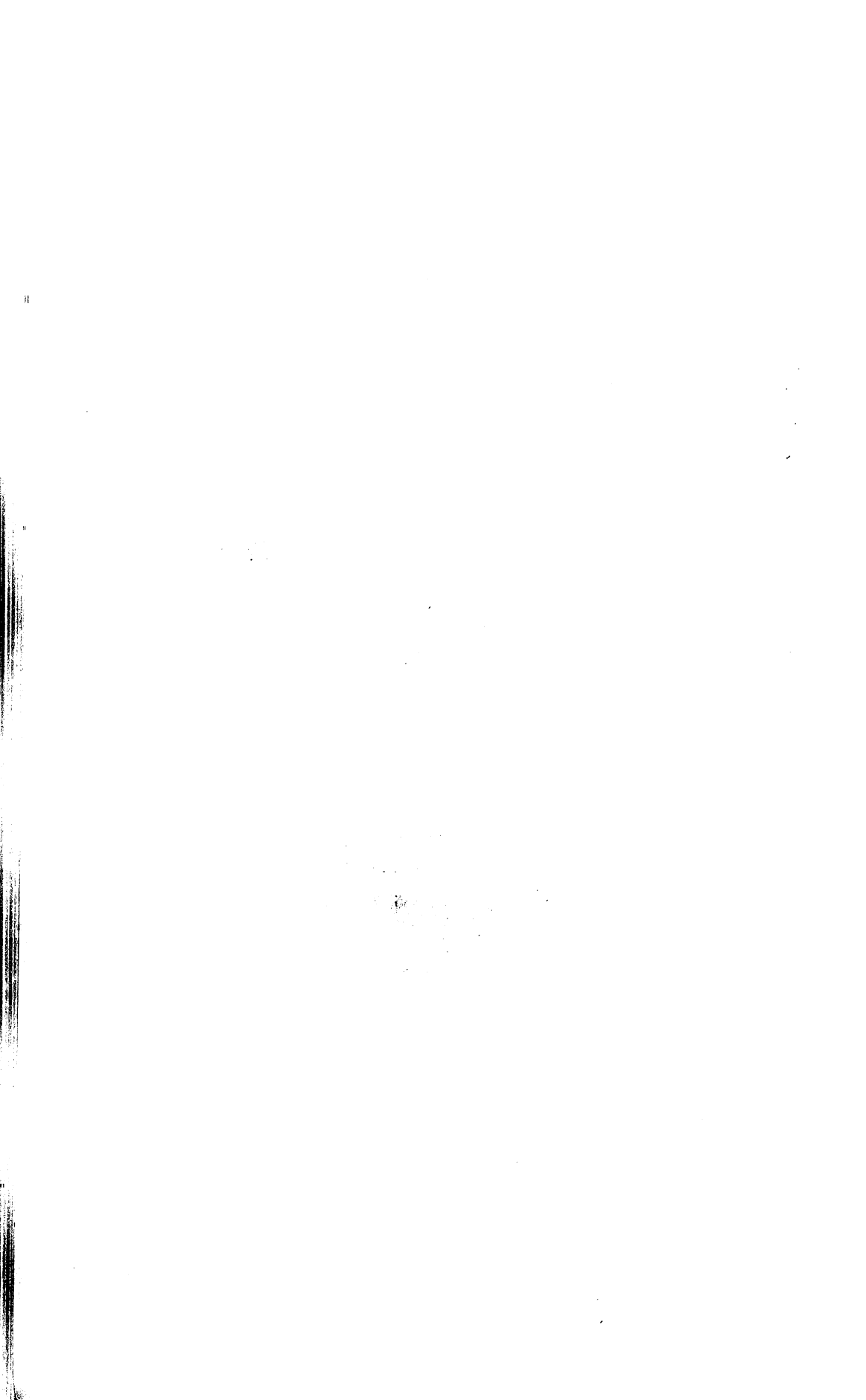
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7105(e)(2).....	7204(f).....	7164(f).....	Delegation of unfair labor practice functions to administrative law judges.	87, 135, 251, 283, 390, 688, 799, 832, 880, 911, 929, 971.
7105(f).....	None.....	None.....	Authority review of decisions on delegated matters.	87, 89, 90, 134, 135, 251, 324-325, 390, 584, 689, 911, 971.
7105(g).....	7204(h)(1), (j).	7164(h)(1), (j).	Investigative and remedial powers of Authority.	88, 96, 104, 105, 153, 154, 155, 156, 157, 164, 168, 216, 281-285, 457, 511, 569, 689, 698, 824, 833, 844, 896, 897, 971, 992-93, 1017, 1019-20, 1041, 1068.
7105(h)..... [7105(i)]	7216(f)(2)....	None.....	Authority may designate attorneys to represent it in civil actions except before Supreme Court.	88, 164, 192, 193, 584, 911, 924, 971.
7105(i)..... [None]	7204(h).....	7164(h).....	Authority may request advisory interpretation by OPM of its regulations.	88, 98, 349, 457, 512, 569, 699, 761, 897, 917, 977.

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New 5 U.S.C. section number from Public Law 95-454	Section number in S. 2640 as passed by the Senate	Section number in original administration proposal	Subject	Page
7106	7215(d); 7218	7169(d); 7170	MANAGEMENT RIGHTS—In general.	190, 191, 244, 469, 530, 590, 682, 689, 690, 721, 722, 730, 731, 735, 749, 750, 757, 764, 765, 821, 822, 826, 832, 834, 836, 839-40, 843, 844, 845, 848, 850, 852, 854, 855, 856, 885, 901, 906, 924-25, 929, 931-33, 934, 948, 949, 953-56, 984, 991-92, 993, 994, 995-95, 999-1000.
7106(a)(1)	7218(a)(2)	7170(b)	To determine mission, budget, organization, number of employees, and internal security practices.	88, 325, 391, 466, 468, 521, 522, 529, 579, 589, 689, 730, 765, 768, 822, 840, 843, 855, 901, 906, 911, 935, 948, 949, 971, 994, 1012, 1019, 1046.
7106(a)(2)(A)	7218(a)(2)(A), (B)	7170(b)(1), (2)	To hire, assign, direct, lay off, and retain employees, to suspend, remove, reduce in grade or pay, or discipline employees.	88, 391, 468, 530, 589, 689, 730, 768, 840, 843, 855, 901, 906, 911, 924, 971, 994, 1012.
7106(a)(2)(B)	7218(a)(2)(B), (C)	7170(b)(2), (3)	To assign work, to make determinations on contracting out and personnel to conduct agency operations.	88, 391, 689, 722, 730, 798, 822, 840, 855, 906, 911, 971, 994, 1012.
7106(a)(2)(C)	7218(a)(2)(B)	7171(b)(2)	To make selections from among properly ranked candidates for promotion or from other appropriate source.	88, 690, 730, 836, 852, 901, 906, 911, 924, 925, 971, 994.
7106(a)(2)(D)	7218(a)(2)(F)	7170(b)(6)	To carry out agency mission during emergencies.	88, 325, 326, 391, 469, 530, 590, 689, 769, 840, 855, 901, 906, 911, 925, 971, 994.
7106(b)(1)	7215(d); 7218(a)(2)(B)	7169(d); 7170(b)(5)	Negotiations, at agency election, on numbers, types, and grades of employees or positions, work project, tour of duty, or technology, methods, and means of performing work.	88, 466, 469, 522, 530, 579, 590, 765, 769, 821, 822, 843, 852, 899, 906, 911, 925, 935, 948, 949, 954, 971, 994, 1012, 1019, 1046.
7106(b)(2)	7218(b)	7170(b)	Negotiations on procedures for exercising any authority under management rights section.	89, 326, 392, 469, 530, 590, 689, 769, 901, 911, 925, 956, 971, 992, 993.
7106(b)(3)	7215(d); 7218(b)	7169(d); 7170(b)	Negotiations on appropriate arrangements for employees adversely affected by exercise of any authority under management rights section.	89, 326, 392, 466, 469, 522, 530, 579, 590, 689, 730, 769, 852, 899, 901, 911, 925, 956, 971, 992, 993, 994.
7111	7212; 7214	7166; 7168	EXCLUSIVE RECOGNITION OF LABOR ORGANIZATIONS—in general.	77, 81, 122, 139, 140, 146, 148, 149, 197, 206, 207, 236, 259, 312, 330, 334, 337, 396, 400, 488, 499, 556, 687, 690, 754, 755, 880, 881, 882, 894, 897, 898, 908, 912, 913, 925, 935, 944, 945, 967, 972, 973, 1014, 1021, 1021, 1022, 1023, 1025, 1026, 1027, 1028, 1029, 1030, 1035, 1038, 1046, 1047.
7111(a)	7212(a), (b); 7214(a)	7166(a), (b); 7168(a)	Exclusive recognition for organization elected by majority of employees.	89, 130, 136, 139, 246, 252, 253, 320, 326, 329, 385, 392, 396, 450, 459, 460, 461, 462, 463, 505, 515, 516, 518, 562, 572, 573, 574, 575, 690, 735, 762, 763, 831, 832, 834, 844, 879, 898, 907, 911, 929, 935, 936, 937, 945, 946, 950, 951, 960, 962, 964, 971, 1005, 1022, 1023, 1024, 1025.
7111(b)	7214(c)	7168(c)	Representational petition, hearing, election, certification, and election bar.	87, 89, 134, 135, 138, 198, 199, 200, 201, 202, 203, 204, 205, 250, 251, 253, 254, 255, 256, 257, 259, 326, 327, 328, 329, 330, 392, 393, 394, 396, 397, 460, 463, 464, 519, 576, 577, 685, 690, 691, 763, 764, 832, 898, 911, 912, 925, 944, 945, 946, 971, 972, 996, 1012, 1015, 1021, 1022, 1023, 1024, 1025, 1030, 1034, 1047.
7111(c)	None	None	Intervention in representational proceedings.	89, 138, 139, 200, 201, 202, 203, 255, 256, 257, 328, 329, 394, 395, 691, 854, 912, 972.

