

Executive Order 13522
Creating Labor-Management Forums to Improve
Delivery of Government Services

Labor – Management Training
Presented by
Office of General Counsel



Course Overview

- Day One: FLRA: Overview of Executive Order 13522, Collective Bargaining under the Statute, including section 7106(b)(1) and Pre-Decisional Involvement.
- Day Two: FMCS: Introduction to Labor-Management Forums, skill building and next steps for starting a Labor-Management Forum.

E.O. 13522 Purpose

- To establish a cooperative and productive form of labor-management relations throughout the executive branch.
- To improve the delivery of government services to the American people.

E.O. 13522 Policy

- Federal Employees and Union representatives are an essential source of front-line ideas and information about how to deliver government services.
- A non-adversarial labor-management (LM) forum to discuss government operations will promote satisfactory labor relations and improve productivity and efficiency.
- LM forums allow parties to work collaboratively to deliver the highest quality services to the American public.
- LM forums complement the existing collective bargaining process.
- Management should discuss workplace challenges and problems with labor and jointly devise solutions rather than adhering to the traditional bargaining procedures.

E.O. 13522

Implementation of LM Forums

- Agencies directed to work with Unions to establish, or adapt existing LM forums at the level of recognition and other appropriate levels as agreed to by the parties, to help identify problems and propose solutions to better serve the public and agency missions.
- Established a National Council on Federal LMR (Council) to oversee implementation of LM forums.

E.O. 13522

Expectations for LM Forums

- Allow employees and unions to have pre-decisional involvement in all workplace matters, without regard to whether subjects are negotiable under the Statute;
- Expeditiously provide union with adequate information on such matters where not prohibited by law;
- Make good-faith attempt to resolve issues concerning proposed changes to conditions of employment, including 7106(b)(1) subjects, in LM forums;
- Evaluate and document in consultation with union changes in employee satisfaction, manager satisfaction, and organizational performance.

E.O. 13522

Agency Reporting Requirements

- Agencies to submit plans to the Council for review and certification.
- Agency plans must address how agency will conduct a baseline assessment of current state of LR;
- Development of metrics to monitor improvements in LM satisfaction, productivity gains, and cost savings.

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Section 7106(b)(1) pilot projects

- To evaluate impact of bargaining over section 7106(b)(1) subjects, several pilot projects will be established where agencies elect to bargain over some or all section 7106(b)(1) subjects and participate in impasse resolution procedures on such subjects.
- Council to oversee pilot projects and evaluation of such projects and impact on organizational performance, employee satisfaction and LR.

E.O. 13522

- The Executive Order does not
 - Abrogate any collective bargaining agreement;
 - Limit, preclude, or prohibit management from electing to negotiate over § 7106(b)(1) matters;
 - Impair or otherwise affect authority granted by law to agencies (i.e. it does not expand bargaining rights);
 - Create any right to administrative or judicial review.

E.O. 13522 Summary and Focus

- The Executive Order 13522 seeks to improve the delivery of high quality government services by establishing:
 - A cooperative and productive form of labor-management relations ;
 - Agency LM forums to identify problems and propose solutions to better serve the public, improve employee work life and labor-management relations;
 - Pre-decisional involvement for employees and their union representatives in all workplace matters to the fullest extent practicable.

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*Collective Bargaining under the
Federal Service Labor-Management
Relations Statute*



TWO ASPECTS OF COLLECTIVE BARGAINING

- Duty to Bargain
 - WHEN the parties are required to bargain.
- Scope of Bargaining
 - WHAT subjects the parties are required to negotiate.

DUTY TO BARGAIN CONDITIONS OF EMPLOYMENT

- The certified exclusive representative has the right to negotiate over the conditions of employment of the bargaining unit.
- Conditions of employment are defined as:
“personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions”.
5 USC § 7103(a)(14)

CONDITIONS OF EMPLOYMENT

- Authority considers two factors in deciding whether a matter involves a negotiable condition of employment:
 - Whether it pertains to bargaining unit employees;
 - The nature and extent of the effect on working conditions of the employees.

Antilles Consol. Education Ass'n., 22 FLRA 235 (1986)

DUTY TO BARGAIN ARISES IN THREE SITUATIONS

- Negotiations for a collective bargaining agreement (CBA).
- Negotiations over a proposed change in conditions of employment.
- Negotiations during the term of a CBA on matters not addressed in the CBA.

