

Collective Bargaining I: Legal Frameworks INSTRUCTOR GUIDE



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Course Overview

Course Goal:

The course will provide a basic introduction to the legal framework for federal sector collective bargaining.

Course Objective:

At the end of this course, participants should be able to demonstrate how to:

- Discuss the collective bargaining roles and requirements under 5 U.S.C Chapter 71.
- Define key terms and concepts used in federal sector collective bargaining.
- Evaluate common legal strategies used in federal collective bargaining.

Class Activities and Icon Key:

The following icons are used in the Participant Workbook to indicate the different types of class activities. The course will emphasize the use of small group activities to emphasize the need for teamwork in bargaining.



Paired/Partner

Activity to complete with one other participant.



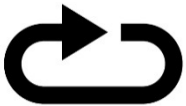
Team Assignment

Small group activity. Each team should select a reporter, a scribe, and timer.



Class Assignment

Activity for the class to complete.



Reportback

Each team provides a report to the class.

Collective Bargaining 1: Legal Frameworks

DAILY AGENDA

CONTENT	INSTRUCTOR	POWERPOINT/ ACTIVITY	PARTICIPANT WORKBOOK/STATUTE	DAY/ESTIMATED TIME
Overview		PPT: 1-3	<ul style="list-style-type: none"> Review materials Instructors introduce themselves 	Day 1
Welcome and Introductions		PPT: 4	<u>Workbook</u> : page 4	
What is Collective Bargaining?		PPT: 5-7 <u>Exercise</u> : What is Collective Bargaining	<u>Workbook</u> : page 5	
		PPT: 8-15	<u>Statute</u> : page 6 (definition 12)	
The Statute		PPT 16-19 <u>Exercise</u> : What is in the Statute?	<i>Hand out the Statute</i>	
		Debrief	<u>Statute</u> (various)	
Federal Collective Bargaining: the language, the players		PPT: 20-22 <u>Exercise</u> : Speaking the Language	<u>Workbook</u> : 13	
Exclusive Representative		PPT: 23-28	<u>Statute</u> : page 8 (definition 16)	
Speaking the language continued.		PPT: 29-31		
Substance vs. I & I bargaining (Appropriate Arrangements and Procedures)		PPT: 32-34	<u>Statute</u> : page 14-15	
		PPT: 35 <u>Exercise</u> : Substance vs I&I	<u>Workbook</u> : page 12-13	
Federal Collective Bargaining Process		PPT: 36-39		
Know Your Neutrals		PPT: 40-50	<u>Statute</u> : 9-14 (FLRA) <u>Statute</u> : 32-34 (FMCS/FSIP)	
		PPT: 51 <u>Exercise</u> : Know your Neutrals	<u>Workbook</u> : page 14	
DAY 1 REVIEW	<u>See APPENDIX A for review questions</u>			

CONTENT	INSTRUCTOR	POWERPOINT/ ACTIVITY	PARTICIPANT WORKBOOK/STATUTE	DAY/ESTIMATED TIME
Bargaining begins with Change		Show Video PPT: 53		Day 2
Demand to Bargain		PPT: 54-60		
		PPT: 61 <u>Exercise:</u> DtB	<u>Workbook:</u> page 16	
Information Requests		PPT: 62-70		
		PPT: 71 <u>Exercise:</u> IR	<u>Workbook:</u> page 17-18 <u>Debrief:</u> page 42-43	
Strategic Bargaining		PPT: 72-77		
Writing Proposals		PPT: 78-84		
		PPT: 85 <u>Exercise:</u> PW I	<u>Workbook:</u> page 19-20	
		PPT: 86-87		
		PPT: 88 <u>Exercise:</u> PW II	<u>Workbook:</u> page 21 Appendix A	
Ground Rules		PPT: 89-97		
		PPT: 98 <u>Exercise:</u> PW III	<u>Workbook:</u> page 22	
Negotiability		PPT: 99-101		
DAY 2 REVIEW	<u>See APPENDIX A for review questions</u>			
Proposal Review				Day 3
Analytical Frameworks		PPT: 102-116	FLRA Guide to Negotiability (various)	
		PPT: 117 <u>Exercise:</u> Analytical Frameworks	<u>Workbook:</u> page 23-33	
Bargaining 101		PPT: 118 - 123		
Mock bargaining sessions		PPT 124 <u>Exercise:</u> Mock Bargaining		
Summary and Review		PPT: 125		

Getting Started

About This Guide

What's the purpose of this guide?

This facilitator guide provides a master reference document to help you deliver the program.

What will I find in the guide?

This facilitator guide is a comprehensive package containing

- The workshop delivery sequence
 - Checklists of necessary materials and equipment
 - Presentation scripts and key points to cover, and
 - Instructions for managing instructional activities.
-

How is this guide organized?

The first section of the Instructor Guide, from pages 1-67 contains all of the preparation information for the program, such as learning objectives, pre-work, required materials, and room set-up.

Finally, the program itself is divided into *modules*, each of which is comprised of one or more *lessons*. A module is a self-contained portion of the program, usually lasting anywhere from 2 to 4 hours, while a lesson is a shorter (typically 30 – 60 minutes) topic area.

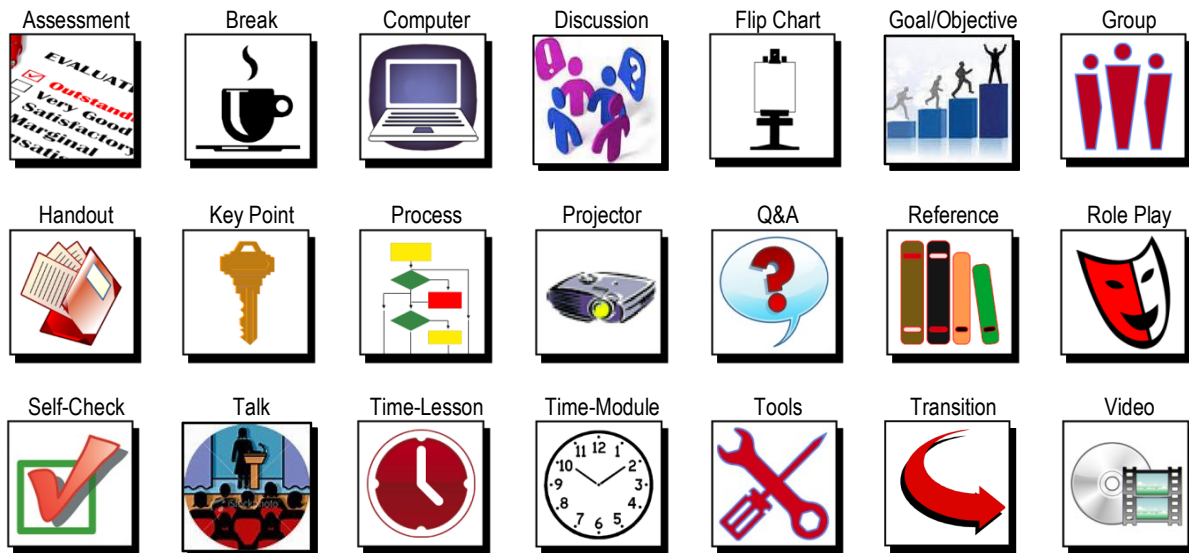
The second section of the Instructor Guide (Appendix B) from pages 68-126 includes a combined Instructor Guide/Participant Workbook for reference when teaching the course.

How is the text laid out in a lesson?

Steps within a lesson are placed in a text block like this one. A margin icon is placed to the left of the text block to signal what information the block contains.

A list of the margin icons used in this guide is provided below.

Graphic Cues



Note:

The instructor for this program should be experienced and knowledgeable in federal sector collective bargaining. In addition, the instructor should prepare sufficiently to present on each topic within the curriculum and to be able to answer participant questions and/or refer them to additional resources they can investigate to learn more.

The Reference icon indicates sections that provide further information on a subject. The facilitator may use them for additional material when time permits or share them with interested participants as outside reading.

The Program in Perspective

What is the (CB1) course?

This course is designed to provide a basic introduction to the legal framework for federal collective bargaining.

Audience

The CB1 course is designed for union leaders and activists with little or no experience in federal collective bargaining.

Overview

Federal collective bargaining is more restrictive than other types of private or public sector bargaining. Accordingly, federal collective bargaining is a process that can often be confusing or frustrating. This course is designed to give participants basic information on the legal framework for federal collective bargaining so they are better prepared to represent their members at the bargaining table. This session will teach members about your rights as a union negotiator and how they can work through common obstacles to bargaining.

This course is the first in a two-part series on Introduction to Collective Bargaining. While this course will teach the basic rules of the road for how to get the agency to sit down and bargain, the next course, *Introduction to Collective Bargaining 2: Negotiation Skills and Techniques (CB2)*, will help participants develop the skills to win the best agreement possible for their members.



Program Learning Objectives

After completing this program, participants should be able to:

- Discuss the collective bargaining roles and requirements for unions and agencies under 5 U.S.C. Chapter 71
 - Define key terms and concepts used in federal collective bargaining
 - Evaluate common legal strategies and bargaining techniques used in federal collective bargaining.
-

Program Length

This program is designed for 3 days of instruction. The suggested class time is a 9 am – 5 pm schedule.

The Program in Perspective

Number of Participants

10 – 20

Program Preparation

Pre-Session Homework for Participants (Optional)

Required Equipment and Materials

- 3-4 Laptops
- 5 USB drives
- Internet connection
- LCD projector and cables to laptop
- External/House Speakers (do not rely on laptop speakers)
- CB1 Workbook with handouts and exercises
- CB1 Course Manual
- CB1 Instructor Guide
- CB1 PowerPoint Presentation
- CB1 Reorganization Scenario Video
- 5 U.S.C. Chapter 71 Handout
- Flipcharts (1 with self-adhesive backing is recommended)
- Markers (for the trainer and a few for participant tables)
- Painter's Tape (or something to post flipchart paper)

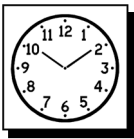
As an alternative to a flipchart, information can be captured in a Word file, which is projected on a screen. The information is easily printed later.

Welcome and Introduction



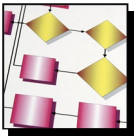
Goal

The purpose and goal of this module is introduce the participants to the course, the instructor and each other.



Time

10 minutes



Overview

Provide an overview of the course, discuss learning objectives and class norms, and conduct an introduction activity.



Materials Needed

- Computer with Internet access
 - Flip Chart and Markers
 - Participant Workbooks
 - Course Manual
 - Title 5 handout
 - Instructor Guide
 - PowerPoint Presentation
-

Welcome

Facilitator

Notes



Objective(s):

Participants will:

- Review the course agenda and learning objectives.
- Agree upon session norms.

Slide 1



Have Slide 1 show as participants enter the training room.