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7111(d)-----	7214(c)-----	7168(c)-----	Eligibility rules and ballot choices for representational elections (runoffs).	87, 89, 90, 139, 256, 328, 329, 395, 463, 464, 516, 519, 576, 690, 691, 898, 912, 972, 1025.
7111(e)----- [7111(f)]	None-----	None-----	Labor organization to submit roster, constitution, and bylaws to Authority.	90, 142, 259, 330, 331, 397, 692, 912, 972.
7111(f)----- 7111(g)]	7214(c); 7217(a).	7175(a)-----	Limitation on exclusive recognition because of corrupt influences, opposition to democratic principles, existing agreement, prior election or agreement, prior election or inadequate showing of interest.	90, 136, 137, 199, 200, 203, 204, 253, 254, 331, 332, 397, 398, 892, 898, 899, 912, 913, 972.
7111(g)----- [7111(h)]	None-----	None-----	Waiver of hearing and consent election.	90, 142, 206, 259, 260, 332, 398, 692, 832, 913, 972.
7112-----	7214-----	7168-----	DETERMINATION OF APPROPRIATE UNITS FOR LABOR ORGANIZATION REPRESENTATION—In general.	81, 86, 140, 141, 205, 312, 377, 692, 693, 898, 908, 968, 1012.
7112(a)-----	7214(b)-----	7168(b)-----	Standards for determining appropriate unit.	90, 140, 205, 257, 332, 398, 399, 463, 518, 575, 692, 763, 832, 898, 913, 972.
7112(b)-----	7214(b)-----	7168(b)-----	Appropriateness not based solely on extent employees are organized.	90, 140, 257, 258, 332, 333, 399, 463, 518, 575, 692, 898, 913, 972.
7112(b)(1)-----	7214(b)(1)-----	7168(b)(1)-----	No management official or supervisor in unit.	90, 140, 141, 206, 258, 399, 463, 518, 575, 686, 692, 832, 898, 913, 972, 992.
7112(b)(2)-----	7214(b)(1)-----	7168(b)(1)-----	No confidential employee in unit.	90, 141, 258, 338, 399, 463, 518, 575, 686, 692, 832, 898, 913, 972.
7112(b)(3)-----	7214(b)(2)-----	7168(b)(2)-----	No employees engaged in personnel work unless purely clerical in unit.	91, 141, 206, 258, 333, 399, 463, 518, 576, 692, 693, 832, 913, 972.
7112(b)(4)-----	None-----	None-----	No employee administering this chapter in unit.	91, 141, 258, 333, 399, 693, 832, 913, 972.
7112(b)(5)-----	7214(b)(3)-----	7168(b)(3)-----	No professional employees in unit with other employees unless majority of professionals so vote.	91, 141, 206, 258, 333, 399, 463, 518, 576, 693, 832, 898, 913, 972.
7112(b)(6)-----	7202(c)(4)-----	7162(c)(4)-----	No employee engaged in intelligence, investigative, or security work in unit.	91, 141, 258, 333, 399, 693, 832, 913, 972, 994.
7112(b)(7)-----	7202(c)(5)-----	7162(c)(5)-----	No employee engaged in internal agency investigative or audit functions in unit.	91, 142, 258, 333, 399, 400, 693, 913, 972, 973, 994.
7112(c)-----	7202(e)-----	7162(e)-----	Bar against employee administering any labor law from being represented by or affiliated with an organization representing other employees covered by the labor law.	91, 452, 564, 758, 759, 913, 925, 942, 973, 1045.
7112(d)-----	7214(c); 7216 (a)(6).	7168(a), (c)---	Consolidation of units upon petition by agency or labor organization with or without an election.	91, 142, 259, 334, 400, 462, 463, 464, 519, 576, 581, 693, 763, 764, 832, 898, 913, 925, 929, 973, 1021, 1023.
7113-----	7213-----	7167-----	NATIONAL CONSULTATION RIGHTS—In general.	145, 146, 831, 947, 948, 1046, 1047.
7113(a)-----	7212(a); 7213 (a), (c).	7166(a); 7167 (a), (c).	National consultation rights for representative of substantial number of employees in agency without an agency-wide exclusive representative; Authority to establish criteria and resolve issues on consultation rights.	87, 91, 142, 143, 260, 334, 335, 400, 401, 461, 462, 516, 517, 574, 575, 693, 760, 763, 831, 832, 898, 913, 935, 973, 1005.
7113(b)(1)-----	7213(b)-----	7167(b)-----	Representative to be informed of any substantial change in conditions of employment and presents its views on the change.	77, 91, 143, 260, 335, 401, 462, 517, 574, 683, 693, 754, 755, 763, 832, 898, 913, 925, 926, 948, 973.
7113(b)(2)-----	7213(b)-----	7167(b)-----	Agency to consider the views before finally acting and report in writing on reasons for taking its action.	91, 143, 260, 335, 401, 462, 517, 574, 575, 693, 763, 832, 898, 913, 933, 948, 957, 973, 995.
7113(c)-----	None-----	None-----	Collective bargaining not limited by this section on national consultation rights.	91, 335, 402, 693, 913, 973.