DUTY TO BARGAIN

EXCEPTIONS

- Negotiations over a proposed change in conditions of employment are not required when:
- The change has already been negotiated and addressed in the CBA, or ;
- The effects of the change are *de minimis*.

Scope of Bargaining

Three Categories

- Mandatory
 - Those subjects the parties are required to negotiate.
- Permissive
 - Those subjects the parties may mutually agree to bargain but are not required to bargain.
- Prohibited
 - Those subjects that the parties are not permitted to bargain.

Prohibited Subjects

- No duty to bargain over matters:
 - Specifically provided for by Federal statute;
 - Relating to the classification of a position;
 - Relating to political activities;
 - Inconsistent with law or Government-wide rule or regulation;
 - Inconsistent with an agency rule or regulation for which a compelling need exists;
 - Relating to the conditions of employment of employees in a different bargaining unit.

Management Rights -- 5 U.S.C. 7106(a)

Nothing in the Statute, including the right to bargain, shall affect an agency's right:

- to determine the mission, budget, organization, number of employees, and internal security practices of the agency;
- 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;
- to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
- to make selections for appointments;
- to take whatever actions may be necessary to carry out the agency mission during emergencies.

Exceptions to Management Rights

5 U.S.C. § 7106(b)(1):

- Numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty
- Technology, methods, and means of performing work
- *Permissive - an agency may, but is not required to bargain over these matters*

Exceptions to Management Rights

Procedures and Appropriate Arrangements

- 5 U.S.C. 7106(b)(2): The “procedures which management officials of the agency will observe in exercising” any management rights under 7106.
- 5 U.S.C. 7106(b)(3): “Appropriate arrangements for employees adversely affected by the exercise of” any management right under 7106.
- *Procedures and appropriate arrangements are mandatory subjects.*

Framework for Resolving Disputes under § 7106(a) and (b)

- Does the proposal affect a § 7106(a) right?
- Is the proposal negotiable under § 7106(b)(2) or (b)(3)?
- Is the proposal electively negotiable under § 7106(b)(1)?

AFGE HUD Council of Locals 222 Local 2910, 54 FLRA 171, 178 (1998)

Two Categories of § 7106(b)(1) Matters

1. Numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty
2. Technology, methods, and means of performing work

“Numbers, Types, and Grades”

- The terms “numbers, types, and grades” in § 7106(b)(1) include:
 - The establishment of staffing patterns, or the allocation of staff, for the purpose of an agency’s organization and the accomplishment of the agency’s work. *See AFGE Local 3354*, 54 FLRA 807, 816 (1998).
 - The numbers of employees and positions assigned to an organizational subdivision and the determination as to whether, and which, vacant positions assigned to an organizational subdivision will be filled. *See AFGE Local 3354*, 54 FLRA 807, 816 (1998).
 - The numbers, types and grades of employees assigned to tours of duty, including the number of employees working part-time or on alternative work schedules. *See U.S. Dep’t of Def. Am. Forces Radio & Television Broad. Ctr. Riverside, Cal.*, 59 FLRA 759, 760 (2004).

“Technology, methods, and means”

- Technology refers to the technical method that will be used in accomplishing or furthering the performance of the agency’s work.
- Method refers to the way in which an agency performs its work.
- Means refers to any instrumentality, including an agent, tool, device, measure, plan, or policy used by an agency for the accomplishment or furtherance of the performance of its work.

Section 7106(b)(1) matters

- Proposals concerning the forms, documents, or electronic systems that an agency uses in accomplishing its mission. *See AFGE, Local 3529, 57 FLRA 172, 175-76 (2001).*
- Proposals concerning the introduction of new technologies that will assist the agency in fulfilling its mission more efficiently. *See AFGE, Local 3129 SSA Gen. Comm., 58 FLRA 273, 275 (2002).*
- Proposals concerning the requirement that employees wear a prescribed uniform while performing work. *See AFGE, Local 1869, 63 FLRA 598 (2009); NAGE, Locals R12-122, R12-222, 38 FLRA 295, 304 (1990).*

Section 7106(b)(1) does not include

- Proposals concerning contracting out. *See GSA*, 54 FLRA 1582, 1590 (1998).
- Proposals concerning the assignment of duties to particular employees. *See AFGE, Local 1985*, 55 FLRA 1145, 1148 (1999).
- Proposals concerning the location at which work will be performed. *See PASS*, 56 FLRA 798, 803 (2000).
- Proposals concerning performance standards and rating levels. *See U.S. EPA, Chi., Ill.*, 62 FLRA 350, 352 (2008).