Slide 2



Start the class:

Welcome participants to the session and introduce yourself as the instructor. Emphasize your experience with AFGE and federal collective bargaining.

Give a brief overview of the session (expectations and objectives).

Walk participants through the participant workbook.

Objectives

- Discuss the collective bargaining roles and requirements under 5 U.S.C Chapter 71.
- Define key terms and concepts used in federal sector collective bargaining.
- Evaluate common legal strategies used in federal collective bargaining.



Slide 3



Emphasize the goal of the training is to provide a basic introduction to the legal framework for federal sector collective bargaining.

Welcome

Facilitator

Notes



SAY:

Federal collective bargaining is a complex process that can often be confusing or frustrating. This course is designed to give you basic information on the legal framework for federal collective bargaining so you are better prepared to represent your members at the bargaining table. This session will teach you about your rights as a union negotiator and how you can work through common obstacles to bargaining.

Please note that this course is the first in a two-part Introduction to Collective Bargaining Series. While this course will teach you the basics rules of the road for how to get the agency to sit down with you and bargain, the next course, Negotiation Skills and Techniques, will help you develop the skills to win the best agreement you can for your members.

I do want to point out the Collective Bargaining: Legal Framework Manual and the Title 5 handout. As we go through this course we will be using these materials as a reference.



Go through the items in the Resource section

Course Manual

5 U.S.C. Chapter 71 handout

Welcome

Facilitator

Notes



Review the session norms. Suggested norms are:

- Participate in all activities
- Silence/turn off cell phones, computers, etc.
- Arrive and start on time
- One person speaks at a time



Ask:

Ask participants if there are any norms that they would like to add or can't agree with.

If there are none, then adopt the norms as the guidelines for the expectation and post the norms on the wall.

Disagreement

If anyone expresses disagreement with a norm, discuss their concerns and work to develop a consensus on the class norms.

Introductions

Facilitator

Notes



Objective(s):

Participants will:

- Identify other people in their learning community
- Reflect upon their experiences with bargaining

Slide 4



Say:

You are all here to learn about collective bargaining or possibly you will be serving on your local or council bargaining team.

I want you to take 3 minutes for some personal reflection and respond to the following question:

- 1. Have you been involved in bargaining?
- 2. Have you taken any training programs on negotiation or collective bargaining?
- 3. Have you ever been involved in negotiations or assisted someone with their negotiations as a union representative?

Introductions

- 1 • Have you been involved in bargaining?
- 2 • Have you taken any training programs on negotiation or collective bargaining?
- 3 • Have you ever been involved in negotiations or assisted someone with their negotiations as a union representative?

Introductions

Facilitator

Notes



Introductions Activity:

After 3 minutes:

- 1) Pair participants together.
- 2) Once in their group, ask participants to introduce themselves to their partner, tell them what local they are from, and share their answers from the activity
- 3) Let participants know that they are going to be introducing their partner.

Slide 5



On a flipchart:

- Write down the title of the activity:
Collective Bargaining and You.

After 3-5 minutes:

- Ask each pair to introduce their partner by giving their partner's:
 - Name
 - Local, and
 - Their answers from .



During the introductions:

- As needed, chart key words as to their experience as bargainers.
- Emphasize the fact that everyone is involved in bargaining on a daily basis, with their significant other, boss, friends and family. This course will cover the specifics of one type of bargaining but the all bargaining situations share similar elements.

Listen for:

Experience as union bargainers

Training in bargaining or negotiations

WHAT IS COLLECTIVE BARGAINING



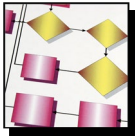
Goal

The purpose and goal of this module is to have the participants reflect on the term collective bargaining and its practical application to their role as a union representative. Finally, this module will introduce the participants to the definition for collective bargaining provided by the Statute.



Time

30 minutes



Overview

Provide an overview of the course, discuss learning objectives and class norms, and conduct an introduction activity.



Materials Needed

- PowerPoint
 - Flip Chart and Markers
 - Participant Workbooks
 - Course Manual
 - Instructor Guide
 - Title 5 handout
-

What is Collective Bargaining?

Facilitator

Notes



Objective(s):

Participants will:

- Describe the term “collective bargaining” and how it relates to employees and the agency.

Slide



Show slide What is Collective Bargaining:



SAY:

The term “Collective Bargaining” can mean many things to many people. One of the most important things you can do when bargaining is to understand what the other side means when they say specific term. To help us get prepared for bargaining, we are going to do an exercise to learn more about what we think the term collective bargaining means.

Slide





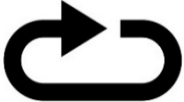



Show slide Exercise: What is Collective Bargaining:

What's is Collective Bargaining?
• Exercise:



What is Collective Bargaining?

Facilitator	Notes
<p>What is Collective Bargaining Activity:</p>  <p>Ask each participant to write down five (5) words that define the term collective bargaining. The descriptions can be benefits, attributes, synonyms, etc. of the term collective bargaining.</p>	<p>Give 2 minutes for this individual activity.</p>
  <p>Activity - Team Exercise</p> <p>Have the participants at each table share their descriptors and, as a team, come up with a seven (7) word consensus definition or description of the term collective bargaining.</p>	<p>Refer class to <u>page 6</u> in the Participant Workbook for this activity.</p>
 <p>Have each team assign a scribe to write down the definition and a reporter to explain the definition to the class</p>	<p>Give 5 minutes for the team activity.</p>
  <p>On a flipchart:</p> <ul style="list-style-type: none">■ Have the scribe at each table write down their sentence on the flip chart paper and have the reporter read their definition and the process they used to come up with this sentence.■ Note similarities and differences in each definition. Inform the class while there are many aspects to collective bargaining, in federal sector bargaining, it is most important to understand the definition of collective bargaining in 5 U.S.C. Chapter 71 under Section 7103(a)(12).	<p>Each team has 3 minutes to report on their definition.</p>

COLLECTIVE BARGAINING and the STATUTE

Facilitator

Notes



Objective(s):

Participants will:

- Identify the role, rights and responsibilities of union representatives in the collective bargaining process under 5 U.S.C. Chapter 71.

Slide



Show slides:

Federal Collective Bargaining slides 16-19.

- Discuss how the 5 U.S.C. Chapter 71 (the Statute) is the foundation for federal labor-management relations; including representation and collective bargaining.
- Introduce key terms and participants in federal collective bargaining.



SAY:

The Statute, 5 U.S.C. Chapter 71, is the foundation for federal labor-management relations, including representation and collective bargaining. To prepare for negotiations with management, AFGE negotiators must understand how the Statute governs federal collective bargaining.

COLLECTIVE BARGAINING and the STATUTE

Facilitator

Notes

Slide



Show slide Exercise: What is in the Statute?

Exercise:
What's in the Statute?



Refer class to page 6-12 in the Participant Workbook for this activity.



Tell the class they will have 10 minutes for this team activity.

COLLECTIVE BARGAINING and the STATUTE

Facilitator

Notes

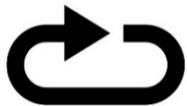


Activity – Team Exercise

- “Each team will be responsible for answering 3-4 questions.
- Research the questions using 5 U.S.C. Chapter 71 handout. Read and review the relevant section and write your answer. Cite the section and reference the page where the answer was found.
- Do not write down all the information in the section, only summarize the main points that provide the answer to the question.
- Choose someone on the team to report back.”

Break the class into 4 teams with 4-5 participants. Depending on the experience level in the class, you can either assign a mix of experience/new to each team or the class can be divided evenly if the experience levels are more uniform.

COLLECTIVE BARGAINING and the STATUTE



Facilitator

Notes

- Have a reporter at each table provide their answers to the assigned questions.
- Refer to the Answer Key to the Statute Exercise on the following pages.
- Note the important language in in each section of the Statute.
- Inform the class that we will continually referring to different sections of the Statute as we learn more about how to do federal collective bargaining.
- Tell the class that the two “bibles” of federal collective bargaining for union representatives are the Statute and their collective bargaining agreement (CBA), which was made possible by the Statute.

Each team has 5 minutes to report on their answers.



5 U.S.C. Chapter 71

Federal Service Labor-Management Relations Exercise

ANSWER KEY

[NOTE: page numbers can vary depending on the printed version of the Statute; citations will not change]

1. Why does the law allow collective bargaining in the Federal Sector?

ANSWER: PAGE 3 § 7101

1. Safeguards the public trust
2. Contributes to the effective conduct of public business
3. Facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment

2. What rights do employees have?

ANSWER: PAGE 4 § 7102

To form, join, or assist any labor organization, or to refrain, freely and without fear of penalty or reprisal.
To act for a labor organization in the capacity of a representative and to present the views of the labor organization.
To engage in collective bargaining.

3. What agency has the authority to enforce labor relations in the Federal Sector?

ANSWER: PAGES 10-14 § 7104 and § 7105

Federal Labor Relations Authority

4. How is “collective bargaining” defined in the Statute?

ANSWER: PAGE 7-8 § 7103 (a) (12)

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 good faith effort to reach agreement with respect to the conditions of employment.... and to execute.... a written document incorporating any collective bargaining agreement but this does not compel either side to agree to a proposal or make a concession...

5. What are three examples of a condition of employment?

ANSWER: PAGE 8 § 7103 (a) (14)

Personnel policies
Personnel practices
Personnel matters

6. What are two elements that are not considered a condition of employment?

ANSWER: PAGE 8 § 7103 (a) (14)

1. Matters relating to political activities
2. Classification of any position
3. Matters specifically provided for in a Federal statute

7. What are the duties does the Federal Labor Relations Authority regarding collective bargaining?

ANSWER: PAGE 12-13 § 7105 (a) (2) (E-G)

Resolve issues relating to the duty to bargain in good faith

Grant consultation rights with respect to conditions of employment

Conduct hearings and resolve complaints of ULPs

8. List four (4) items that the Agency does not have to negotiate with the Union:

ANSWER: PAGE 15-16 § 7106 (a) (1) and (2)

1. Determine the mission, budget, organization, number of employees and internal security practices
2. Hire, assign, direct, layoff, retain, discipline... employees
3. Assign work, contract out decisions...
4. Take actions during emergencies....

9. What are three (3) areas that the Statute allows an agency to choose to negotiate with a labor organizations but cannot be required to negotiate?

ANSWER: PAGE 16 § 7106 (b) (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.

10. Identify two (2) areas where the Union can negotiate with the Agency?

ANSWER: PAGE 16 § 7106 (b) (2) and (b)(3)

- Procedures which management officials observe in exercising any authority
- Appropriate arrangements for employees adversely affected by the exercise of any authority by management officials.

11. What are three (3) requirements for a union to be accorded the exclusive recognition as a labor organization by an agency?

