

A. PRE-CHARGE ASSISTANCE

OVERVIEW: Before a party files a charge, ROs are frequently contacted by unions, activities, or other persons to discuss various labor-management matters. The Agent is prepared to give guidance and information in accordance with the specific needs expressed.

OBJECTIVE: To provide the Agent with a list of matters that s/he is prepared to cover if pre-charge assistance is required: (1) general pre-filing technical assistance; (2) drafting the charge; (3) collecting and organizing supporting evidence; and (4) legal impediments precluding the filing of a charge.

1. GENERAL PRE-FILING ASSISTANCE:

- Upon request, an Agent may provide a person/s the following types of assistance:
- Explain generally the rights and obligations under the Statute;
- Explain ULP procedures under the Regulations;
- The FLRA's Internet Home Page Web address--**www.flra.gov**--and the types of information found there;
- Furnish appropriate forms and reasonable technical assistance regarding completion of forms, including drafting language describing the basis of a charge; and
- Public written materials.

NOTE: *The Agent clarifies, whether orally, in writing, or by e-mail, that s/he is providing technical assistance only; that s/he cannot advise a party on what course of action to pursue; and that should a charge be filed, the charge will be investigated and a decision will be made by the RD on the evidence adduced during the investigation.*

2. DRAFTING THE CHARGE:

The charge includes a clear and concise statement of the facts alleged to constitute an unfair labor practice, including the date and place of occurrence of the particular acts and the names and titles of Agency or Union representatives involved.

3. COLLECTING AND ORGANIZING SUPPORTING EVIDENCE:

The Agent explains to the person the types of information that are necessary to gather to support a charge:

- Witnesses - with a brief synopsis as to what each witness will testify to, and a telephone number for each witness; and
- Documents, e.g., collective bargaining agreement;

See [ATTACHMENT 1A1](#) for a Sample Letter describing what a person needs to do before filing a charge.

4. LEGAL IMPEDIMENTS PRECLUDING THE FILING OF A CHARGE:

a. *Contractual notification requirements:*

An agreement between a union and an activity, which contains a requirement for pre-charge filing, notification, or settlement efforts, is enforceable. *Headquarters, Fort Sam Houston, Dep't of the Army and AFGE, Local 2154*, [8 FLRA 394](#), 395 (1982). If the Region finds that the Charging Party has not followed a required procedure, the charge is dismissed.

NOTE: *Contractual notification requirements are not binding on persons who file charges as individuals.*

b. *Grievance bar:*

- i. Second sentence of § [7116\(d\)](#) governs whether ULP charge is barred by a previously-filed grievance: and
- ii. ULP charge is barred by an earlier-filed grievance if “the unfair labor practice charge arose from the same set of factual circumstances as the grievance and the theory advanced in support of the ULP charge and the grievance are substantially similar.” *Olam S.W. Air Defense Sector (TAC), Point Arena Air Force Station, Point Arena, Cal.*, [51 FLRA 797](#), 801-02 (1996) (citation omitted).

NOTE: *The charge form requires that the Charging Party state whether the matter raised in the charge has been raised previously in a grievance procedure. See § [2423.4\(a\)\(i\)](#).*

c. *Charge is untimely:*

Agent advises if action may be untimely under § [7118\(a\)\(4\)](#) of the Statute. See *United States Dep't of the Treasury, IRS, Wash., D.C.*, [61 FLRA 146](#), 150 (2005) where the Authority stated that the “six-month filing period for ULP charges starts at the time the `alleged unfair labor practice . . . occurred.’” Therefore, with respect to arbitration awards, the filing period cannot begin at least until there has been a failure to comply with an award.” *Id.*; *EEOC, Wash., D.C.*, [53 FLRA 487](#) (1997) (*EEOC*); *Air Force Flight Test Ctr., Edwards Air Force Base, Cal.*, [55 FLRA 116](#), 120 (1999) (charge was timely filed where although changes in program were made more than six months before the charge was filed, charge alleges incident upon which charge was based occurred in the month preceding the charge, *i.e.*, meeting that occurred in month preceding charge modified

conditions of employment from those set forth in memorandum which issued more than six months prior to the filing of the charge). See *also* Part 2, Chapter A concerning Filing a Charge.

NOTE: *If any of the legal impediments described above applies, the Agent informs the person. But, the Agent advises person that s/he has the right to file a charge and a determination will be made by the RD.*

5. E-MAIL AND PRE-CHARGE ASSISTANCE:

Agents may reply by e-mail to inquiries received by e-mail. All Agents check their e-mail for messages with the same frequency that they check their telephone messages.

6. CONFIRMATION AND DOCUMENTATION OF TECHNICAL ASSISTANCE:

a. *Confirmation:*

Under no circumstances is it permissible for an Agent to allow a technical assistance call to be taped. An Agent who is advised that a conversation is actually being taped informs the caller that taping is against OGC policy and then terminates the conversation. If asked, the Agent may inform the caller that if the caller makes a specific inquiry in writing, the Region will respond in writing.

b. *Documentation:*

Calls approximating at least five minutes duration are documented on the Technical Assistance form. See [ATTACHMENT 1A2](#). Calls of shorter duration are not documented.

B. ALTERNATIVE DISPUTE RESOLUTION SERVICES

OVERVIEW: The provision of ADR services supports the FLRA's Agency-wide initiative to assist labor and management parties to evaluate the success of their current labor-management relationship and develop the type of labor-management relationship that best meets their interests. The OGC furthers its mission to provide leadership in promoting stable and productive labor-management relationships in the Federal sector by providing ADR programs both before and after a charge has been filed. See § [2423.1](#)(a) and (b). Section [2423.2](#) codifies the OGC's ADR services.