Key Points on Bargaining Over 7106(b)(1) Subjects Under the Statute.

- Bargaining is permissive.
- Agreements reached on permissive subjects in collective bargaining are enforceable. *See SSA, Balt., Md.*, 55 FLRA 1063, 1069 (1999).
- Agency head review under 7114(c) cannot reject agreements on 7106(b)(1) subjects. *See NATCA*, 61 FLRA 336 (2005).
- Parties can terminate agreements on permissive subjects when agreement expires. *See FAA, NW Mtn. Region Seattle, Wash.*, 14 FLRA at 648-49.

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Pre-Decisional Involvement Under Executive Order 13522



Pre-Decisional Involvement

Under E.O. 13522, parties are to establish labor-management forums and, through the forums

- Allow employees and their unions pre-decisional involvement to the fullest extent practicable on all workplace matters without regard to negotiability under §7106 of the Statute.
- Make good-faith attempt to resolve issues concerning proposed changes to conditions of employment, including those involving §7106(b)(1) subjects.

Pre-Decisional Involvement

- Is a voluntary model of collaboration and engagement for labor and management to deal with decisions and issues concerning the work place outside the traditional collective bargaining process.
- Does not waive or expand the rights of labor, employees or management under the Statute.
- The scope and structure of pre-decisional involvement are shaped and determined by the parties.

Pre-Decisional Involvement

To be successful, it is critical that the parties:

- Have a common understanding of what pre-decisional involvement is;
- Share a mutual appreciation of when it is in their interest to use pre-decisional involvement;
- Share similar expectations of the results they seek to achieve through pre-decisional involvement;
- Agree on what actions occur after pre-decisional involvement has concluded.
- Share an understanding of relationship between pre-decisional involvement and the collective bargaining obligations.

Pre-Decisional Involvement

Guiding Principles

- The process begins early when ideas are forming;
- The parties have common expectations;
- Information is shared and there is a mutual understanding of what matters are confidential;
- The parties utilize a problem solving approach founded on interest-based principles.
- High degree of commitment to the process and to the achievement of shared expectations.

Common Expectations

Is there a Common Understanding of what authority the Labor Management Forum has?

- Decision making body
- Recommending body

Is there a Common Understanding of what will happen after PDI?

- What aspects of the issue are involved and what are the next steps?

Common Expectations

What happens when pre-decisional involvement is concluded?

- Consensus reached – proceed to implementation without further bargaining
- Recommendation accepted by principals
- Recommendation modified and accepted
- Execute MOA regarding consensus
- No Consensus reached – revert to proper place in existing labor-management relationship
- Will statutory bargaining be required?

Fully Sharing Information

Management will disclose all relevant information as part of the problem solving process.

Information provided as part of process.

No need for statutory information requests.

Mutual understanding of what remains confidential.

Non-adversarial and no litigation.

PROBLEM SOLVING APPROACH

Negotiator vs. Problem Solver

Problem-solving processes to create solutions through consensus decision-making

Collaborative approach, based on parties' interests rather than their positions

Issues Appropriate for Pre-Decisional Involvement

Does issue lend itself to joint management and union concerns and issues?

Does issue present an opportunity for agency and union to join together and collaborate on a common strategy or approach?

Does issue lend itself to a short-term or long-term solution?

Does issue require a national or local solution?

Have parties already adopted a fixed position on the issue or are they willing to explore different solutions?

Pre-Decisional Involvement Summary of Steps

- Decide when to engage and what issue.
- Decide relationship between pre-decisional involvement and collective bargaining.
- Decide structure of process.
- Identify interests that must be satisfied and standards to evaluate solutions.
- Implement the solution.
- Evaluate actions and measure benefits achieved.

For Further Information

- www.flra.gov
- www.fmcs.gov
- www.lmrcouncil.gov