ANSWER: PAGE 17 § 7111(a)

- Secret ballot election
- Majority of the employees
- Appropriate unit who cast ballots

12. Describe five (5) requirements for good faith negotiations:

ANSWER: PAGE 23 § 7114 (b) (1-5)

1. Approach negotiations with a sincere resolve to reach a collective bargaining agreement.
2. Duly authorized representatives are prepared to discuss and negotiate on any condition of employment.
3. Meet at reasonable times and places as frequently as necessary and to avoid unnecessary delays.
4. In the case of the agency, furnish data to the union upon request and to the extent not prohibited by law:
 - a. Data which is normally maintained by the agency in the regular course of business
 - b. Reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of 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 an 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 necessary to implement such agreement.

13. What is Agency Head Review?

ANSWER: PAGE 24 § 7114 (c) (1-4)

Agency head will review the document within 30 days from the date of execution to see if the agreement is in accordance with the provisions of all applicable laws, rules or regulations (unless the agency has granted an exception).

14. Describe two (2) conditions when the agency does not have a duty to bargain in good faith matters that are subject of agency rule or regulation:

ANSWER: PAGE 28-29 § 7117 (a) (1-3)

1. Matters inconsistent with Federal law or any Government-wide rule or regulation
2. No compelling need exists for the rule or regulation.

15. What is the first step for resolving an impasse in negotiations?

ANSWER: PAGE 34 § 7119 (a) and (b)

The Federal Mediation and Consultation Service (FMCS).

16. If voluntary mediation attempts fail, what two (2) options for resolving the impasse:

ANSWER: PAGE 34-35 § 7119 (b) (1) and (2)

Either party may go to either:

1. Federal Service Impasses Panel
2. Binding arbitration (as approved by the Panel)

17. When is official time authorized for collective bargaining?

ANSWER: PAGE 43 § 7131 (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 would otherwise be in a duty status.

18. How many people can the union have on official time for their negotiating team?

ANSWER: PAGE 43 § 7131 (a)

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. The FLRA has determined that this is a permissive subject of bargaining.

SPEAKING THE LANGUAGE

Slide



**Show slide 20 Federal Collective Bargaining:
*Speaking the Language, Knowing the Players***

Federal Collective Bargaining:
SPEAKING The Language, Knowing the Players...



- Bargaining unit
- Conditions of employment
- Exclusive Representative
- Designee(s)
- Employer/Agency
- Neutrals: FMCS, FLRA, FSIP, Arbitrators
- Union Member
- Bypass
- Bargaining unit member
- Bargaining team members
- Chief Negotiator (Chief Spokesperson)
- Subject Matter Expert (SME)



Refer class to page 13 in the Participant Workbook for this activity.



Tell the class they will have 10 minutes to complete the exercise. Say



“In your own words, define each of the terms which are used in federal collective bargaining.”



Debrief with the class using the Answer Key on the next page. Refer to the Statute as needed.

Speaking the Language



Class Activity –

1. Bargaining Unit Member:

A member of a group of employees that a union represents that the FLRA finds appropriate under 5 USC 7112 (community of interest, effective dealings, efficiency of operations) for collective bargaining purposes.

2. Conditions of Employment:

Under 5 USC 7103(a)(14), means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise affecting working conditions, except by matters that are specifically provided for by Federal Statute.

3. Bypass:

A violation of 5 USC 7114(a)(1) when the agency deals directly with either another union or with unit employees on matters that are within the sole authority of the exclusive representative for that bargaining unit.

4. Chief Negotiator:

The labor union negotiation team often has one individual who serves as the lead person to communicate the union's interests at the bargaining table.

5. Exclusive Representative:

The union that is certified as the exclusive representative of a unit of employees by having won a representation election.

6. Subject Matter Expert:

A member of the bargaining unit with extensive knowledge of a specific issue, position, and/or workplace conditions.

7. Union Member:

A member of a bargaining unit who is a dues paying member of the local union.

8. FLRA:

Federal Labor Relations Authority (the Authority).

9. FSIP:

Federal Services Impasse Panel (the Panel).

10. FMCS:

Federal Mediation and Conciliation Service (the Service)

SUBSTANCE vs. I & I BARGAINING

Facilitator

Notes



Objective(s):

Participants will:

- Identify proposals as either eligible for substance or I & I bargaining

Slide



Show slides:

Federal Collective Bargaining slides 32-34.

- Introduce the term *substance bargaining* (over matters not affecting management rights) and *impact and implementation (I and I) bargaining* over matters that affect management rights.
- Discuss how the relationship of these terms to Section 7106 (a) and (b)(2-3) under 5 U.S.C. Chapter 71
- Note that the Statute does not refer to impact and implementation, instead the actual language refers to “procedures and appropriate arrangements

SUBSTANCE vs. I & I BARGAINING

Facilitator

Notes



SAY:

The key to determining whether you can bargain over the substance of the agency change or are limited to bargaining over its implementation (procedures) and/or its adverse impact on affected employees (appropriate arrangements) depends on whether or not a management right under Section 7106(a) has been affected. The following exercise will give you a chance to review proposed Agency changes to determine what type of bargaining you can pursue.



Show slide: Exercise: Substance vs. Impact and Implementation

Exercise:
Substance vs. Impact and
Implementation



Refer class to page 12-13 in the Participant Workbook for this activity.



Tell the class they will have 10 minutes for this team activity.

SUBSTANCE vs. I & I BARGAINING

Facilitator

Notes



Activity – Class Exercise



“Review the following list of changes in the conditions of employment to determine if these topics can be bargained substantively or can only be bargained over their impact and implementation (see procedures and/or appropriate arrangements under 7106(b)(2) and (b)(3)). Check the correct line to indicate if the topic can be bargained on its substance or only for procedures and/or appropriate arrangements (impact & implementation).

NOTE: If you determine that the topic is limited to impact and implementation bargaining only, describe the management right under 5 U.S.C. Section 7106(a) the Agency is exercising.”



Ask for a show of hands for the answer to each question. Have participants volunteer to give their reason for selecting their choice.

Debrief the responses and indicate the correct answers per the Answer Key on the following pages.



Substance vs. Impact and Implementation (I&I) Exercise

ANSWER KEY

1. The Agency wants to change the grievance procedure to eliminate one of the steps in the appeal process.

X Substance

___ Impact and Implementation

The management right is:

2. The Agency has asked to reduce the amount of official time that the union uses to represent cases.

X Substance

___ Impact and Implementation

The management right is:

3. The Agency is implementing a 30 day furlough for all employees.

___ Substance

X Impact and Implementation

The management right is:

7106(a)(2)(A)

4. The Agency is consolidating two units into one central unit. 50 employees will need to be transferred to a new location under this change.

___ Substance

X Impact and Implementation

The management right is:

7106(a)(2)(B)

5. The Agency has implemented a new electronic system for travel vouchers to expedite the processing of employee travel expenses.

Substance

Impact and Implementation

The management right is:

7106(b)(1) – permissive topic – agency could choose to bargain

6. The Agency has notified the Union of a new wellness program designed to promote physical fitness.

Substance

Impact and Implementation

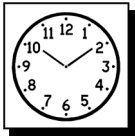
The management right is:

Federal Collective Bargaining Process



Goal

Participants should learn the appropriate role for the FLRA, FMCS, FSIP and arbitrators in the federal collective bargaining process.



Time

20 minutes



Materials Needed

- PowerPoint
 - Flip Chart and Markers
 - Participant Workbook
 - Course Manual
 - Instructor Guide
 - Title 5 handout
-

Federal Collective Bargaining Process

Facilitator

Notes



Objective(s):

Participants will:

- Identify key elements of the federal collective bargaining process and the role of the neutrals under the Statute.

Slide



Show slides:

Federal Collective Bargaining slides 36-51.

- Introduce and describe the role and responsibilities of the FLRA, FMCS, FSIP and the Arbitrator



SAY:

Knowing the role that each neutral plays in the collective bargaining process gives you the ability to use the appropriate resource to help resolve conflicts and disputes with the agency.



Show slide: Exercise: Know Your Neutrals

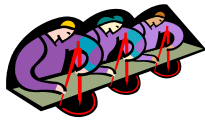
Exercise:
Know your Neutrals



Refer class to page 14 in the Participant Workbook for this activity.



Tell the class they will have 10 minutes for this activity.



Activity – Class Exercise



“Select the appropriate neutral (FMCS, FLRA, FSIP and/or Arbitrator) for each statement below.”



Ask for a show of hands for the answer to each question. Have participants volunteer to give their reason for selecting their choice.

Debrief the responses and indicate the correct answers per the Answer Key on the following pages.



Exercise: Know Your Neutrals

ANSWER KEY

1. We settle disputes between the union and the agency concerning how language in their contract should be interpreted. ARBITRATOR
2. We decide whether an unfair labor practice has been committed after either the union or the agency files a charge against the other. FLRA
3. We help the parties reach an agreement when they are bargaining a new contract.
FMCS
4. We decide what language will go into a collective bargaining agreement when the parties cannot agree. FSIP
5. We decide which employees are in, or out of a bargaining unit. FLRA
6. We decide on grievances when an employee is fired. ARBITRATOR
7. We train union representatives and managers on how to bargain more effectively and cooperatively. FMCS
8. We resolve disputes when an agency wants to terminate an alternative work schedule.
FSIP
9. We decide whether the parties have to negotiate over a proposal the union makes during bargaining.
FLRA
10. We review an arbitrator's award if one party believes it is contrary to law.
FLRA

DEMAND TO BARGAIN

Facilitator

Notes



Objective(s):

Participants will:

- Develop a demand to bargain for a proposed change to a condition of employment (See Appendix A in the Participant Workbook for the Office Relocation scenario)

Slide



Show slides:

Federal Collective Bargaining slides 53-61.

- Describe the key questions to have the agency answer about the change in the condition of employment.
- Discuss the need to communicate with the affected members on how the proposed change could affect them.



Team Activity:

Have participants draft a demand to bargain to the Agency over the office relocation.

Exercise:
DEMAND TO BARGAIN



REQUEST FOR INFORMATION

Facilitator

Notes



Objective(s):

Participants will:

- Identify the information that needs to be requested for a proposed change to a condition of employment (See Appendix A in the Participant Workbook for the Office Relocation scenario correspondence)

Slide



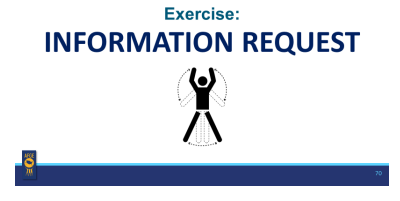
Show slides:

- Show slides 62-71



Team Activity:

Have participants draft a request for information to gather data that can assist with bargaining with the Agency over the office relocation.



PROPOSAL LANGUAGE

Facilitator

Notes



Objective(s):

Participants will:

- Discuss the characteristics and benefits of strategic bargaining.
- Identify issues and concerns with proposal language by reviewing and editing sample contract proposal language.

