Amending Executive Order No. 11491,[1] as Amended by Executive Orders 11616 [2] 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.".

Gerald R. Ford

THE WHITE HOUSE,
January 30, 1976.

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[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.