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New 5 U.S.C. section number from Public Law 95-454	Section number in S. 2640 as passed by the Senate	Section number in original administration proposal	Subject	Page
7114.....	7212; 7215....	7166, 7169....	REPRESENTATION RIGHTS AND DUTIES—In general.	10, 81, 122, 197, 212, 236, 262, 263, 312, 326, 377, 488, 499, 693, 754, 860, 870, 894, 898, 908, 933, 968, 973.
7114(a)(1).....	7215(a)(1), (2).	7169(a).....	Representative entitled to act for and negotiate collective bargaining agreement for all unit employees; to represent interests of all employees without discrimination or regard to union membership.	92, 143, 197, 212, 250, 261, 335, 336, 402, 464, 520, 577, 694, 722, 764, 832, 899, 914, 931-33, 953-56, 957, 973, 984, 991, 995-96, 997, 998, 999-1000.
7114(a)(2)(A).... [7114(a)(3)(A)]	7215(a)(3); 7212(c)(2), (3).	7169(a); 7166(c)(2), (3).	Representative may be present at any formal discussion concerning any grievance or condition of employment.	92, 143, 144, 196, 197, 261, 336, 402, 464, 465, 520, 646, 764, 844, 898, 914, 926, 933, 957, 973.
7114(a)(2)(B).... [7114(a)(3)(B)]	None.....	None.....	Representative may be present at examination of unit employee by agency if employee believes disciplinary action may result and requests representation.	92, 229, 230, 231, 232, 233, 261, 336, 402, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 654, 655, 656, 657, 658, 823, 824, 844, 914, 926, 933, 973, 995.
7114(a)(3)..... [7114(a)(2)]	None.....	None.....	Agency to inform employees annually of representation rights in examinations.	92, 824, 973, 995.
7114(a)(4)..... [7114(a)(3)(B)]	7215(b), (c)....	7169(c).....	Agency and representative to negotiate collective bargaining agreement; may use appropriate techniques to assist negotiations consistent with section 7119.	92, 144, 261, 336, 402, 403, 521, 578, 579, 694, 764, 831, 899, 914, 973.
7114(a)(5)..... [7114(a)(3)(B)]	7212(c).....	7166(c).....	Except for negotiated procedures, employee may be represented by non-exclusive representative and exercise rights established by law, rule, or regulation.	92, 198, 261, 262, 263, 336, 408, 460, 515, 516, 573, 694, 762, 763, 860, 861, 898, 914, 973, 995, 1046.
7114(b).....	7215(b).....	7169(b).....	The duty to negotiate in good faith includes the obligation.	92, 144, 261, 337, 403, 465, 466, 520, 577, 694, 764, 832, 899, 914, 973.
7114(b)(1).....	7215(b)(1)....	7169(b)(1)....	—to approach negotiations with a sincere resolve to reach agreement.	92, 144, 261, 337, 403, 465, 520, 577, 694, 764, 899, 914, 973.
7114(b)(2).....	7215(b)(2)....	7169(b)(2)....	—to send authorized representatives prepared to discuss and negotiate on any condition of employment.	92, 127, 144, 262, 337, 403, 465, 520, 578, 694, 764, 899, 914, 973, 974, 995, 996.
7114(b)(3).....	7215(b)(3)....	7169(b)(3)....	—to meet at convenient places as may be necessary and to avoid unnecessary delays.	92, 127, 144, 262, 337, 403, 465, 520, 578, 694, 764, 899, 914, 974.
7114(b)(4).....	None.....	None.....	—for the agency to provide normally maintained data which is necessary for understanding and negotiating subjects of bargaining and which does not constitute advice or guidance for management or supervisors on collective bargaining.	10, 92, 93, 144, 262, 337, 403, 404, 694, 914, 926, 974, 995.
7114(b)(5).....	7215(b)(4)....	7169(b)(4)....	—to execute a written document embodying any agreed terms and to implement that agreement.	92, 127, 144, 145, 262, 337, 404, 465, 466, 520, 521, 578, 674, 686, 694, 764, 880, 899, 914, 974.
7114(c)(1)..... [None]	7219.....	7172.....	Agreements to be subject to approval by agency head.	92, 474, 489, 531, 556, 591, 769, 894, 901, 995.
7114(c)(2)..... [None]	7219.....	7172.....	Agency head to approve agreement within 30 days if in accord with this chapter and applicable law, rule, or regulation (unless the agency has granted an exception to the regulation).	92, 474, 531, 591, 769, 901, 995.
7114(c)(3).....	7219.....	7172.....	If agency head does not act within 30 days, agreement to take effect subject to this chapter and applicable law, rule, or regulation.	92, 474, 531, 532, 591, 901, 995.
7114(c)(4).....	7219.....	7172.....	Local agreement subject to controlling agreement at higher level to be approved under procedures in controlling agreement or agency.	92, 474, 475, 532, 591, 592, 901, 995.

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7115.....	7231; 7218(c)	7176; 7170(c)	ALLOTMENTS TO REPRESENTATIVES—In general.	39, 149, 150, 196, 197, 275, 276, 337, 338, 339, 340, 404, 483, 539, 599, 694, 772, 823, 832, 834, 836, 843, 854, 914, 929, 931, 936, 960, 961, 974, 1047.
7115(a).....	7231(a); 7218(c)	7176; 7170(c)	Agency to deduct dues from employees' pay upon written assignment without charge; assignment may be revoked at 1 year periods	93, 149, 196, 275, 276, 338, 404, 483, 539, 599, 694, 772, 823, 879, 889, 903, 914, 936, 960, 974.
7115(b).....	7231(b)	7176(b)	Deduction of dues to terminate when no longer applicable to employee or employee is suspended or expelled from membership.	93, 149, 276, 338, 404, 483, 539, 600, 695, 772, 903, 914, 974.
7115(c)(1).....	None	None	Agency to negotiate with representative of 10 percent of unit employees concerning deduction of dues after certification by Authority.	93, 277, 405, 695, 879, 914, 929, 936, 974.
7115(c)(2)(A).....	None	None	If exclusive representative exists for the unit, no deduction under paragraph (1).	93, 196, 341, 405, 914, 974.
7115(c)(2)(B).....	None	None	Any dues deduction under paragraph (1) to cease upon certification of exclusive representative.	93, 278, 341, 405, 695, 914, 975.
7116.....	7216	7174	UNFAIR LABOR PRACTICES—In general.	3, 82, 83, 84, 85, 94, 95, 216, 696, 832, 958, 975.
7116(a).....	7216(a)	7174(a)	Agency unfair labor practices	94, 150, 214, 278, 341, 405, 477, 523, 580, 695, 765, 899, 915.
7116(a)(1).....	7216(a)(1)	7174(a)(1)	—to interfere with or coerce employee in exercising any rights under this chapter.	82, 83, 94, 150, 214, 278, 341, 405, 477, 523, 580, 695, 765, 899, 915, 974.
7116(a)(2).....	7216(a)(2)	7174(a)(2)	—to encourage or discourage membership in any labor organization by discrimination in conditions of employment.	6, 83, 84, 94, 150, 214, 215, 278, 341, 342, 405, 406, 477, 523, 580, 695, 765, 899, 915, 974.
7116(a)(3).....	7216(a)(3)	7174(a)(3)	—to sponsor, control, or assist any labor organization other than impartially furnishing customary and routine services.	83, 94, 150, 151, 196, 214, 278, 342, 406, 477, 478, 523, 581, 695, 765, 899, 915, 974.
7116(a)(4).....	7216(a)(4)	7174(a)(4)	—to discipline or otherwise discriminate against an employee filing a complaint or testifying under this chapter.	83, 94, 151, 215, 279, 342, 406, 478, 524, 581, 695, 765, 899, 915, 974.
7116(a)(5).....	7216(a)(6)	7174(a)(6)	—to refuse to consult or negotiate in good faith.	82, 83, 84, 94, 151, 215, 279, 342, 406, 478, 524, 581, 695, 765, 900, 915, 933, 946, 957, 974, 1021, 1034, 1047.
7116(a)(6).....	None	None	—to fail to cooperate in impasse procedures and decisions.	94, 99, 151, 279, 342, 406, 695, 700, 701, 915, 974.
7116(a)(7).....	7218(a)(1)	7170(a)	—to enforce any rule or regulation in conflict with any applicable collective bargaining agreement (except a regulation on prohibited personnel practices).	77, 83, 94, 145, 146, 342, 343, 406, 695, 822, 823, 915, 974.
7116(a)(8).....	None	None	—to otherwise fail to comply with any provision of this chapter.	94, 151, 215, 279, 342, 406, 695, 696, 915, 933, 957, 974.
7116(b).....	7216(b)	7174(b)	Labor organization unfair labor practices.	3, 94, 95, 151, 216, 279, 343, 407, 478, 524, 581, 695, 766, 900, 915.
7116(b)(1).....	7216(b)(1)	7174(b)(1)	—to interfere with or coerce any employee in exercising any rights under this chapter.	82, 83, 94, 151, 216, 279, 343, 407, 478, 524, 582, 695, 766, 900, 915, 974.
7216(b)(2).....	7216(b)(2)	7174(b)(2)	—to cause any agency to encourage or discourage membership in a labor organization by discrimination in conditions of employment.	82, 83, 92, 94, 151, 279, 343, 407, 478, 524, 582, 695, 766, 900, 915, 974.
7116(b)(3).....	7216(b)(3)	7174(b)(3)	—to coerce, discipline, or fine a member of the labor organization as punishment, reprisal, or for the purpose of hindering the member's work performance.	83, 94, 151, 152, 279, 343, 407, 478, 479, 524, 582, 695, 766, 900, 915, 974.