Slide



Show slides:

- Slides 72-77 Strategic Bargaining
- Slides 78-84 Writing Proposals



Team Activity:

Proposal Writing I Exercise: Have participants rewrite contract language.

Exercise:
PROPOSAL WRITING I



DRAFTING A PROPOSAL

Facilitator

Notes



Objective(s):

Participants will work in teams to:

- Draft a proposal regarding parking for the Office Relocation Scenario.

Slide



Show slides:

- Slides 86-87



Team Activity:

Proposal Writing Exercise II: Have participants draft a proposal based on the response to the information request provided by the Agency.

Exercise:
PROPOSAL WRITING I



GROUND RULES

Facilitator

Notes



Objective(s):

Participants will work in teams to:

- Draft a proposal regarding parking for the Office Relocation Scenario.

Slide



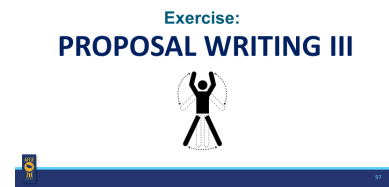
Show slides:

- Slides 89-97



Team Activity:

Proposal Writing Exercise III: Have participants draft a proposal on ground rules to assist with bargaining with the Agency over the office relocation.



ANALYTICAL FRAMEWORKS

Facilitator

Notes



Objective(s):

Participants will:

- Discuss the concept of negotiability in federal collective bargaining
- Identify common analytical frameworks used in federal collective bargaining and determine the appropriate Union response.

Slide



Show slides:

- Slides 99-101 Negotiability
- Slides 102 - 116 Analytical Frameworks



Team Activity:

Break the class into five (5) teams. Have participants complete one of the following scenarios and report back to the class.

Exercise: Analytical Frameworks



SCENARIO 1: NEW REMOTE ACCESS REQUIREMENTS

BACKGROUND:

Local 22000 received a notice that a new Remote Access Requirement would be implemented within five days. The notification of this change occurred through an email sent to all members of the bargaining unit:

Due to the increased use of telework and new federal security requirements from NIST and OMB, the Office of the Chief Information Officer will be deploying a new two-step login process to access www.agencymobile.agency.gov. To enable this, each employee will receive a unique plastic 3" x 2" grid card that will be used to enter the challenge response after entering the Agency ID and password credentials.

The grid cards will be shipped to your office this week. We are requesting that distribution of the cards each employee be completed within ten (10) days after the material have arrived at your office.

If you have any questions or concerns about this process, please contact Selma Itech at 505.727.310A.

Thank you for your assistance.

PROPOSAL LANGUAGE

The Union submitted a demand to bargain with the following proposals:

1. **No Adverse Action:** No adverse action would be taken against an employee who did not have access to the new Remote Access Card due to the card being lost, damaged or stolen, the card being compromised and/or is unable to access the Agency system due to this change.
2. **Replacement Cards:** Replacement cards shall be issued to employees at no cost and shall be sent to employees who are out of the office and require cards or replacement cards.

AGENCY RESPONSE:

These proposals restrict Management's discretion regarding how the agency will be structured to accomplish its mission to strengthen the internal security practices of the agency in a cost-effective manner. Therefore, these proposals excessively interfere with Management's right to determine the mission, budget, organization, and internal security practices of the agency.

UNION: ANALYSIS AND RECOMMENDED RESPONSE

1. Use the checklist below to identify the technique or collective bargaining doctrine the Agency is using in its response:

- Covered-by*
- Management Right violation*
- Permissive topic agency had decided not to bargain*
- Agency Head Review will overturn*
- De Minimis*
- Bargaining for employees not impacted by management action*
- Not allowed under mid-term bargaining*
- Compelling need*
- Not meeting the timeline for demand to bargain*
- Union is not bargaining in good faith*

2. Cite the appropriate section of 5 USC Chapter 71 the Agency is referencing.

§7106 (a) (1)

3. What option(s) are available for the Union to respond? Cite the section of 5 USC Chapter 71 or FLRA case law that supports each option.

Option 1: Drop the proposals as they violate a management right

Option 2: Engage in a conversation with the Agency to determine if there is something that can make the proposal negotiable if you agree with management's declaration of non-negotiability.

Option 3: File a negotiability appeal under 5 U.S.C. §7117 (c).

Recommended response for the Union:

Option 3: Discuss with the Agency to determine concerns. Note that there is no reasonable link between the proposals to assist affected personnel records and their actions related to their management authority for internal security practices. If no progress, file a ULP for bargaining in bad faith or file a negotiability appeal under 5 U.S.C. §7117 (c). See FLRA Guide to Negotiability page 31.

SCENARIO 2: NEGOTIATING TEAM ARRANGMENTS

BACKGROUND:

Local 22000 is bargaining a term contract with the Agency. As part of the Ground Rules negotiation procedure, the Union is proposing the number of representatives it should have on its team and how they will be reimbursed.

PROPOSAL LANGUAGE

The Union submitted a demand to bargain with the following proposals:

The Union is entitled to at least (3) three representatives to negotiate over any proposed changes or their impact and implementation. Negotiations shall be held at mutually agreed upon convenient locations.

All negotiations over proposed changes in personnel policies, practices and working conditions shall be held when the Union representatives are otherwise in duty time during the work day and negotiators designated by the Union shall be entitled to travel and per diem in addition to official time provided by law for negotiations and impasse proceedings. Union representatives shall be entitled to two days of official time to prepare for each day of negotiations or impasse proceedings.

AGENCY RESPONSE:

The Agency notes that the proposal does not require that officials designated to represent the Union travel away from their normal job sites in order to obtain travel and per diem payments. According to the Agency, the proposal conflicts with the Federal Travel Regulations (FTRs) and the Joint Travel Regulations, an Agency regulation for which a compelling need exists.

The Agency cites specifically only to 5 U.S.C. 5702 which provides that a Federal employee "traveling on official business away from his designated post of duty . . . is entitled to . . . a per diem allowance" in support of its position.

The Agency alleges that payment of travel expenses is not a condition of employment under section 7103(a)(14)(C) of the Statute and is not subject to bargaining. The Agency also relies on a decision of the Comptroller General, 46 Comp. Gen. 21 (1966), authorizing payment of travel and per diem expenses to employee representatives when the agency head has certified that the travel would be in the "primary interest of the Government." The general rule, according to the Agency, would be to deny such payments. This certification, it is argued, must be made by the agency head and the decision-making cannot be shared.

UNION: ANALYSIS AND RECOMMENDED RESPONSE

1. Use the checklist below to identify the technique or collective bargaining doctrine the Agency is using in its response:

- Covered-by*
- Management Right violation*
- Permissive topic agency had decided not to bargain*
- Agency Head Review will overturn*
- De Minimis*
- Bargaining for employees not impacted by management action*
- Not allowed under mid-term bargaining*
- Compelling need*
- Not meeting the timeline for demand to bargain*
- Union is not bargaining in good faith*

2. Cite the appropriate section of 5 USC Chapter 71 the Agency is referencing.

§7117 (a) (2)

3. What option(s) are available for the Union to respond? Cite the section of 5 USC Chapter 71 or FLRA case law that supports each option.

Option 1: Drop the proposals as management states that there a compelling need

Option 2: Engage in a conversation with the Agency to determine if there is something that can make the proposal negotiable if you agree with management's declaration of compelling need.

Option 3: File a negotiability appeal under 5 U.S.C. §7117 (c).

Recommended response for the Union:

Discuss with the Agency to determine concerns. If no progress, file a ULP for bargaining in bad faith or file a negotiability appeal under 5 U.S.C. §7117 (c). See FLRA Guide to Negotiability page 45-46.

SCENARIO 3: ASSIGNMENT OF MEDICAL ASSISTANTS

BACKGROUND:

Local 22000 and the Agency are engaged in impact bargaining over the agency's decision to change its practice regarding the assignment of medical assistants to accompany high-risk patients during routine daily treatments.

PROPOSAL LANGUAGE

The Union proposes continuation with the "status quo" of assigning medical assistants to accompany high-risk patients until good faith negotiations are completed. This will ensure that the high-risk patients will have the assistance of qualified medical assistants who will accompany them during routine daily treatments. This proposal is a negotiable arrangement and a procedure which the employer will observe while negotiating the action of changing a practice. The proposal will have no impact it is not changing the current practice that is in effect.

AGENCY RESPONSE:

The Agency stated that the proposal would unduly restrict and interfere with the Agency's right to assign work to medical assistants.

UNION: ANALYSIS AND RECOMMENDED RESPONSE

1. Use the checklist below to identify the technique or collective bargaining doctrine the Agency is using in its response:

- Covered-by*
- Management Right violation*
- Permissive topic agency had decided not to bargain*
- Agency Head Review will overturn*
- De Minimis*
- Bargaining for employees not impacted by management action*
- Not allowed under mid-term bargaining*
- Compelling need*
- Not meeting the timeline for demand to bargain*
- Union is not bargaining in good faith*

2. Cite the appropriate section of 5 USC Chapter 71 the Agency is referencing.

§7106 (a)(2)(B)

3. What option(s) are available for the Union to respond? Cite the section of 5 USC Chapter 71 or FLRA case law that supports each option.

Option 1: Drop the proposals as management states that this is a management right

Option 2: Engage in a conversation with the Agency to determine if there is something that can make the proposal negotiable if you agree that this is a management right.

Option 3: File a negotiability appeal under 5 U.S.C. §7117 (c).

Recommended response for the Union:

Discuss with the Agency to determine concerns. Argue that the status quo provision is a procedure and therefore a mandatory subject of bargaining under 7106(b)(2). If no progress, file a ULP for bargaining in bad faith or file a negotiability appeal under 5 U.S.C. §7117 (c). See FLRA Guide to Negotiability page 39-43.

SCENARIO 4: CIVILIAN ACCESS TO COMMISSARY

BACKGROUND:

The Shoppette, part of the base exchange, sells food, gas, and certain health and household items. Local 3300 unit employees currently have access to the Shoppette only to purchase food that can be consumed on the premises. These unit employees work varying shifts during the week and on weekends, and many have limited break periods. And they often have to drive off of the base during breaks in their shifts to "satisfy their shopping needs,"⁴ which can contribute to traffic congestion on the base.

The Union and the Agency went arbitration over the negotiability of the proposal. The arbitrator ruled that the proposal was acceptable under the Statute.

PROPOSAL LANGUAGE

The Union proposed to grant unit employees broad access to base commissary and exchange facilities, including the Shoppette. The proposal stated:

Bargaining unit employees with a valid DOD [identification] card shall be granted full access to the Luke Air Force Base Exchange Shoppette, including the gas station. Employees may not purchase uniform items, "tax free" tobacco items, and "tax-free" alcoholic beverages.

