

Overview of the Federal Service Labor-Management Relations Statute

FSLMRS - 5 U.S.C. Chapter 71
5 C.F.R. Chapter XIV
The Back Pay Act - 5 U.S.C. § 5596

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FEDERAL LABOR RELATIONS AUTHORITY

THREE AGENCIES

- ◆ Authority - 3 member board
- ◆ General Counsel (7 Regional Offices)
- ◆ Federal Service Impasses Panel (FSIP)

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5 U.S.C. § 7101 Findings and Purpose

- Right to organize/bargain/participate
- Safeguards/contributes/facilitates
- Labor organizations and collective bargaining are in the public interest
- Statutory goal of effective and efficient Government

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5 U.S.C. § 7102

Employees' Rights

-Right to form/join/assist labor organizations, or to refrain from doing so

-To exercise these rights freely and in a protected manner

-Serve as labor organization representative, and express views to Government officials

-Engage in collective bargaining concerning conditions of employment

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5 U.S.C. § 7103 - Definitions

-(a)(2) Employee: Employed by the agency but not managers or supervisors

-(a)(12) Collective Bargaining: Reflects statutory obligations but no obligation to agree to proposal or make a concession

-(a)(8) Collective Bargaining Agreement: Agreement reached by collective bargaining under the FSLMRS

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5 U.S.C. § 7103 - Definitions

--(a)(9) Grievance: Extremely Broad

– Employment matters of an employee (by the employee)

– Employment matters of an employee(s) (by a union)

– Effect/interpretation/claimed breach of agreement (by employee/union/agency)

– Violation/misinterpretation/misapplication of law, rule, regulation affecting conditions of employment (by employee/union/agency)

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5 U.S.C. § 7103 - Definitions

-(a)(10) Supervisor: Exercising or effectively recommending the exercise of certain duties, if not routine or clerical in nature and requiring the consistent exercise of independent judgment

-(a)(11) Management Official: Require or authorize individual to formulate/determine/influence agency policies

-(a)(13) Confidential Employees: For those who formulate or effectuate management LMR policies

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5 U.S.C. § 7103 - Definitions

--(a)(14) Conditions of Employment:

- Personnel policies/practices/matters**
- Established by rule, regulation or otherwise**
- Affecting working conditions**
- Excluding 5 U.S.C. Ch. 73 activities, position classification, matters specifically provided for by Federal statute**

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5 U.S.C. § 7103 - Definitions

-(a)(4) Labor organization: Group of employees in whole or part, who participate and pay dues, purpose is to deal with agency concerning grievances and conditions of employment (no status if certain conduct present)

-(a)(16) Exclusive Representative: Labor organization certified as such of employee group in appropriate unit as determined by FSLMRS, or agency recognition of status immediately prior to CSRA, and continued recognition in accordance with FSLMRS

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5 U.S.C. § 7104 - The FLRA

- Three members, only two can be in same party
- Presidential nomination, Senate approval, staggered five year terms
- General Counsel is separate, having separate responsibilities, but same nomination/approval process, five year term

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5 U.S.C. § 7105 - Powers and Duties of the Authority

- Leadership in establishing policies/guidance for FSLMRS matters
- Representation Issues
- National Consultation Rights and Consultation Rights
- Duty to Bargain and Compelling Need Issues

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5 U.S.C. § 7105 - Powers and Duties of the Authority cont.

- Unfair Labor Practices
- Arbitration Exceptions
- Actions necessary to administer FSLMRS

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5 U.S.C. § 7106 - Management Rights

-Enumerated rights found at § 7106(a) and (b)(1), considerable precedent attempting to define terms

-(a)(1) Determine Internal Security Practices

-(a)(2)(A) Assign/Direct employees

-(a)(2)(B) Assign Work

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5 U.S.C. § 7106 - Management Rights cont.