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7116(b)(4)-----	7216(b)(5)-----	7174(b)(5)-----	—to discriminate in membership on the basis of race, color, creed, national origin, sex, age, civil service status, political affiliation, marital status, or handicapping condition.	82, 83, 94, 152, 216, 280, 343, 407, 479, 525, 582, 695, 696, 766, 900, 915, 974.
7116(b)(5)-----	7216(b)(6)-----	7174(b)(6)-----	—to refuse to consult or negotiate in good faith.	3, 82, 83, 84, 92, 94, 152, 216, 280, 343, 407, 479, 525, 583, 696, 766, 900, 915, 974, 975.
7116(b)(6)-----	None-----	None-----	—to fail to cooperate in impasse procedures and decisions.	94, 99, 152, 280, 343, 344, 407, 696, 915, 975.
9116(b)(7)(A)---	7216(b)(4)(A)---	7174(b)(4)-----	—to call or participate in a strike, work stoppage, or picketing which interferes with agency operations.	83, 94, 152, 213, 214, 280, 344, 408, 479, 524, 525, 582, 696, 766, 824, 900, 907, 915, 926, 929, 930, 933, 935, 937, 938, 950, 957, 958, 960, 962, 975, 996, 1046.
7116(b)(7)(B)---	7216(b)(4)(B)---	7174(b)(4)-----	—to condone such activity by failing to take action to prevent or stop it.	94, 152, 213, 280, 344, 408, 479, 525, 582, 696, 700, 701, 766, 824, 900, 907, 915, 926, 929, 930, 933, 935, 937, 938, 950, 957, 958, 960, 962, 975, 996, 1046.
7116(b)(8)-----	None-----	None-----	—to otherwise fail to comply with any provision of this chapter.	94, 152, 280, 344, 408, 696, 915, 975.
7116(c)-----	7216(c)-----	7174(c)-----	Unfair labor practice for an organization to deny membership to any employee except for failure to meet uniform occupational standards or to tender dues: organization may enforce discipline.	85, 95, 152, 153, 215, 216, 280, 344, 408, 479, 525, 583, 696, 766, 900, 915, 975.
7116(d)-----	7216(d), (e)---	7174(d), (e)---	Issues which can be raised under an appeals procedure may not be raised as unfair labor practices; otherwise, issues covered by negotiated grievance procedure may be raised as grievances or unfair labor practices.	84, 95, 153, 281, 344, 345, 408, 696, 697, 762, 763, 767, 859, 860, 900, 915, 975.
7116(e)----- [None]	7216(g)-----	None-----	Expression of certain personal views under certain circumstances not to constitute unfair labor practice or justify setting aside election.	95, 585, 586, 824, 996, 1022, 1025, 1026, 1027, 1028, 1035, 1046, 1047.
7117-----	7215-----	7169-----	DUTY TO BARGAIN IN GOOD FAITH; COMPELLING NEED; DUTY TO CONSULT— In general.	77, 465, 466, 467, 468, 522, 523, 579, 580, 683, 698, 754, 755, 764, 822, 823, 831, 832, 899, 924, 927, 931-33, 953-56, 957, 984, 991, 995-96, 999-1000.
7117(a)(1)-----	7215(c)-----	7169(c)-----	Duty to bargain extends to matters subject to any rule or regulation if the rule or regulation is not Governmentwide; see also Section 7114(a)(1).	95, 127, 145, 146, 148, 148, 189, 190, 243, 245, 383, 409, 465, 466, 521, 578, 697, 722, 823, 826, 827, 832, 840, 843, 844, 855, 899, 906, 915, 927, 933, 956, 957, 975, 991, 996, 997, 1019.
7117(a)(2)-----	7215(c), (d)---	7169(c), (d)---	Duty to bargain extends to matters subject to agency rule or regulation if no compelling need exists for the rule or regulation; see also Section 7114(a)(1).	95, 127, 145, 190, 243, 345, 383, 409, 466, 521, 578, 697, 840, 843, 844, 853, 855, 899, 906, 915, 927, 931, 935, 956, 957, 975, 992, 995.
7117(a)(3)-----	None-----	None-----	Compelling need for a rule or regulation to bar negotiations except for representative of unit continuing majority of employees in issuing agency or subdivision.	95, 915, 916, 927, 956, 975.
7117(b)(1)-----	7215(e)(1) (B), (3).	7169(e)(2), (4).	Challenges to compelling need to be decided by Authority according to its regulation.	87, 96, 345, 346, 409, 410, 466, 467, 468, 521, 522, 523, 578, 579, 580, 697, 698, 916, 927, 975, 995.
7117(b)(2)-----	None-----	None-----	Compelling need not to be found if the issuing agency or the Authority so determines.	96, 346, 410, 698, 916, 927, 975.
7117(b)(3)-----	None-----	None-----	Authority may hold hearing to resolve compelling need issues; General Counsel not to be a party.	96, 346, 410, 697, 698, 916, 927, 975.