OBJECTIVE: To list the types of ADR services the OGC provides to parties and to describe how they promote stable and productive labor-management relationships in the Federal sector.

1. WHAT ADR SERVICES ARE PROVIDED:

Pursuant to § [2423.2](#)(b), the parties may request the following services:

- Facilitation - Assisting the parties in improving their labor-management relationship;
- Intervention - Using an interest-based technique, intervening when parties are experiencing or expect significant ULP disputes;
- Training - Training union and management representatives on their rights and responsibilities under the Statute, and how to avoid litigation over those rights; and
- Education - Working with the parties to recognize the benefits of, and establish processes for, avoiding disputes without the need for litigation.

2. BENEFITS OF ADR SERVICES:

- Ensure understanding of, and compliance with, the Statute;
- Assist the parties in developing the type of labor-management relationship that best suits them;
- Enable Federal agencies and their employees to deliver the highest quality services; and
- Enhance the quality of work life and the well-being of employees and managers.

3. ADR SERVICES PROVIDE LEADERSHIP AND PROMOTE STABLE AND PRODUCTIVE LABOR-MANAGEMENT RELATIONSHIPS:

- a. Description of ADR Programs:

- Training for union and management representatives on the rights and duties of employees, unions, and management under the Statute to ensure that the Statute's purposes are understood and supported and to assist the parties to improve their labor-management relationships within the requirements of the Statute;
- Assistance provided to union and management representatives which supports their efforts to improve and strengthen their working relationships.
- Services provided to union and management representatives who are experiencing or expect significant ULP activity due to relationship difficulties or external influences, and agree to use OGC ADR methods to try to resolve their conflicts and disputes.
- Training for union and management representatives on interest-based negotiation and problem-solving techniques for contract negotiations; and
- Training for union and management representatives to assist them in designing ADR approaches to meet their needs.

NOTE: [ATTACHMENT 1B1](#) contains a more exhaustive description of the above services.

b. Examples of situations when ADR assistance is appropriate:

- Newly certified unit - statutory training for union officers and agency managers;
- Numerous ULP charges are filed at one activity - intervention.

c. Examples of symptoms that indicate assistance is appropriate:

- Adversarial nature of negotiations; contract negotiations have been ongoing for too long a period of time; actual or potential ULP charges; and
- General interactions between union and management representatives are poor, e.g., parties do not talk to each other; no joint meetings are held; allegations are personalized; extraneous matters are raised; actual or potential ULP charges.

e. Criteria for providing ADR services:

The OGC concentrates its limited resources where they have the potential to achieve the greatest results. Based on this objective, RDs consider specific factors in determining whether ADR programs and services are undertaken. Not all of the following factors are relevant to each situation:

- **Commitment of the parties to improve their labor-management relationship:**

The OGC expends its limited resources only when both parties are committed to improve their relationship. Parties must be willing to be represented by officials who are committed to the process undertaken and empowered with the authority to commit their principals to specific actions intended to improve their relationship.

- **Availability of OGC employees to meet the parties' needs:**

A program is not undertaken unless there are employees available to assign to the specific program. RDs only assign those employees who are experienced in the type of ADR program undertaken and who are available at a time agreeable to both parties. In the event that the Region is unable to provide a requested program, the RD will advise OGC HQ and it will be determined if training resources may be secured elsewhere.

- **Balancing resource needs among OGC programs:**

The OGC continues to administer effectively its limited resources to achieve the maximum results in fulfilling its statutory mission. RDs thus take into consideration the pending ULP and representation caseload, the geographic location and timing of the program, the Agency's agreement to pay the travel and per diem of the RO employees involved and the size of the group which is involved in the ADR program.

- **Organizational level of the Agency and Union:**
- **Character of labor-management relationships:**
- **The OGC's commitment to, and the parties' need for, continued assistance:**
- **Nature and extent of prior assistance:**
- **Acceptability of OGC assistance by the Agency and Union:**

The weight of this factor varies depending upon the type of ADR program under consideration. For example, the degree of acceptability should be greater in a facilitation to improve a relationship, as compared to an intervention to resolve a pending ULP or representation dispute.

- **OGC involvement furthers dispute resolution:**

All ADR programs further the OGC's mission to provide leadership and promote stable and productive labor-management relationships in the Federal sector. The Regions do not undertake an ADR program which is not intended to further the mission.

f. Additional criteria if request is for pre-charge ADR assistance pursuant to § [2423.1\(a\)](#):

- Whether or not dispute involves a ULP;
- How close is it to the 6-month time limit for filing a charge;

- Parties are informed that the 6-month time period for filing charge is not tolled; and
- Magnitude of the violation.

Among other things, the Region considers whether there is potential for the situation to get worse in a short period of time.

4. HOW ADR SERVICES ARE INITIATED:

ADR services may be initiated by the OGC or by a request or agreement of the parties. Depending upon the type of ADR service requested, it may be appropriate to require that the parties jointly agree that the Region provide such services. In any event, the Region provides such services consistent with OGC criteria.

For example, parties may jointly request skills training or assistance in enhancing their labor-management relationship, or the OGC may suggest to the parties that they may benefit from such training or assistance. Irrespective of how these ADR services are initiated, the OGC creates innovative programs that are responsive to the varying needs of the parties.

5. DECIDING WHETHER TO PROVIDE AN ADR SERVICE:

Upon receipt of a joint request or a request from a Union or Agency for an ADR service, the Region explains the process for delivering an ADR program and obtains sufficient information from the parties to enable the RD to:

- Diagnose the needs of the parties;
- Apply the criteria listed above; and
- Determine which, if any, ADR program will be offered.