-Enumerated rights subject to bargaining under all three portions of (b)

- (b)(1) "Permissive" bargaining on (b)(1) topics

- (b)(2) "Procedures" - Direct Interference

- (b)(3) "Appropriate Arrangements" - Excessive Interference

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5 U.S.C. § 7114 - Union Representation Rights and Duties

-Exclusive right to act for/negotiate agreements, represent all unit employees without discrimination or regard to labor organization membership

-Representation at certain meetings

-Formal discussions regarding grievance, personnel policy/practice, or other general condition of employment (independent right)

-Investigative Examinations (when requested)

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5 U.S.C. § 7114 - Duty to Bargain in Good Faith

--Mutual obligation between agency and exclusive representative only

-Sincere resolve to reach agreement

-Represented by duly authorized representatives prepared to discuss any condition of employment

-Meet at reasonable times, convenient places, as frequently necessary, avoid unnecessary delays

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5 U.S.C. § 7114 - Duty to Bargain in Good Faith

--Additional agency obligation to share information

- Normally maintained

- Reasonably available and necessary

- Not constituting guidance, advice, counsel, training

--Agency head review, approval/disapproval of agreements

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5 U.S.C. § 7115 - Allotments to Representative

-Dues Deductions allotments to labor organizations

-Minimum one year period

-Where no exclusive representative recognized, labor organizations can bargain over dues deduction with 10% showing of membership

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5 U.S.C. § 7117 - Duty to Bargain in Good Faith

--Does not extend to matters inconsistent with any Federal law, Government-wide rule or regulation

- Management rights under § 7106 covered

--Does not extend to agency rule or regulation matters if a “compelling need” exists for the agency rule or regulation, unless union represents majority of employees in issuing agency or primary national subdivision

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5 U.S.C. § 7117 - Duty to Bargain in Good Faith

-Special procedures to resolve compelling need issues arising during collective bargaining

-Duty to bargain issues raised in collective bargaining appealable by union IAW procedures established

-Agency head disapproval of provisions under § 7114 also appealable under this section

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5 U.S.C. § 7122 - Exceptions to Arbitral Awards

Contrary to law, rule, regulation

Private Sector Grounds

- Essence
- Exceeds Authority
- Non-fact
- Bias
- Fair Hearing
- Procured by Fraud

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5 U.S.C. § 7122 - Exception to Arbitral Awards

--Awards appealable to Authority, with exceptions

- § 4303 and § 7512 actions

**- Matters similar to above that arise under other
personnel systems**

--Optional review by MSPB and EEOC

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5 U.S.C. § 7123 - Judicial Review

--Final orders of the Authority

-Review of arbitration awards not involving ULPs

-Appropriate unit determinations

--60 day period for appeal

**--Appeal in U.S. Circuit Court of Appeals for that
location or U.S. Circuit Court of Appeals for D.C.**

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Office of General Counsel

Seven Regional Offices and HQ, Washington D.C.

- 1. Atlanta**
- 2. Boston**
- 3. Chicago**
- 4. Dallas**
- 5. Denver**
- 6. San Francisco**
- 7. Washington, D.C.**

**Headquarters Office provides advice and policy
guidance.**

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OGC Responsibilities

-Investigate & process ULP charges

-If complaint is issued, OGC prosecutes violations of the Statute (ULPs) before an Administrative Law Judge

-Administers the process by which unions become/continue as exclusive representatives

-Enforces arbitration awards

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Unfair Labor Practices

5 U.S.C. § 7116

5 C.F.R. §2423

7116(a) - lists Agency unfair labor practices

7116(b) - lists Union unfair labor practices

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5 U.S.C. § 7116(a)

It is a ULP for an agency to:

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

Example: threats of reprisal for exercising right to form, join or assist.

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

Example: disciplining an employee for exercising a right under this Chapter.

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Agency ULP cont.

(a)(3) to sponsor control or otherwise assist any labor organization. . . .;

Example: assist a union in organizing employees or campaigning.

(a)(4) -to discipline or otherwise discriminate against an employee because the employee has . . . given information or testimony under this chapter;

Example: taking action against an employee for giving testimony in a ULP proceeding.

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Agency ULP cont.

(a)(5) - to refuse to consult or negotiate in good faith with a labor organization;

Example: implement a change in conditions of employment prior to giving notice and an opportunity to bargain.