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7117(b)(4)	None	None	Issuing agency to be a party at any hearing on compelling need.	96, 346, 410, 698, 916, 975.
7117(c)(1)	7215(e)(1)(B), (3).	7169(e)(2), (4).	Representative may appeal other negotiability objections to the Authority.	87, 96, 466, 467, 468, 522, 523, 579, 580, 696, 760, 765, 899, 916, 975.
7117(c)(2)	None	None	Appeal of agency negotiability objection to be filed within 15 days.	96, 916, 975, 976.
7117(c)(3)	None	None	Agency has 30 days to withdraw its objections or state in full the reasons supporting the objection.	96, 916, 976.
7117(c)(4)	None	None	Representative has 15 days to file its response.	96, 916, 976.
7117(c)(5) [None]	None	None	Authority may hold hearing on negotiability objections; General Counsel not to be a party.	96
7117(c)(6) [7117(c)(5)]	None	None	Authority to expedite negotiability proceedings and provide a decision at earliest practicable date.	96, 916, 976.
7117(d)(1)	None	None	Agency issuing Government-wide rule or regulation to grant consultation rights to representative of substantial number of employees as determined by the Authority.	87, 96, 97, 127, 145, 146, 147, 148, 149, 823, 826, 827, 831, 832, 836, 840, 855, 899, 906, 916, 931, 933, 947, 948, 956, 957, 976, 1005, 1017, 1018, 1019, 1047, 1055, 1056, 1057, 1058, 1077, 1078, 1079, 1080.
7117(d)(2)	None	None	Representative to be informed of substantive change in conditions of employment and present its views on the change.	97, 916, 948, 976.
7117(d)(3)	None	None	Agency to consider the views before finally acting and report in writing on reasons for taking its action.	97, 916, 933, 948, 957, 976, 995.
7118	None	None	PREVENTION OF UNFAIR LABOR PRACTICES—In general.	97, 98, 153, 216, 281, 698, 832, 833, 897, 997.
7118(a)(1)	7204(k)(1), (2).	7164(j)	Unfair labor practice charge to be investigated by the General Counsel who may issue a complaint or state reasons for not doing so.	83, 86, 97, 153, 154, 216, 281, 282, 346, 347, 410, 411, 458, 513, 637, 672, 698, 761, 762, 766, 767, 897, 916, 976, 997.
7118(a)(2)	None	None	Complaint to contain notice of the charge and time and place of hearing. Authority may designate individual to conduct hearing.	97, 154, 216, 282, 347, 411, 698, 761, 916, 917, 976.
7118(a)(3)	None	None	Answer to complaint may be filed and testimony given.	97, 154, 217, 282, 347, 411, 698, 825, 826, 917, 976, 977.
7118(a)(4)(A)	None	None	No complaint on unfair labor practice which occurred more than 6 months before filing of charge.	97, 154, 217, 282, 283, 348, 411, 698, 917, 976, 997.
7118(a)(4)(B)	None	None	If concealment or failure to perform a duty prevents timely filing of charge, complaint may be filed within 6 months after discovery.	97, 155, 217, 283, 348, 411, 412, 698, 699, 917, 976.
7118(a)(5) [None]	None	None	General Counsel may prescribe regulations for informal resolution of charges.	97, 98, 105, 458, 766.
7118(a)(6) [7118(a)(5)]	None	None	Hearing to be held not earlier than 5 days after service of complaint; intervention allowed; transcript kept.	98, 154, 155, 157, 217, 218, 282, 283, 347, 348, 412, 413, 699, 917, 976, 997, 1045, 1047.
7118(a)(7) [7118(a)(6)]	7233	7178	Preponderance of evidence to establish unfair labor practice; remedies include cease and desist order, backpay, and other relief; see also Section 7120(f).	98, 106, 155, 156, 157, 218, 219, 220, 282, 238, 284, 285, 348, 349, 413, 414, 457, 484, 489, 490, 491, 512, 513, 540, 544, 545, 546, 547, 699, 761, 774, 775, 897, 917, 928, 946, 976, 977, 992, 993, 1047.
7118(a)(8) [7118(a)(7)]	None	None	If no unfair labor practice is found, hearing officer to issue written findings and order dismissing complaint.	98, 156, 219, 284, 285, 349, 414, 917, 977, 1045, 1047.
7118(b)	7204(h)(1)	7164(h)(1)	Authority may request advisory interpretation from OPM of its regulations in connection with unfair labor practice proceeding.	98, 349, 350, 414, 457, 512, 699, 761, 897, 917, 977.

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7119.....	7222.....	7173.....	NEGOTIATION IMPASSES; FEDERAL SERVICE IMPASSES PANEL—In general.	92, 699, 700, 834, 997.
7119(a).....	7222(b).....	7173(a).....	Federal Mediation and Conciliation Service to provide assistance in resolving impasses.	98, 158, 207, 208, 209, 210, 211, 285, 350, 414, 415, 475, 538, 598, 684, 700, 750, 772, 831, 832, 834, 844, 903, 917, 977, 1005.
7119(b).....	7222(c).....	7173(b).....	Either party may request Panel to consider impasse or adopt binding arbitration if approved by the Panel.	99, 158, 207, 208, 209, 285, 286, 700, 772, 826, 844, 903, 917, 928, 949, 977, 997.
7119(c)(1).....	7222(a)(1).....	7173(c).....	Panel is entity within the Authority providing assistance in resolving impasses.	83, 99, 158, 286, 350, 415, 475, 537, 597, 632, 637, 661, 665, 666, 672, 684, 700, 750, 771, 781, 787, 831, 832, 834, 841, 844, 903, 917, 977, 1009, 1012.
7119(c)(2).....	7222(a)(2).....	7173(c).....	Appointment of Panel members.....	99, 158, 286, 350, 351, 415, 475, 537, 597, 632, 700, 771, 832, 903, 917, 918, 977.
7119(c)(3).....	7222(a)(2); section 701(c) of the bill.	7173(d); section 701(b) of the bill.	Terms and removal of Panel members.	99, 158, 159, 286, 351, 415, 416, 475, 476, 537, 597, 598, 700, 771, 772, 832, 843, 903, 918, 977.
7119(c)(4).....	7222(a)(3).....	7173(e).....	Pay of Panel members; appointment of Executive Director and others.	99, 159, 286, 287, 351, 416, 476, 538, 598, 632, 700, 772, 832, 903, 918, 977.
7119(c)(5)(A).....	7222(d).....	7173(f).....	Panel to investigate impasse and either recommend procedures for or assist parties in resolving the impasse.	99, 159, 208, 211, 287, 351, 352, 416, 476, 477, 538, 598, 599, 700, 772, 826, 831, 832, 903, 918, 977, 1005.
7119(c)(5)(B).....	7222(d).....	7173(f).....	Panel may hold hearings, take testimony, issue subpoenas, and take whatever action necessary to resolve impasse.	99, 105, 159, 160, 209, 210, 287, 352, 417, 477, 539, 599, 700, 772, 832, 884, 885, 903, 918, 977, 997, 1000.
7119(c)(5)(C).....	7204(c)(4); 7222(d); 7233.	7164(c)(4); 7173(f); 7178.	Panel action to be final and binding on parties unless they agree otherwise.	99, 160, 210, 211, 287, 352, 417, 455, 477, 510, 539, 567, 599, 700, 761, 772, 831, 832, 884, 885, 896, 903, 918, 978, 997, 1005.
7120.....	7217.....	7175.....	STANDARDS OF CONDUCT FOR LABOR ORGANIZATIONS; DE-CERTIFICATION—In general.	90, 100, 101, 160, 287, 294, 295, 832, 833, 1044, 1045.
7120(a).....	7217(a).....	7175(a).....	Recognition only to be accorded to labor organization free from corrupt influences and influences opposed to democratic principles. No proof of such freedom required if organization subject to requirements on:	90, 100, 160, 287, 352, 417, 480, 481, 526, 527, 586, 701, 767, 768, 900, 918, 978.
7120(a)(1).....	7217(a)(1).....	7175(a)(1).....	—democratic procedures, equal treatment, fair disciplinary proceedings.	100, 160, 287, 353, 417, 481, 527, 586, 701, 768, 832, 900, 918, 978.
7120(a)(2)..... [None]	7217(a)(2).....	7175(a)(2).....	—exclusion from office of communists and other totalitarian movements.	100, 481, 527, 586, 768, 900.
7120(a)(3)..... [7120(a)(2)]	7217(a)(3).....	7175(a)(3).....	—prohibition of financial conflict of interest.	100, 160, 288, 353, 418, 481, 515, 527, 587, 701, 768, 832, 900, 818, 975.
7120(a)(4)..... [7120(a)(3)]	7217(a)(4).....	7175(a)(4).....	—maintenance of fiscal integrity.....	100, 160, 161, 288, 353, 418, 481, 527, 587, 701, 768, 823, 900, 918, 978.
7120(b)..... [None]	7217(b).....	7175(b).....	Organization may be required to furnish evidence of freedom from influence if reasonable cause to believe organization has been disciplined for or is in fact subject to such influence.	100, 482, 527, 528, 587, 768, 900.
7120(c)..... [7131]	7217(c).....	7175(c).....	Organization seeking recognition to file financial reports with the Assistant Secretary, have officials bonded, and comply with trusteeship and election standards.	83, 100, 167, 294, 295, 360, 425, 482, 528, 588, 704, 768, 833, 900, 901, 979, 980.