The Union and the Agency went arbitration over the negotiability of the proposal. The arbitrator ruled that the proposal was acceptable under the Statute.

AGENCY RESPONSE:

The Agency head disapproved the provision, without elaboration, as contrary to "law, rule, or regulation."

UNION: ANALYSIS AND RECOMMENDED RESPONSE

1. Use the checklist below to identify the technique or collective bargaining doctrine the Agency is using in its response:

- Covered-by*
- Management Right violation*
- Permissive topic agency had decided not to bargain*
- Agency Head Review will overturn*
- De Minimis*
- Bargaining for employees not impacted by management action*
- Not allowed under mid-term bargaining*
- Compelling need*
- Not meeting the timeline for demand to bargain*
- Union is not bargaining in good faith*

2. Cite the appropriate section of 5 USC Chapter 71 the Agency is referencing.

§7114 (c)(2)

3. What option(s) are available for the Union to respond? Cite the section of 5 USC Chapter 71 or FLRA case law that supports each option.

Option 1: Drop the proposal and return to bargaining.

Option 2: File a Unfair Labor Practice.

Option 3: File a negotiability appeal under 5 U.S.C. §7117 (c).

Recommended response for the Union:

Discuss with the Agency to determine concerns. If no progress, file a ULP for bargaining in bad faith or file a negotiability appeal under 5 U.S.C. §7117 (c). See FLRA Guide to Negotiability page 5.

SCENARIO 5: FURLOUGHS

BACKGROUND:

The Agency will be conducting a furlough and provided a 60 day notice as provided by the current Agreement. The collective bargaining agreement currently has the following language on this topic:

Section 5.0 Furloughs

Section 5.1

Employees who are furloughed during a lapse of appropriation will be retroactively paid and otherwise compensated to the extent permitted by law and regulation, if appropriations are approved.

Section 5.2

The Agency will ensure that the government's share of the employee's health insurance premium is paid during any period of furlough to the extent permitted by law and/or regulation.

PROPOSAL LANGUAGE

The Union is proposing the following language:

If the Agency places an employee(s) on furlough for more than 30 days in a reduction in force, the Agency will explore options to allow the employee(s) to serve the furlough on a discontinuous or continuous basis so as to qualify for unemployment compensation.

AGENCY RESPONSE:

The Agency states that the decision to furlough employees is a management right protected from collective bargaining. Additionally, the Agency states that this matter is currently addressed through the current collective bargaining agreement.

UNION: ANALYSIS AND RECOMMENDED RESPONSE

1. Use the checklist below to identify the technique or collective bargaining doctrine the Agency is using in its response:

- Covered-by*
- Management Right violation*
- Permissive topic agency had decided not to bargain*
- Agency Head Review will overturn*
- De Minimis*
- Bargaining for employees not impacted by management action*
- Not allowed under mid-term bargaining*
- Compelling need*
- Not meeting the timeline for demand to bargain*
- Union is not bargaining in good faith*

2. Cite the appropriate section of 5 USC Chapter 71 the Agency and any related legal doctrine the Agency is referencing.

5 U.S.C. 7106 (a)(2)(A).

“Covered by” doctrine.

3. What option(s) are available for the Union to respond? Cite the section of 5 USC Chapter 71 or FLRA case law that supports each option.

Option 1: Drop the proposal.

Option 2: File a negotiability appeal under 5 U.S.C. §7117 (c).

Recommended response for the Union:

Discuss with the Agency to determine concerns. If no progress, file a ULP for bargaining in bad faith or file a negotiability appeal under 5 U.S.C. §7117 (c). See FLRA Guide to Negotiability page 45-46.

MOCK BARGAINING

Facilitator

Notes



Objective(s):

Participants will work in teams to:

- Bargain with the Agency (instructor or other participant team) on a ground rules proposal and/or a proposal based on the office relocation scenario.

Slide



Show slides:

- Slides 118-123 Bargaining 101



Team Activity:

Break the class into teams to bargain as the Union with the Agency representative (instructor). See Instructor Notes on following page.



MOCK BARGAINING



Facilitator

Notes

Instructor Notes:

- Break the class into 3-4 teams, depending on the size of the class. Have each team assign a chief negotiator, note taker, and determine a negotiating strategy for the proposals. Allow 20 minutes for the team to prepare to bargain.
- Call each team up and allow 10-20 minutes to bargain with the instructor(s).
- Instructor (or team) Play different types of managers with each team to allow the class to see how different personalities can affect bargaining.
- Resist bargaining by stating that the office relocation is a management right. Use analytical framework tactics to attempt to end negotiation. Use common negotiating tactics to intimidate/distract the other side.
- Debrief what worked and what could be improved at the conclusion of each session.
- Emphasize the need to identify the member's core issue - parking (as discussed in the membership survey)

Times can be adjusted based on the size of the class and remaining time available.

As an alternative, the teams can bargain with each other - one as management, the other as the union (additional preparation time will be required to prepare for dual roles. E.g. The team that bargains as the union for ground rules could be the management for the substance bargaining). Allow the other teams to observe the negotiation and be prepared to participate in the debrief.

APPENDIX A

DAILY REVIEW QUESTIONS

DAY 1 REVIEW

- 1. What law gives federal employee unions the right to bargain over conditions of employment?**
5 USC Chapter 71
- 2. Who enforces 'good faith' bargaining between the agency and the union?**
Federal Labor Relations Authority (FLRA)
- 3. Is an agency required to bargain over a "permissive" topic under the Statute?**
No. The agency can choose to bargain or chose not to bargain on these topics.
- 4. Is an agency required to bargain over a change in working conditions that will have an adverse impact on several bargaining unit employees (the union has submitted a timely demand to bargain)?**
Yes. Bargaining over a change in workplace conditions that adversely affects bargaining unit employees would lead to procedures and appropriate arrangements (impact and implementation) bargaining.
- 5. What federal agency mediates disputes between labor and management in collective bargaining?**
The Federal Mediation and Conciliation Service (FMCS).
- 6. What federal agency has the authority to end impasse and determine a final settlement?**
The Federal Services Impasse Panel.
- 7. What are two (2) possible actions the Union could perform to assist in bargaining over conditions of employment with management under the Statute?**
 - *File a demand to bargain*
 - *File an information request*
 - *File a unfair labor practice charge if there is a 'bad faith' bargaining*
 - *File a negotiability appeal if the agency argues that a proposal is not in line with the Statute and the Union understands that it is.*
- 8. Can the Agency Head overturn a legal agreement that the agency and the union have negotiated?**
No. The Agency Head can only overturn an agreement that violates law, government-wide rule or regulation.

9. Describe one example of “bad faith” at the bargaining table that could lead to an unfair labor practice (ULP) charge?

- *Do not approach negotiations with a sincere resolve to reach a collective bargaining agreement.*
- *Do not allow a duly authorized representatives to be prepared to discuss and negotiate on any condition of employment.*
- *Do not meet at reasonable times and places as frequently as necessary and have unnecessary delays.*
- *In the case of the agency, refuse to furnish data to the union upon request and to the extent not prohibited by law:*
- *Refuse to execute on the request of any party to the negotiation a written document embodying the agreed terms and refuse to take such steps as necessary to implement such agreement.*

10. How many people can the union have on their bargaining team?

As many as the union can negotiate to have.

DAY 2 REVIEW

11. Can the Agency work directly with a group of employees on an office relocation and not consult with the union?

No. The union is the exclusive representative and the agency is required to bargain with the union.

12. Who is responsible for settling grievances over contract interpretation?

Arbitrators.

13. What determines the time limit for when a Union can submit a demand to bargain over a change in working conditions?

The collective bargaining agreement.

14. Describe two (2) items that the Union could include with a demand to bargain.

Proposals and/or a request for information.

15. The Statute requires that data requested by the union must meet what two requirements?

Normally maintained and reasonably available.

16. List one or more ways that a Union could use data requested from a federal agency that has been requested under 7114(b)(4)?

Grievances, bargaining and representational activities.

17. What are two (2) elements of the FLRA 'particularized need' test for information requests?

- *Purpose for requesting the information*
- *How the union will use the information*
- *How the purpose for requesting the information relates to the Union's role as the exclusive representative.*

18. What are some characteristics of effective contract language?

- *Clear*
- *Unambiguous*
- *Simple and easy to understand.*

19. Are ground rules a mandatory, permissive or prohibited topic of negotiation?

- *Mandatory.*

20. What action can the Union take if the Agency violates a negotiated ground rule?

File an unfair labor practice for 'bad faith' bargaining or a grievance.

APPENDIX B

Instructor Guide/Participant Workbook Combination

The following pages include the Participant Workbook layout with the answers from the Instructor Guide. This section of the Instructor Guide can be used as a reference when teaching in a classroom environment.



Introduction to Collective Bargaining Series:
Legal Framework

INSTRUCTOR GUIDE
Participant Workbook

June 2016

AFGE Field Services and Education Department

Version 2.1 (CB1)

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Course Overview

Course Goal:

The goal of the course is to provide a basic introduction to the legal framework for federal sector collective bargaining.

Course Objective:

At the end of this course, you should be able to demonstrate how to:

- *Discuss* the collective bargaining roles and requirements under 5 U.S.C Chapter 71.
- *Define* key terms and concepts used in federal sector collective bargaining.
- *Evaluate* common legal strategies used in federal collective bargaining.

Course Materials:

- Collective Bargaining: Legal Framework Participant Workbook
- Collective Bargaining: Legal Framework Manual
- 5 U.S.C. Chapter 71 Federal Service Labor-Management Relations Statute

Workshop Components and Icon Key:

The following icons are used throughout the Participant Workbook to indicate the different types of class activities. Given that effective collective bargaining relies on good teamwork, the course will emphasize the use of small group activities.



Paired/Partner

Activity to complete with another participant.



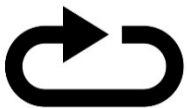
Class Assignment

Activity for the class to complete.



Team Assignment

Small group activity. Each team should select a reporter, a scribe, and timer.



Reportback

Each team provides a report to the class.

Welcome and Introduction

Objectives: At the conclusion of this session, participants should be able to:

- Review the course agenda and learning objectives.
- Identify other people in their learning community.

- Agree upon session norms.

<p>COLLECTIVE BARGAINING I: LEGAL FRAMEWORK</p> <p>Introduction to Collective Bargaining Series FSED 2016</p>	<p>WELCOME</p> <ul style="list-style-type: none"> • Course Objectives • Class Norms <p>2</p>	<p>OBJECTIVES</p> <ul style="list-style-type: none"> • Discuss the collective bargaining roles and requirements under 5 U.S.C Chapter 71. • Define key terms and concepts used in federal sector collective bargaining. • Evaluate common legal strategies used in federal collective bargaining. <p>3</p>	<p>INTRODUCTIONS</p> <ol style="list-style-type: none"> 1. Have you been involved in bargaining? 2. Have you taken any training programs on negotiation or collective bargaining? 3. Have you ever been involved in negotiations or assisted someone with their negotiations as a union representative? <p>4</p>
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Activity – Federal Collective Bargaining and You (Introduction):

Write down your answer to the following questions.