(a)(6) - to fail or refuse to cooperate in impasse procedures;

Example: failure to comply with a final order of FSIP.

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Agency ULP cont.

(a)(7)

(a)(8) - to otherwise fail or refuse to comply with any provision of this chapter; (catch -all provision)

Example: formal discussions and examinations (5 U.S.C. § 7114(a)(2)(A)&(B)); official time (5 U.S.C. § 7131); and dues allotment (5 U.S.C. § 7115).

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5 U.S.C. § 7116(b)

It is a ULP for a labor organization

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

Example: tell an employee he needs to join to get representation.

(b)(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.

Example: Try to get agency to discipline an employee for organizing another union

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Union ULP cont.

(b)(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 non-preferential civil service status, political affiliation, marital status or handicapping condition;

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

Example: unduly delay negotiations or send representatives who are not authorized to bind union.

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Union ULP cont.

(b)(6) - to fail or refuse to cooperate in impasse procedures

**(b)(7)(A) - to call or participate in a strike
(B) - to condone any of the activity described in (A) or by failing to take action to prevent or stop such activity**

(b)(8) - to otherwise fail or refuse to comply with this chapter (catch-all provision)

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Examples of Problems That Aren't “Unfair Labor Practices (ULPs)”

- All other “unfair” conduct
 - Threats, rewards or punishments *for any other* reasons
- Violations of other laws
- Violations of agency or other regulations
- Contractual violations
 - Except for “repudiations”

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Remedies 5 U.S.C. § 7118

- FLRA issues orders requiring parties to:
 - -cease & desist from the ULP activity
 - -bargain retroactively
 - -post a Notice
 - -return to the status quo ante
- FLRA also issues orders requiring corrective actions, for example, rescind discipline, provide back pay with interest, rescind assignments, bargain
- FLRA may not impose “punitive” penalties (“damages”)

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How Does the OGC Process Work? 5 C.F.R. §2423.6

Charges must be filed within six months of event unless there has been a concealment.

**Charges are “filed” when received & docketed
Not when faxed or mailed.**

Charges may not be processed where:

- Prior grievance on the same facts & issue was filed
- On matters before the MSPB (e.g., “adverse actions”)

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How Does OGC Process Work cont. . . ?

FLRA agents investigate charges (5 C.F.R. § 2423.8)

- A) Contact filer and charged party close to filing date.**
-Ask charging party for preliminary info, documents

**Note: Charging party responsible for evidence,
naming witnesses if known**

- B) FLRA agent takes sworn statements from Charging
Party representative & witnesses**
-Arranges Official Time as necessary with Agency

- C) Agent seeks evidence from Charged Party**

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How Does OGC Process Work cont.?

- D) Agent reports to Regional Director (RD) and RD
decides merits**

-If no merit - written dismissal issued which is
appealable to General Counsel (GC), if charge is not
withdrawn, or

- If meritorious - complaint issued and prosecuted by
the Region before an ALJ (opportunity to settle
prior to issuance).

- E) Judges' decisions final unless appealed to FLRA**

- F) FLRA decisions final unless appealed to court**

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Grievance Procedures (5 U.S.C. § 7121)

- Negotiated Grievance Procedures, and arbitration, are mandatory under the Statute
- ▶ Arbitrators decide whether a matter may be arbitrated
- ▶ Refusal to proceed to arbitration can be a ULP
- Employees may file/process their own grievances
- ▶ Can represent themselves or have a union rep (but cannot be represented by someone else unless union agrees)
- ▶ Cannot invoke arbitration-only the Union can do so
- Union right → be represented at all proceedings including Meetings to discuss grievance
- Separate meetings without Union approval may amount to bypass and formal discussion ULPs

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Grievance Procedures Cont.