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7120(d)----- [7131]	7204(c)(3); 7217(d).	7164(c)(3); 7175(d).	Assistant Secretary to prescribe regulations similar to private sector principles and may require organization to adhere to this section.	83, 100, 167, 294, 295, 360, 425 455, 482, 483, 528, 529, 588 704, 768, 833, 901, 979, 980,
7120(e)----- [7120(b)]	7211(b)-----	7165(b)-----	Chapter not to allow management of labor organization by management official, supervisor, confidential employee, or employee with conflict of interest.	100, 101, 131, 353, 418, 459, 515, 701, 918, 978.
7120(f)-----	7217(e)-----	None-----	Authority to revoke recognition or take other disciplinary action against any labor organization willfully violating strike, stoppage, or slowdown prohibitions.	101, 588, 824, 880, 881, 882, 883, 929, 930, 933, 937, 938, 946, 947, 1021, 1022, 1028, 1029, 1030, 1035.
7121-----	7221-----	7171-----	GRIEVANCE PROCEDURES—In general.	162, 163, 212, 290, 355, 420, 472, 473, 535, 536, 595, 596, 626, 645, 646, 702, 721, 722, 730, 757, 771, 825, 833, 843, 844, 856, 857, 859, 860, 861, 869, 870, 871, 874, 886, 902, 919, 923, 958, 959, 978, 997, 1005, 1007, 1015, 1017, 1019, 1020, 1038, 1040, 1041, 1044, 1068, 1076, 1077.
7121(a)(1)----- [7121(a)]	7221(a), (c), (g).	7171(a), (c), (g).	Agreement to provide procedure for resolving grievances and questions of arbitrability; to be exclusive procedure except for subsections (d) and (e).	101, 161, 162, 211, 212, 289, 354, 419, 470, 532, 592, 701, 762, 767, 769, 770, 825, 831, 833, 834, 843, 844, 845, 854, 856, 901, 906, 907, 918, 923, 935, 978, 992, 1005, 1012.
7121(a)(2)----- [None]	7221(a)-----	7171(a)-----	Agreement may exclude matters from the negotiated grievance procedure.	101, 825, 992, 997, 998.
7121(b)-----	7221(b), (c)---	7171(b), (c)---	Grievance procedure to be fair, simple, allow representative or employee to process grievances, and provide for binding arbitration.	100, 162, 211, 212, 289, 290, 354, 355, 419, 420, 470, 471, 532, 533, 592, 593, 701, 702, 762, 770, 831, 833, 834, 843, 844, 883, 885, 886, 901, 902, 918 931, 935, 978, 995.
7121(c)----- [7121(d)]	7221(d), (g)---	7171(d), (g)---	Preceding sections not to apply to prohibited political activities, retirement, life or health insurance, certain suspensions or removals, examination, certification, appointment, or any classification not resulting in reduction in grade or pay.	101, 355, 356, 420, 471, 533, 593, 702, 767, 770, 834, 843, 844, 902, 906, 907, 919, 928, 978, 994, 1046.
7121(d)----- [7121(e)]	7221(f)-----	7171(f)-----	Employee with discrimination grievance may use either negotiated procedure or statutory procedure; may request review by MSPB or EEOC.	101, 102, 162, 289, 354, 420, 421, 472, 534, 535, 594, 595, 626, 696, 697, 702, 762, 763, 767, 770, 771, 834, 843, 844, 859, 860, 861, 902, 907, 919, 978, 992, 994, 997, 998, 1020, 1037, 1046.
7121(e)(1)----- [None]	7221(e)-----	7171(e)-----	Employee with unacceptable performance or other adverse action may use either negotiated or statutory procedure.	102, 162, 289, 354, 471, 472, 533, 534, 593, 594, 626, 696, 697, 702, 735, 762, 763, 767, 770, 834, 836, 843, 844, 857, 859, 860, 861, 879, 902, 907, 994, 997, 998, 999, 1012, 1020, 1037.
7121(e)(2)----- [None]	7221(h)-----	7171(h)-----	Arbitrator to apply statutory standards of proof in unacceptable performance and adverse action grievances under negotiated procedures.	102, 472, 473, 535, 595, 771, 825, 902, 998, 1000, 1001, 1012.
7121(f)----- [None]	7221(k)-----	7171(k)-----	Judicial review for unacceptable performance and adverse action grievances under negotiated procedures to be the same as under statutory procedures.	102, 473, 474, 536, 537, 596, 597, 771, 821, 902, 903, 936, 998, 1012.
7122-----	7221(j)-----	7171(j)-----	EXCEPTIONS TO ARBITRAL AWARDS—In general.	702, 703, 928, 1017, 1041, 1068, 1069, 1077.

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7122(a)	7221(j)	7171(j)	Exceptions to arbitral awards filed with the Authority, except on unacceptable performance or adverse action grievances; Authority to take appropriate action if award found deficient after limited review.	102, 103, 163, 164, 212, 290, 291, 356, 421, 473, 536, 596, 702, 771, 821, 833, 902, 919, 978, 979.
7122(b)	7221(i), (j); 7204(l); 7233.	7171(i), (j); 7164(k); 7178.	Award to be final and binding if no exceptions filed within 30 days; agency to take actions required by award, including payment of backpay.	103, 163, 212, 213, 291, 356, 357, 421, 422, 702, 826, 919, 979.
7123	7204(l); 7216(f).	7164(k)	JUDICIAL REVIEW: ENFORCEMENT—In general.	103, 104, 703, 833, 844, 856, 935, 958, 999, 1062.
7123(a)	7204(l); 7216(f).	7164(k)	Person aggrieved by final order of Authority, except for appropriate unit determinations and arbitral awards on a matter not an unfair labor practice, may obtain judicial review in circuit court of appeals within 60 days.	103, 164, 212, 213, 222, 291, 292, 357, 422, 458, 513, 584, 637, 672, 703, 762, 821, 833, 844, 856, 897, 907, 919, 936, 979, 992, 999, 1000, 1036, 1037, 1062, 1063.
7123(b)	None	None	Authority may petition court of appeals for enforcement of its orders or temporary relief.	103, 165, 220, 221, 222, 292, 357, 422, 703, 820, 821, 833, 844, 919, 979, 1065, 1066.
7123(c)	7216(f)(4)	None	Judicial review to be on the record, filed by the Authority, with the Authority's findings of fact to be conclusive if supported by substantial evidence; court of appeals judgment and decree to be final except for writ of certiorari or certification to Supreme Court.	103, 164, 165, 166, 220, 221, 222, 223, 224, 292, 293, 294, 357, 358, 359, 422, 423, 424, 458, 584, 585, 637, 672, 703, 821, 844, 919, 920, 979, 999, 1000, 1001, 1037, 1062, 1063, 1065, 1066, 1067.
7123(d)	None	None	Authority may petition district court for temporary relief in unfair labor practice cases; court not to grant such relief if it would interfere with essential agency functions or if probable cause is not established.	104, 157, 166, 167, 224, 294, 359, 424, 425, 704, 821, 844, 920, 979, 1044, 1048.
7131 [7132]	7232	7177	OFFICIAL TIME—In general	104, 168, 295, 360, 425, 484, 540, 600, 704, 772, 833, 834, 844, 920, 931, 936, 957, 980, 999.
7131 [7132(a)]	7232	7177	Employee representing exclusive representative to be granted official time for negotiation of agreements; this section limited to number of employees equal to number of agency representatives.	104, 168, 295, 360, 425, 484, 540, 600, 704, 772, 833, 903, 920, 931, 934, 980, 999.
7131(b) [7132(b)]	7232	7177	Internal business of labor organization to be conducted in non-duty status.	104, 168, 295, 296, 361, 426, 484, 540, 600, 704, 772, 833, 903, 920, 934, 957, 980, 999.
7131(c) [7132(c)]	None	None	Authority to determine official time for employees participating in its proceedings.	104, 168, 296, 361, 426, 704, 833, 920, 980.
7131(d) [7132(d)]	None	None	Employees to be granted official time for representational activity in any amount the agency and representative agree.	104, 296, 361, 427, 705, 772, 920, 934, 980.
7132 [7133]	7234	7179	SUBPENAS—In general	104, 226, 227, 833, 928, 935.
7132(a) [7133(a)]	7234(a)	7179(a)	Authority, General Counsel, Panel, and others may issue subpoenas, administer oaths and examine witnesses; no subpoena to be issued for intramanagement guidance or advice.	104, 105, 168, 169, 170, 224, 225, 226, 296, 297, 298, 299, 362, 363, 364, 427, 428, 429, 456, 484, 485, 511, 512, 541, 601, 705, 761, 773, 833, 903, 904, 920, 928, 980.
7132(b) [7133(b)]	7234(b)	7179(b)	District court may issue order requiring compliance with subpoena; contempt of court possible for failure to obey order.	105, 170, 171, 225, 227, 297, 298, 363, 364, 428, 485, 541, 601, 602, 705, 773, 833, 904, 920, 928, 980.
7132(c) [7133(c)]	7234(c)	7179(c)	Witnesses to be paid same fee and allowances as in court	13, 88, 105, 170, 227, 298, 363, 428, 485, 541, 602, 705, 773, 833, 904, 920, 928, 930.
7133 [7134]	7204(j)	7181	COMPILATION AND PUBLICATION OF DATA—In general.	928.