1. Have you been involved in bargaining?

2. Have you taken any training programs on negotiation or collective bargaining?

3. Have you ever been involved in negotiations or assisted someone with their negotiations as a union representative?




Turn to a neighbor and introduce yourself by sharing your name, local, and answers to the questions **(10 minutes)**. You and your partner will introduce each other to the class.

What is Collective Bargaining?

Objectives: At the conclusion of this session, participants should be able to:

- Describe the term “collective bargaining” and how it determines the relationship between the employees and the Agency.

<p>What is Collective Bargaining?</p> <p>5</p>	<p>What's is Collective Bargaining?</p>  <p>6</p>	<p>WHAT IS COLLECTIVE BARGAINING</p> <p>Write down five (5) words that define the term collective bargaining. The descriptions can be benefits, attributes, synonyms, etc. At your table, share your descriptors and create a seven (7) word consensus definition for collective bargaining.</p> <p>7</p>	<p>COLLECTIVE BARGAINING</p> <p>Collective bargaining is a process designed to manage conflict and produce a consensus document outlining the work relationship among the parties (agency and union). AFGE Council 238 Collective bargaining is the preferred, statutorily established method for employees to participate in making the decisions that affect their working conditions. It is the most effective form of pre-decisional involvement there can be. In collective bargaining, there is an equal partnership between management and the employees, speaking through their union representatives, on matters that the law requires be bargained.</p> <p>8</p>	<p>COLLECTIVE BARGAINING PROVIDES AN EMPLOYEE VOICE IN DECISIONS ABOUT WORKING CONDITIONS.</p> <p>UNION AND EMPLOYEE RIGHTS ARE OUTLINED BY LAW !</p>
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<p>COLLECTIVE BARGAINING</p> <p><i>That's what makes us a Union!</i></p>	<p>WHY DO WE BARGAIN WITH THE AGENCY?</p> <p>To determine working conditions for bargaining unit employees.</p> <p>11</p>	<p>Collective bargaining is just one type of negotiation.</p> <p>We negotiate every day of our lives. It is part of living together as social beings.</p> <p>12</p>	<p>Bargaining is not war.</p> <p>The object is not to defeat the other side. The object is to reach a DEAL.</p> <p>13</p>
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Activity - Class Exercise

Write down five (5) words that define the term collective

bargaining. The descriptions can be benefits, attributes, synonyms, etc. of the term collective bargaining.



Activity - Team Exercise

Working at your table, share your descriptors and, as a team, come up with a seven (7) word consensus definition or description of the term collective bargaining.





Share your team definition with class.

Union Rights under 5 U.S.C. Chapter 71

Objective: Participants will:

- Identify the role, rights and responsibilities of union representatives in the collective bargaining process under 5 U.S.C. Chapter 71.

<p>FEDERAL COLLECTIVE BARGAINING</p> <p>14</p>	<p>Federal Labor Relations Authority [5 U.S.C. 7103(a)(12)]: Collective bargaining means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees of an appropriate unit in the agency to meet at reasonable times and to consult and bargain in good-faith effort to reach agreement with respect to 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 concession.</p> <p>15</p>	<p>THE STATUTE</p>  <p>16</p>	<p>The Civil Service Reform Act of 1978 included a title that added Chapter 71 to Title 5 U.S. Code. This is commonly referred to as the Statute in labor relations parlance.</p> <p>17</p>	<p>The Statute sets the basic rules for conducting labor-management relations in the Federal sector.</p> <p>18</p>
<p>Exercise: What's in the Statute?</p>  <p>19</p>				



Activity – Team Exercise

- Each team will be responsible for answering one or more of the following questions.
- Research the questions using 5 U.S.C. Chapter 71 handout. Read and review the relevant section and write your answer. Reference the page and cite the section where the answer was found.
- Do not write down all the information in the section, only summarize the main points that provide the answer to the question.
- Choose someone to report back.



5 U.S.C. Chapter 71

Federal Service Labor-Management Relations Exercise

ANSWER KEY

[NOTE: page numbers can vary depending on the printed version of the Statute; citations will not change]

7. Why does the law allow collective bargaining in the Federal Sector?

ANSWER: PAGE 3 § 7101

4. Safeguards the public trust
5. Contributes to the effective conduct of public business
6. Facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment

8. What rights do employees have?

ANSWER: PAGE 4 § 7102

To form, join, or assist any labor organization, or to refrain, freely and without fear of penalty or reprisal.
To act for a labor organization in the capacity of a representative and to present the views of the labor organization.
To engage in collective bargaining.

9. What agency has the authority to enforce labor relations in the Federal Sector?

ANSWER: PAGES 10-14 § 7104 and § 7105

Federal Labor Relations Authority

10. How is “collective bargaining” defined in the Statute?

ANSWER: PAGE 7-8 § 7103 (a) (12)

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 good faith effort to reach agreement with respect to the conditions of employment.... and to execute.... a written document incorporating any collective bargaining agreement but this does not compel either side to agree to a proposal or make a concession...

11. What are three examples of a condition of employment?

ANSWER: PAGE 8 § 7103 (a) (14)

Personnel policies
Personnel practices
Personnel matters

12. What are two elements that are not considered a condition of employment?

ANSWER: PAGE 8 § 7103 (a) (14)

4. Matters relating to political activities
5. Classification of any position
6. Matters specifically provided for in a Federal statute

7. What are the duties does the Federal Labor Relations Authority regarding collective bargaining?

ANSWER: PAGE 12-13 § 7105 (a) (2) (E-G)

Resolve issues relating to the duty to bargain in good faith
Grant consultation rights with respect to conditions of employment

Conduct hearings and resolve complaints of ULPs

8. List four (4) items that the Agency does not have to negotiate with the Union:

ANSWER: PAGE 15-16 § 7106 (a) (1) and (2)

5. Determine the mission, budget, organization, number of employees and internal security practices
6. Hire, assign, direct, layoff, retain, discipline... employees
7. Assign work, contract out decisions...
8. Take actions during emergencies....

9. What are three (3) areas that the Statute allows an agency to choose to negotiate with a labor organizations but cannot be required to negotiate?

ANSWER: PAGE 16 § 7106 (b) (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.

19. Identify two (2) areas where the Union can negotiate with the Agency?

ANSWER: PAGE 16 § 7106 (b) (2) and (b)(3)

- Procedures which management officials observe in exercising any authority
- Appropriate arrangements for employees adversely affected by the exercise of any authority by management officials.

20. What are three (3) requirements for a union to be accorded the exclusive recognition as a labor organization by an agency?

ANSWER: PAGE 17 § 7111(a)

- Secret ballot election
- Majority of the employees
- Appropriate unit who cast ballots

21. Describe five (5) requirements for good faith negotiations:

ANSWER: PAGE 23 § 7114 (b) (1-5)

6. Approach negotiations with a sincere resolve to reach a collective bargaining agreement.
7. Duly authorized representatives are prepared to discuss and negotiate on any condition of employment.
8. Meet at reasonable times and places as frequently as necessary and to avoid unnecessary delays.
9. In the case of the agency, furnish data to the union upon request and to the extent not prohibited by law:
 - a. Data which is normally maintained by the agency in the regular course of business

- b. Reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of bargaining, and
 - c. Which does not constitute guidance, advice, counsel or training provided for management officials or supervisors, relating to collective bargaining and
10. If an 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 necessary to implement such agreement.

22. What is Agency Head Review?

ANSWER: PAGE 24 § 7114 (c) (1-4)

Agency head will review the document within 30 days from the date of execution to see if the agreement is in accordance with the provisions of all applicable laws, rules or regulations (unless the agency has granted an exception).

23. Describe two (2) conditions when the agency does not have a duty to bargain in good faith matters that are subject of agency rule or regulation:

ANSWER: PAGE 28-29 § 7117 (a) (1-3)

- 3. Matters inconsistent with Federal law or any Government-wide rule or regulation
- 4. No compelling need exists for the rule or regulation.

24. What is the first step for resolving an impasse in negotiations?

ANSWER: PAGE 34 § 7119 (a) and (b)

The Federal Mediation and Consultation Service (FMCS).

25. If voluntary mediation attempts fail, what two (2) options for resolving the impasse:

ANSWER: PAGE 34-35 § 7119 (b) (1) and (2)

Either party may go to either:

3. Federal Service Impasses Panel
4. Binding arbitration (as approved by the Panel)

26. When is official time authorized for collective bargaining?

ANSWER: PAGE 43 § 7131 (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 would otherwise be in a duty status.

27. How many people can the union have on official time for their negotiating team?

ANSWER: PAGE 43 § 7131 (a)

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. The FLRA has determined that this is a permissive subject of bargaining.


Speaking the Language

Objective: Participants should be able to define various terms used in federal collective bargaining.

FEDERAL COLLECTIVE BARGAINING: SPEAKING THE LANGUAGE, KNOWING THE PLAYERS...	
Bargaining unit	Union Member
Conditions of employment	Bypass
Exclusive Representative	Bargaining unit member
Designee(s)	Bargaining team members
Employer/Agency	Chief Negotiator (Chief Spokesperson)
Neutrals: FMCS, FLRA, FSIP, Arbitrators	Subject Matter Expert (SME)

20

Run the exercise on this slide (see answer key on the following page) before going through the rest of the slides below.