Coverage: 5 U.S.C. §§ 7103(a)(9), 7121

- “Grievance” defined at § 7103(a)(9) is a fairly broad definition
- Certain matters excluded by § 7121(c) - e.g. prohibited political activities, retirement, life and health insurance, a suspension or removal over 14 days, any examination, certification or appointment or the classification of any position which does not result in the reduction of grade or pay.
- Coverage of complaints for the negotiated procedure otherwise is “mandatory” subject
- Union right to participate in grievance process i.e., speak, negotiate changes in C/E affecting unit
- “Exclusives” have great discretion on whether and how to process a grievance as long as no discrimination based on union membership

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Grievance Arbitration

- Union or agency may require arbitration for grievances; employees may not
- Issues for arbitration
 - Parties may agree on what arbitrator will decide
 - If parties disagree on the issue to be arbitrated, arbitrator decides
- Arbitration awards may be appealed to FLRA
- FLRA rarely disturbs contract interpretations
- FLRA largely reviews awards for whether they comply with law

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“Official Time” (1)

5 U.S.C. § 7131

- “Official Time”
 - paid time, without charge to leave, for unit *employees* when they would otherwise be in a duty status
- Statutory Official Time
 - (1) time in negotiations for # of employees equal to # of management representatives in negotiations
 - (2) time required by FLRA for its proceedings when employee is acting for exclusive representative
- *No other* statutory official time under the Statute
 - All other official time must be negotiated by the exclusive representative and the Agency, or
 - originate under other statutes/regulations

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“Official Time” (2)

- **Prohibited for “internal union business”**
 - see definition at 5 U.S.C. § 7131(b)
- **Other time may be negotiated; disputes are contractual**
- **Negotiated Official Time may cover, for example**
 - Time for meetings, safety surveys, preparations for negotiations, representation of employees
- **Disputes over amounts/use of official time are the most common disputes**

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Representation Matters

5 U.S.C. § 7112
5 C.F.R. § 2422

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How Do Unions Become Exclusive Representatives?

- **Petitions, with “showings of interest,” filed at FLRA Regional Offices** (5 CFR Chap. XIV, Appendix A)
 - Seeking representation for unrepresented or currently represented employee group (“unit”)
 - “Window” periods may exist that limit filing times
- **FLRA decides if group (unit) is “appropriate” for collective bargaining/representation by exclusive**
- **Employees vote in an FLRA administered election** (no involvement in internal union elections)
- **FLRA certifies exclusive representative if employees’ vote dictates that result**

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Appropriate Unit 5 U.S.C. 7112(a)

An appropriate unit is one which 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.

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A unit is not appropriate if it includes:

5 U.S.C. § 7112(b) - (c)

- - ▶ “Supervisors”
 - ▶ “Management officials”
 - ▶ “Confidential employees”
 - ▶ “Persons in personnel work in other than a purely clerical capacity”
 - ▶ *Certain* internal security personnel
- ▶ These persons:
 - lack right to be represented under the Statute
 - May be union members, but are not part of the unit
 - May not be controlling officials in the Union

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FEDERAL SERVICE IMPASSES PANEL

**5 U.S.C. § 7119
5 C.F.R. § 2471**

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**Resolves disputes over
negotiation impasses.**

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Substitute for the Strike and Lockout

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**Panel has authority to impose a
resolution.**

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**Cases are decided by seven
political appointees**

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**Only labor organizations or
agencies may file a request for
Panel assistance.**

To File:

- Use FSIP form; or
- Follow filing requirements set forth in 5 C.F.R.
§ 2471.3

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**Requirements for Panel
asserting jurisdiction**

1. Parties must have bargained
2. Parties must have had mediation assistance
3. Parties must have reached an impasse on substantive
issues

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Panel does NOT:

- 1. Resolve grievances**
- 2. Make determinations on good faith bargaining; or**
- 3. Resolve duty to bargain questions**

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Panel Members vote on whether to assert jurisdiction

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Panel provides parties with a procedure to help them reach a voluntary resolution

Procedures Include:

- 1. Informal conferences**
- 2. Written submissions**
- 3. Mediation/Arbitration**

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**If no voluntary resolution,
Panel may take whatever
action it deems appropriate to
resolve the impasse**

- Usually a Decision and Order.

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**Panel's Decision and Order
subject to review only within
limited context of 5 U.S.C. §
7114(c)**

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The End

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