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7133(a) [7134(a)]	7204(j)(1)	7181(a)	Authority to maintain files of proceedings, agreements, and arbitral decisions and to publish texts of its decisions and Panel actions.	105, 171, 299, 364, 429, 486, 705, 706, 833, 920, 980.
7133(b) [7134(b)]	7204(j)(2)	7181(b)	Files to be open for inspection and reproduction.	105, 171, 299, 364, 365, 429, 486, 706, 833, 921, 980.
7134 [7135]	7235	7180	REGULATIONS	105, 172, 194, 299, 365, 429, 486, 542, 602, 706, 773, 833, 904, 921, 928, 980.
7135 [7136]	Section 701(b) of the bill.	7182	CONTINUATION OF EXISTING LAWS, RECOGNITIONS, AGREEMENTS, AND PROCEDURES—In general.	928, 934, 957, 958.
7135(a)(1) [7135(a)(1)]	Section 701(b)(1)(A) of the bill.	7182(a)(1)	Chapter not to preclude renewal or continuation of exclusive recognition or lawful agreement.	105, 172, 228, 300, 365, 430, 486, 487, 542, 602, 603, 706, 774, 833, 904, 921, 934, 957, 958, 980.
7135(a)(2) [7136(a)(2)]	Section 701(b)(1)(B) of the bill.	7182(a)(2)	Chapter not to preclude renewal, continuation, or initial according of recognition for certain units of management officials or supervisors.	90, 105, 172, 300, 365, 366, 430, 487, 542, 543, 603, 706, 774, 833, 904, 921, 980.
7135(b) [7136(b)]	Section 701(b)(2) of the bill.	7182(b)	Policies, regulations, procedures, and decisions under certain Executive Orders to remain in force until revised by President or superseded by specific provisions of this chapter or regulations or decisions issued thereunder.	105, 106, 113, 173, 300, 366, 430, 487, 543, 603, 672, 706, 774, 787, 833, 904, 921, 932, 954, 958, 980, 993.
Section 702 of the act.	Section 702 of the bill.	Section 702 of the bill.	BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND GRIEVANCES—Amends section 5596 of title 5, United States Code.	106, 173, 174, 300, 301, 302, 366, 367, 368, 431, 432, 433, 489, 490, 491, 492, 493, 544, 545, 546, 547, 548, 605, 606, 607, 608, 706, 707, 774, 775, 833, 904, 905, 921, 928, 980, 981.
5596(b)(1)	5596(b)	5596(b)	Employee found to have been affected by unjustified or unwarranted personnel action is entitled to backpay, attorneys fees under 5 U.S.C. 7701(g) standards for grievances and unfair labor practices, and restoration of leave.	
5596(b)(2) [None]	5596(d)	5596(d)	This subsection does not apply to any reclassification action nor authorize setting aside an otherwise proper promotion.	
5596(b)(3) [5596(b)(2)]	5596(c)	5596(c)	"Personnel action" includes the omission or failure to take an action or confer a benefit; "grievance" and "collective bargaining" as defined in 5 U.S.C. 7103; "unfair labor practice" in 5 U.S.C. 7116.	
Section 703 of the act.	Section 701(e), (f), (g), (h).	Section 701(e), (f), (g), (h).	TECHNICAL AND CONFORMING AMENDMENTS.	106, 107, 179, 180, 181, 195, 307, 308, 309, 368, 369, 370, 433, 434, 435, 488, 489, 604, 707, 833, 861, 862, 875, 904, 905, 921, 922, 928.
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- Decision No. B-191520 of the Comptroller General*, 57 Compt. Gen. (June 6, 1978) [invalidating certain contract provisions of Department of the Interior prevailing rate employees and voiding an arbitrator's opinion] 857, 999, 1011-13 (text)
- Statement on Major Policy Issue: Assistance During Meetings with Management*, 4 FLRC 709 (FLRC No. 75P-2) (1976) [ruling that an employee has no protected right under the Executive Order to union assistance or representation during nonformal investigative meetings with management] ----- 644-45
- Statement on Major Policy Issue: Delineation of Permissible and Nonpermissible Picketing*, 5 FLRC 991 (FLRC No. 76P-4) (1977) [ruling that only picketing that interferes or reasonably threatens to interfere with agency operations is an unfair labor practice]----- 766, 933, 957, 996

BACKGROUND CONGRESSIONAL HEARINGS AND DOCUMENTS

This list contains Congressional hearings and documents on Federal sector labor-management relations and, in some cases, on use of arbitration in lieu of certain statutory appeals procedures. In most instances, the documents are no longer available but may be located at a Government Depository Library or at many university libraries. In order to facilitate retrieval of the documents, several classification numbers are listed after each entry. Omission of a classification number indicates that particular entry was unavailable.

LABOR-MANAGEMENT RELATIONS

- U.S. Congress. Senate. Committee on Post Office and Civil Service. Labor-management relations in the Federal service. Hearing, 93d Congress, 1st session, on S. 351. Washington, U.S. Govt. Print. Off., 1973-. Contents incomplete: Pt. 1, May 31, 1973. (No evidence that Pt. 2 was ever printed.)
LC Call KF26.P6 1973d
Dewey Dec. 344.73/0189041353
Supt. Docs. Y4.P84/11:L11/Part 1
CIS S621-7
- U.S. Congress. House. Committee on Post Office and Civil Service. Subcommittee on Manpower and Civil Service. Federal service labor-management legislation. Hearings, 93d Congress, 2d session, on H.R. 13, H.R. 9784, H.R. 10700 and related bills. May 21-July 25, 1974. Washington, U.S. Govt. Print. Off., 1974. 598 p. "Serial No. 93-51."
LC Call KF27.P653 1974
Dewey Dec. 344.73/0189041353
Supt. Docs. Y4.P841/10:93-51
CIS H621-9
- U.S. Congress. House. Committee on Post Office and Civil Service. Subcommittee on Civil Service. Federal labor relations program. Briefing, 95th Congress, 1st session. Mar. 15, 1977. Washington, U.S. Govt. Print. Off., 1977. 27 p. "Serial No. 95-3."
LC Call KF27.P635 1977a
Dewey Dec. 331.041/353
Supt. Docs. Y4.P84/10:95-3
CIS H621-14
- U.S. Federal Labor Relations Council. Federal service labor-management relations program; report of the Federal Labor Relations Council, prepared for the Subcommittee on Civil Service of the Committee on Post Office and Civil Service of the House of Representatives. Washington, U.S. Govt. Print. Off., 1977. 57 p. At head of title: 95th Congress, 1st session. Committee print No. 95-5.
LC Call HD8008.A5 1977
Dewey Dec. 331.041/353
Supt. Docs. Y4.P84/10:F31/7
- U.S. Congress. House. Committee on Post Office and Civil Service. Subcommittee on Civil Service. Improved labor-management relations in the Federal service; part I. Hearings, 95th Congress, 1st session, on H.R. 13 and H.R. 1589. Washington, U.S. Govt. Print. Off., 1977. 337 p. Hearings held Apr. 21-May 10, 1977. "Serial No. 95-30."
Supt. Docs. Y4.P84/10:95-30
CIS H621-39