<p>...MEANS WHAT?</p> <p>...MEANS WHAT? (CONT'D)</p> <p>Chief Negotiator/Spokesperson = person who chairs the Union's bargaining team in discussions and during negotiation sessions authorized to "sign off" on agreements, award and receive correspondence, etc.</p> <p>Subject Matter Expert (SME) = person who is accepted by both parties as being able to explain laws, regulations, or policies in specified areas.</p> <p style="text-align: right;">31</p>	<p>INTRODUCING: The Union as the Exclusive Representative</p> <p style="text-align: right;">22</p>	<p>EXCLUSIVE REPRESENTATIVE</p> <p>The Union, upon being certified as such, has the sole legal right and duty to represent employees in the bargaining unit on matters concerning their conditions of employment, AND must abide by DOL standards for democratic procedures (elections, etc.)</p>  <p style="text-align: right;">23</p>	<p>2 KINDS OF "MEMBERS"</p> <p>Bargaining Unit is the description of the positions the Union must represent as a group. A person whose position is in that description is a "member of the bargaining unit"</p> <p>The Unit is AFCG.</p> <p>A person who fills AFCG is a Unit member.</p> <p style="text-align: right;">24</p>	<p>WHY DOES IT MATTER?</p> <p>Unit members are treated alike on matters covered by a Collective Bargaining Agreement (CBA) or affecting Conditions of Employment (COE). Unit members have no ability to participate in Internal Union decisions.</p> <p>On matters not covered by a CBA or affecting COE, union members can be given different treatment than non-members of the union. Union members have the right, among others, to vote in elections and participate in a CBA.</p> <p style="text-align: right;">25</p>
<p>The Union is the only entity that can speak for one or more members of the bargaining unit.</p> <p>This carries important legal requirements for the Union and the Employer as well</p> <p style="text-align: right;">26</p>	<p>Q: WHAT IF THE INTERESTS OF 2 BARGAINING UNIT MEMBERS OR GROUPS CONFLICT?</p> <p>A: The Union's is required to represent the bargaining unit as a whole/group.</p> <p style="text-align: right;">27</p>	<p>For the Union: The Union must abide by DOL standards for democratic procedures within the bargaining unit, including not discriminating against non-members.</p> <p>For the Employer: The Employer must deal with the Union.</p> <p><u>It is illegal for the employer to "deal directly" with employees on bargaining unit issues.</u></p> <p style="text-align: right;">28</p>	<p>SPEAKING THE LANGUAGE, KNOWING THE PLAYERS... (CONT'D)</p> <p>"Authorized" Representative = the person or persons authorized to speak or act for the Union or the Agency. The authorized representative ("designee") must have authority to make decisions of the Union.</p> <p>Employer/Agency = the employer organization that has been identified as the Union's counterpart within the government.</p> <p>Neutrals = Federal Mediation and Conciliation Service = Federal Labor Relations Authority = Federal Service Impasses Panel = Arbitrators = Courts</p> <p style="text-align: right;">29</p>	<p>...MEANS WHAT? (CONT'D)</p> <p>Unit member = person who pays dues and is considered as a member dues are paid through payroll deductions or directly to the Union.</p> <p>Bargaining unit member = Person who occupies a position in the bargaining unit, whether or not a union member.</p> <p>Bargaining team members = Persons designated by the Union to conduct negotiations.</p> <p style="text-align: right;">30</p>



Class Activity – In your own words, define each of the terms which are used in federal collective bargaining.

11. Bargaining Unit Member:

A member of a group of employees that a union represents that the FLRA finds appropriate under 5 USC 7112 (community of interest, effective dealings, efficiency of operations) for collective bargaining purposes.

12. Conditions of Employment:

Under 5 USC 7103(a)(14), means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise affecting working conditions, except by matters that are specifically provided for by Federal Statute.

13. Bypass:

A violation of 5 USC 7114(a)(1) when the agency deals directly with either another union or with unit employees on matters that are within the sole authority of the exclusive representative for that bargaining unit.

14. Chief Negotiator:

The labor union negotiation team often has one individual who serves as the lead person to communicate the union's interests at the bargaining table.

15. Exclusive Representative:

The union that is certified as the exclusive representative of a unit of employees by having won a representation election.

16. Subject Matter Expert:

A member of the bargaining unit with extensive knowledge of a specific issue, position, and/or workplace conditions.

17. Union Member:

A member of a bargaining unit who is a dues paying member of the local union.

18. FLRA:

Federal Labor Relations Authority (the Authority).

19. FSIP:


Federal Services Impasse Panel (the Panel).

20. FMCS:

Federal Mediation and Conciliation Service (the Service)

Substance vs. Impact and Implementation (I&I)

Objective: Participants should be able to identify proposals as either eligible for substance or I & I bargaining.

<p>Management Rights and Bargaining: Substance vs. Appropriate Arrangements and Procedures</p> <p>32</p>	<p>SUBSTANCE BARGAINING</p> <p>Does NOT interfere with a management right under Section 7106(a)</p> <p>Examples include: Grievance procedures Official time for union representation Fitness programs Union recognition programs</p> <p>33</p>	<p>APPROPRIATE ARRANGEMENTS AND PROCEDURES BARGAINING</p> <p>Management rights are directly affected Bargaining allowed under Section 7106(b)(2)-(3) Commonly referred to as "Impact and Implementation (I and I)" bargaining Examples include reorganization, promotions, contracting out, RIFs, new assignments, etc.</p> <p>34</p>	<p>Exercise: Substance vs. Impact and Implementation</p>  <p>35</p>
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Class Activity – Identify if the topic can be bargained for substance or for impact and implementation (I &I)

Review the following list of changes in the conditions of employment to determine if these topics can be bargained substantively or can only be bargained over their impact and implementation (see procedures and/or appropriate arrangements under 7106(b)(2) and (b)(3)). Check the correct line to indicate if the topic can be bargained on its substance or only for procedures and/or appropriate arrangements (impact & implementation).

NOTE: If you determine that the topic is limited to impact and implementation bargaining only, describe the management right under 5 U.S.C. Section 7106(a) the Agency is exercising.

7. The Agency wants to change the grievance procedure to eliminate one of the steps in the appeal process.

Substance

Impact and Implementation

The management right is:

8. The Agency has asked to reduce the amount of official time that the union uses to represent cases.

Substance

Impact and Implementation

The management right is:

9. The Agency is implementing a 30 day furlough for all employees.

Substance

Impact and Implementation

The management right is:

7106(a)(2)(A)

10. The Agency is consolidating two units into one central unit. 50 employees will need to be transferred to a new location under this change.

Substance

Impact and Implementation

The management right is:

7106(a)(2)(B)

11. The Agency has implemented a new electronic system for travel vouchers to expedite the processing of employee travel expenses.

Substance

Impact and Implementation

The management right is:

7106(b)(1) – permissive topic – agency could choose to bargain

12. The Agency has notified the Union of a new wellness program designed to promote physical fitness.

Substance

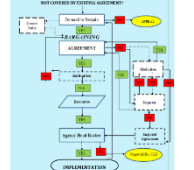

Impact and Implementation

The management right is:

FEDERAL COLLECTIVE BARGAINING PROCESS

Objective: Participants will:


- Identify key elements of the federal collective bargaining process and role of the neutrals under the Statute.

<p>Federal Collective Bargaining: The Process and the Players</p> <p>36</p>	<p>Federal Collective Bargaining <i>When does this occur?</i></p> <p>No agreement on working conditions in effect (no contract) End of an agreement on working conditions (expired contract) Change in working conditions (issue not covered in current contract)</p> <p>37</p>	<p>Federal Collective Bargaining Types of Agreements</p> <p>Master Labor Agreement (MLA) National recognition Consolidated Units Local Agreement Local Supplemental Agreement (only if the MLA allows) Memorandum of Agreement (issue specific)</p> <p>38</p>		<p>THE NEUTRALS</p>  <p>40</p>
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<p>INTRODUCING: The Federal Labor Relations Authority</p> <p>41</p>	<p>FEDERAL LABOR RELATIONS AUTHORITY (FLRA)</p> <p>Overses representation elections Resolves negotiability disputes Stops unfair labor practices by either agencies or unions Enforces the National Labor Relations Act in the private sector</p> <p>42</p>	<p>INTRODUCING: The Federal Mediation and Conciliation Service</p> <p>43</p>	<p>FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)</p> <p>Provides assistance to parties involving negotiation (process) or other disputes Trains parties in cooperative practices for bargaining Has no authority to impose anything on the parties Provides list of available arbitrators upon request</p> <p>44</p>	<p>INTRODUCING: The Federal Service Impasses Panel</p> <p>45</p>
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<p>FEDERAL SERVICE IMPASSES PANEL (FSIP)</p> <p>Notes that resolution to negotiation impasses between federal unions and agencies Also decides disputes over alternative work schedules Uses various methods, including acting as a final offeritor Processes the substitution for a strike or lockout</p> <p>46</p>	<p>Examples of FSIP Options</p> <p>The FSIP can require more bargaining, <u>and/or</u> more mediation</p> <p>The FSIP can require fact finding and written submissions <u>to aid the FSIP in its final determination.</u></p> <p>** The FSIP can require final offers from both sides, <u>and may impose a settlement</u></p> <p>47</p>	<p>In view of what you know about the powers of the FSIP, what are the implications for you as a negotiator when considering impasse?</p> <p>48</p>	<p>INTRODUCING: Arbitrators</p> <p>49</p>	<p>ARBITRATORS</p> <p>Settle grievances over contract interpretation and change violation Self-employed May settle interest disputes setting terms of the contract when directed by FSIP Organized management pay arbitrator by the day for each grievance</p> <p>50</p>
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Exercise:
Know your Neutrals



51

Activity – Class Exercise: Know Your Neutrals



Select the appropriate neutral (FMCS, FLRA, FSIP and/or Arbitrator) for each statement below.

ANSWER KEY


11. We settle disputes between the union and the agency concerning how language in their contract should be interpreted. ARBITRATOR
12. We decide whether an unfair labor practice has been committed after either the union or the agency files a charge against the other. FLRA
13. We help the parties reach an agreement when they are bargaining a new contract.
FMCS
14. We decide what language will go into a collective bargaining agreement when the parties cannot agree. FSIP
15. We decide which employees are in, or out of a bargaining unit. FLRA
16. We decide on grievances when an employee is fired. ARBITRATOR
17. We train union representatives and managers on how to bargain more effectively and cooperatively. FMCS
18. We resolve disputes when an agency wants to terminate an alternative work schedule.
FSIP
19. We decide whether the parties have to negotiate over a proposal the union makes during bargaining.
FLRA
20. We review an arbitrator's award if one party believes it is contrary to law.
FLRA

DEMAND TO BARGAIN

<p>REVIEW DAY ONE</p> <p>5 U.S.C. Chapter 71 is the statute. The statute governs how labor relations and collective bargaining work in the Federal government.</p> <p>52</p>	<p>BARGAINING BEGINS WITH A CHANGE</p> <p>53</p>	<p>DEMAND TO BARGAIN</p> <p>54</p>	<p>CHANGE IN CONDITION OF EMPLOYMENT</p> <p>The Union should request answers from the Agency on the following key questions:</p> <p>What do you want to do? Why do you want to do it? Who is it going to affect? How is it going to affect them? When do you want to get it done?</p> <p>55</p>
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<p>DEMAND TO BARGAIN</p> <p>IT'S ABOUT THE MEMBERS!</p> <p>Who is affected? What are their concerns? What do they expect the Union to do? How can the Union help them?</p> <p>COMMUNICATE. COMMUNICATE. COMMUNICATE!</p> <p>SURVEYS UPDATES (UNION MEETING, 1 on 1, newsletter)</p> <p>56</p>	<p>DEMAND TO BARGAIN</p> <p>Inform management of the Union's intent to bargain</p> <p>Check current contract's requirements and follow them carefully</p> <p>Time limits Who receives the request? Submit proposals at the same time?</p> <p>57</p>	<p>DEMAND TO BARGAIN: EXAMPLE</p> <p>Dear [Management representative]:</p> <p>Pursuant to Article ____, Section ____ of our collective bargaining agreement, this constitutes notice that AFGE Local/Council ____ demands to negotiate over the procedures to be used to implement furloughs of bargaining unit employees prompted by the sequestration, as well as appropriate arrangements for those employees who are adversely affected.</p> <p>58</p>	<p>DEMAND TO BARGAIN: EXAMPLE</p> <p>The union proposes to meet [date, time, place]. Our bargaining team will consist of [names].</p> <p>We are aware of the serious nature of the current circumstances and appreciate the need for prompt action. Look forward to receiving your response and to efficient and productive negotiations.</p> <p>Sincerely,</p> <p>59</p>
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Team

<p>DEMAND TO BARGAIN: ADDITIONAL LANGUAGE</p> <p>Attached is a request pursuant to the contract and 5 U.S.C. 7114 (b) (4) for information that is necessary for our collective bargaining.</p> <p>Or</p> <p>Attached are the union's initial proposals. We reserve the right to make additional proposals during the course of these negotiations.</p> <p>60</p>	<p>Exercise: DEMAND TO BARGAIN</p>  <p>61</p>
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Assignment

As a team, review the following notice and determine what steps would be appropriate for the Local to take to assist those members who are affected by this change in employment conditions.