U.S. Congress. House. Committee on Post Office and Civil Service. Subcommittee on Civil Service. Improved labor-management relations in the Federal service. Hearings, 95th Congress, 1st session, on H.R. 13, H.R. 1589, H.R. 9094. Sept. 15, 1977. Washington, U.S. Govt. Print Off., 1977. 30 p. "Serial No. 95-31."
Supt. Docs. Y4.P84/10:95-31
CIS H621-46

HEARING AND REPRESENTATION RIGHTS

U.S. Congress. House. Committee on Post Office and Civil Service. Subcommittee on Retirement and Employee Benefits. Right to counsel during interrogations. Hearings, 94th Congress, 1st session, on H.R. 1674. March 11, 26, Apr. 8, 1975. Washington, U.S. Govt. Print Off., 1975. 92 p. "Serial No. 94-10."

LC Call KF27.P673 1975c

Dewey Dec. 353.001/76

Supt. Docs. Y4.P84/10:94-10

CIS H621-19

U.S. Congress. House. Committee on Post Office and Civil Service. Right to representation during questioning; report together with minority views to accompany H.R. 6227. Washington, U.S. Govt. Print. Off., 1975. 25 p. (94th Congress, 1st session. House Report no. 94-459)

CIS H623-22

U.S. Congress. House. Committee on Post Office and Civil Service. Subcommittee on Civil Service. Right to representation, Hearing, 95th Congress, 1st session, on H.R. 3793. July 21, 1977. Washington, U.S. Govt. Print. Off., 1977. 51 p. "Serial no. 95-33"

LC Call KF27.P635 1977f

Dewey Dec. 347.73/072

Supt. Docs. Y4.P84/10:95-33

CIS H621-44

U.S. Congress. House. Committee on Post Office and Civil Service. Subcommittee on Civil Service. Federal employee administrative hearing rights guarantee act. Hearing, 95th Congress, 1st session, on H.R. 6225. July 28, 1977. Washington, U.S. Govt. Print. Off., 1977, 76 p. "Serial no. 95-34."

LC Call KF27.0635 1977g

Dewey Dec 342.73/068

Supt. Docs. Y4.P84/10:95-34

CIS H621-45

U.S. Congress. House. Committee on Post Office and Civil Service. Federal Employee Administrative Hearing Rights Guarantee Act; report together with minority views to accompany H.R. 6225, including cost estimate of the Congressional Budget Office. Washington, U.S. Govt. Print. Off., 1978. 35 p. (95th Congress, 2d session. House. Report no. 95-1207)

Supt. Docs. 95-2:H.rp.1207

CIS H623-9

EQUAL EMPLOYMENT OPPORTUNITY REORGANIZATION

U.S. President, 1977- (Carter). Reorganization plan no. 1 of 1978; message. Washington, U.S. Govt. Print. Off., 1978. 7 p. (95th Congress, 2d session. House. Document no. 95-295)

Supt. Docs. 95-2:H.doc. 295

CIS H400-1

U.S. Congress. House. Committee on Government Operations. Legislation and National Security Subcommittee. Reorganization plan no. 1 of 1978 (equal employment opportunity). Hearing, 95th Congress, 2d session, Mar. 2-9, 1978. Washington, U.S. Govt. Print. Off., 1978. 526 p.

LC Call KF27.G6676 1978a

Dewey Dec. 353.001

Supt. Docs. Y4.G74/7:R29/3/978/no. 1

CIS H401-28

U.S. Congress. House. Committee on Government Operations. Reorganization plan no. 1 of 1978; report together with additional views to accompany H.Res 1049. Washington, U.S. Govt. Print. Off., 1978. 28 p. (95th Congress, 2d session. House. Report no. 95-1069)

Supt. Docs. 95-2:H.rp.1069

CIS H403-7

CIVIL SERVICE REFORM AND OVERSIGHT IN GENERAL

- U.S. Congress. House. Committee on Post Office and Civil Service. Subcommittee on Manpower and Civil Service. Civil Service amendments of 1976. Hearing, 94th Congress, 2d session on H.R. 12080. Mar. 17-26, 1976. Washington, U.S. Govt. Print. Off., 1976. "Serial no. 94-67."
 LC Call KF27.P653 1976a
 Dewey Dec. 342.73/068
 Supt. Docs. Y4.P84/10:94-67
 CIS H621-27
- U.S. Congress. House. Committee on Post Office and Civil Service. Full committee hearing on H.R. 12080 amendments. Hearing, 94th Congress, 2d session. May 11, 1976. Washington, U.S. Govt. Print. Off., 1976. 49 p. "Serial no. 94-68."
 LC Call KF27.P6 1976
 Dewey Dec. 342.73/068
 Supt. Docs. Y4.P84/10:94-68
 CIS H621-36
- U.S. Congress. Senate. Committee on Governmental Affairs. Nomination of Alan K. Campbell. Hearing, 95th Congress, 1st session, on nomination of Alan K. Campbell to be a Civil Service Commissioner. May 2, 1977. Washington, U.S. Govt. Print. Off., 1977. 67 p.
 LC Call KF26.G67 1977d
 Dewey Dec. 353.006.
 Supt. Docs. Y4.G74/9:C15
 CIS S401-19
- U.S. Congress. House. Committee on Post Office and Civil Service. Oversight hearing on the Civil Service Commission. Hearing, 95th Congress, 1st session. June 14, 1977. Washington, U.S. Govt. Print. Off., 1977. 24 p. "Serial no. 95-21."
 LC Call KF27.P6 1977
 Dewey Dec. 353.006
 Supt. Docs. Y4.P84/10:95-21
 CIS H621-30
- U.S. Congress. House. Committee on Post Office and Civil Service. Civil Service reform. Hearings, 95th Congress, 2d Session, On H.R. 11280. Mar. 14-May 23, 1978. Washington, U.S. Govt. Print. Off., 1978. 1025 p. "Serial no. 95-65."
 LC Call KF27.P6 1978a
 Dewey Dec. 353.006.
- U.S. Congress. Senate. Committee on Governmental Affairs. Civil Service Reform Act of 1978 and Reorganization Plan no. 2 of 1978. Hearings, 95th Congress, 2d session, on S. 2640, S. 2707, and S. 2830. Apr. 6-May 9, 1978. Washington, U.S. Govt. Print. Off., 1978. 1439 p.
 Supt. Docs. Y4.G4/9:C49
 CIS S401-40
- U.S. Congress. Senate. Committee on Governmental Affairs. Civil Service Reform Act of 1978 and Reorganization Plan no. 2 of 1978. Hearings, 95th Congress, 2d session, on S. 2640, S. 2707, and S. 2830 to reform the Civil Service laws, June 1978: appendix. Washington, U.S. Govt. Print. Off., 1978. 905 p.
 LC Call KF26.G67 1978c
 Dewey Dec. 342.73/068
 Supt. Docs. Y4.G74/9:C449/app
 CIS S401-41
- U.S. Congress. House. Committee on Government Operations. Legislation and National Security Subcommittee. Reorganization plan no. 2 of 1978 (Federal Personnel Management System). Hearings, 95th Congress, 2d session, June 6, 13, and 15, 1978. Washington, U.S. Govt. Print. Off., 1978. 319 p.
 LC Call KF27.G6676 1978b
 Dewey Dec. 353.001
 Supt. Docs. Y4.G74/7:R29/3/978/no. 2
 CIS H401-29





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