U.S. Department of Important Stuff

Government Center
100 Washington Avenue
Pennstreetoc, AZ 19000-3389

DATE: March 30, 20__

MEMORANDUM FOR: Julie Milly, Local President, AFGE Local 90001

FROM: Jon Imawatchin, Senior Advisor, Employee & Labor Relations
Ms. Marinda Agencia, Director, Office of Regulatory Affairs

RE: UNION NOTIFICATION-RELOCATION OF ADMINISTRATIVE OFFICE

Please accept this communication as notification pursuant to applicable provisions of the DIS/AFGE Agreement that the ORA will be relocating five bargaining unit employees in the Administrative Office to a new office facility on 52 Shore Street, four blocks from the main office location, effective December 1, 20__, to address current space restrictions. The affected employees are listed below:

- Alicia Bumbry, Program Officer, GS-12010-11
- Tori Smith, Program Specialist, GS-12010-10
- Jim Palmer, Program Officer, GS-12010-11
- Lisa May, Program Specialist, GS-12010-10
- Ken Singleton, Program Specialist, GS-12010-10


All employees will maintain their current supervisor, Earl Weaver.

If you have questions, please contact Earl Weaver, Director, Administrative Office, at 777.555.9999 or Jim Imawatchin, Senior Advisor, Employee & Labor Relations, at 777.555.9991.

INFORMATION REQUESTS

<p>INFORMATION REQUESTS</p> <p>62</p>	<p>Under 5 U.S.C., §7114(b):</p> <p>"The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—</p> <p>63</p>	<p>(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</p> <p>64</p>	<p>DATA</p> <p>No definition in Statute. Includes:</p> <ul style="list-style-type: none"> Documents Video Tapes Cash register receipts Answers to specific questions
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<p>NORMALLY MAINTAINED</p> <p>Agency must possess the data. Maintains possession in regular course of business Not necessarily in just one location Not necessarily in a "system of records"</p> <p><small>NOTE: the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. 5 USC § 522a – Records Maintained on Individuals (The Privacy Act)</small></p>	<p>DEGREE OF BURDEN</p> <p>Burden of complying with Union's request may relieve agency of obligation to provide data Need not be disclosed if it is available only through "extreme or excessive means"</p> <p><small>NOTE: Determining whether extreme or excessive means are required to retrieve precise data requires case-by-case analysis of relevant facts and circumstances. Such facts and circumstances include the efforts required to make the documents available, including costs and displacement of the agency's workforce. See Fed. Bureau of Prisons, Wash., D.C., 35 FLRA 1250, 1255 n.9 (2000).</small></p>	<p>NECESSARY</p> <p>Necessary for the union to carry out "the full range of Union responsibilities in both negotiations and administration of a labor agreement"</p> <ul style="list-style-type: none"> Pursuing Grievances Bargaining Other representational activities 	<p>THE PARTICULARIZED NEED TEST</p> <p>Section 7114(b)(4), has been restricted by the FLRA's particularized need test. Involves <i>how</i> the parties handle a Union's request: Both parties have a duty to discuss in detail a dispute about requested information. The parties must try to resolve the dispute, compromising when appropriate.</p> <p>69</p>
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<p>THE PARTICULARIZED NEED TEST</p> <p>Involves <i>what</i> the parties must consider. When the Union requests information under the labor law, it must tell the Agency: The purpose for requesting the information; The uses to which the Union will put the information; and How the purpose relates to the Union's role as the exclusive representative. <i>5 USC § 7114(b)(4)</i></p> <p>This test does not apply if information is requested under the Freedom of Information Act (FOIA) or is a separate contractual right of the Union.</p> <p>70</p>	<p>Exercise: INFORMATION REQUEST</p>  <p>71</p>
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Team Assignment

Develop a list of information that you need to be prepared to bargain over the relocation of the administrative office.

PROPOSAL LANGUAGE

<p>STRATEGIC BARGAINING</p>	<p>STRATEGIC BARGAINING</p> <p>Strategic bargaining is a process</p>	<p>STRATEGIC BARGAINING</p> <p>Can be applied to both term and mid-term negotiations. Systems and structures can be used in legislative grassroots mobilization efforts. Encourages activism and involvement by members.</p>	<p>STRATEGIC BARGAINING</p> <p>Identifying Goals Bargaining Team Committees Communications/Community Outreach Organizing Legislative Research Notes and Record Keeping Pre-Bargaining Preparation and Training Research Contract Proposal Preparation</p>
<p>"Sec. 1. Notwithstanding the provisions of Handbook 871.3, employees may be given additional time when warranted by the circumstances."</p> <p>"Sec. C.2.(iii). Practices that are appropriate and legal may continue, subject to local determination."</p> <p>WHAT DID YOU SAY?"</p>	<p>Exercise: PROPOSAL WRITING I</p> 	<p>74</p>	<p>75</p>
<p>PROCESSES INTO STRATEGY</p> <p>PLAN TRAIN PREPARE</p>	<p>Reactive bargaining makes it difficult to enact bargaining support structures. Efforts are rushed. Research and outreach for information is limited. Management often dictates or controls when and how bargaining is done.</p>	<p>PROPOSAL WRITING</p>	<p>BEFORE YOU WRITE</p> <p>What is the issue? What is the goal of the Union on this issue? What is the important principle/value behind what the Union is asking for? How important is this issue to the Union?</p>
<p>76</p>	<p>77</p>	<p>78</p>	<p>79</p>
<p>GUIDELINES FOR WRITING PROPOSALS</p> <p>Focus on <u>one</u> issue at a time. Be <u>clear</u>. Give enough detail so the reader understands what you mean. Write in <u>complete sentences</u>. <u>Organize</u> the content of the proposal.</p>	<p>When preparing proposals, always consider how a 3rd party neutral may respond to your proposal</p>	<p>Simply stating that you "want it," or that "it is justified," <i>Will Not Get What You Want!</i></p>	<p>COMMENTS RE WRITING PROPOSALS</p> <p>✓ The agreement should be clear and unambiguous!</p> <p>Ask yourself, "Does someone who wasn't in the negotiations understand what the proposed language means?"</p>
<p>80</p>	<p>81</p>	<p>82</p>	<p>83</p>

Team

Assignment

1. Revise the following contract provision so it is in "clear language". Clear language is contract language that your audience (bargaining unit members) will understand and that gives them the information they need.
2. There are a number of issues raised by this contract language that are unclear. Do not attempt to resolve these issues in the rewrite of the contract provision. Make a list of the unresolved issues.

ARTICLE 20 – LEAVE


Section 5. Sick Leave

Section 5.1. It is the Agency's policy that all Employees shall be entitled to continuation of pay in accordance with the provisions of this Article when absent due to illness, injury, disability, or illness of an immediate family member (immediate family member is defined as spouse and dependent children, parents or grandparents of the Employee residing with the Employee).

REWRITE:

ISSUES

DEVELOPING A PROPOSAL

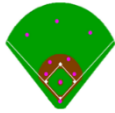
<p>CONTRACT LANGUAGE IS NOT "ONE SIZE FITS ALL"</p> <p>Contract language should be written to fit your bargaining unit! Do not borrow other agency language just because it "looks good" --Different organizations have different cultures and priorities: and, --There are different levels of experience and trust in different organizations!</p> <p>86</p>	<p>ASK FIRST— <u>DOES THE PROPOSAL MEET UNIT NEEDS?</u></p> <p><u>THEN</u>, ask—</p> <ol style="list-style-type: none">1) Whether anyone else has similar language?2) Do you have the facts to support the proposal?3) Can you answer management's questions? <p>87</p>	<p>Exercise: PROPOSAL WRITING II</p>  <p>88</p>
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Team Assignment

Develop a proposal for bargaining over the relocation of the administrative office based on the membership survey results.

DEVELOPING A PROPOSAL

<p>GROUND RULES</p>  <p>89</p>	<p>GROUND RULES</p> <p>Ground Rules state the procedures and protocols that the parties will follow in negotiating a collective bargaining agreement.</p>	<p>GROUND RULES</p> <p>Creating ground rules is a mandatory subject of bargaining if either party wants them.</p> <p><i>VA Medical Center, Fargo, SD and AFGE, 22 FLRA 612 (1986).</i></p>	<p>GROUND RULES</p> <p>Do we need written Ground Rules?</p>
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<p>WRITING PROPOSALS GROUND RULES</p> <p>Depends on level of experience and trust Useful in Most Cases</p> <p>93</p>	<p>GROUND RULES</p> <p>What do they contain?</p> <ul style="list-style-type: none"> Status of current contract during bargaining Mgmt-initiated changes during bargaining Union team's preparation Timing, format for proposals <p>94</p>	<p>WRITING PROPOSALS GROUND RULES</p> <p>What do they contain, cont.</p> <ul style="list-style-type: none"> Size of Union bargaining team Alternates Note takers Observers Subject Matter Experts <p>95</p>	<p>GROUND RULES</p> <p>What do they contain, cont.</p> <ul style="list-style-type: none"> Site of negotiations Travel & per diem expenses Bargaining Schedule Daily schedule Length of sessions Frequency of sessions <p>96</p>
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<p>GROUND RULES</p> <p>What do they contain, cont.</p> <ul style="list-style-type: none"> Behavior at the table How to signify agreement Facilities to Union Effect of Negotiability Appeals Ratification Impasse Resolution Execution Agency Head Review <p>97</p>	<p>Exercise: PROPOSAL WRITING III</p>  <p>98</p>
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Team Assignment

Develop a proposal for bargaining over the relocation of the administrative office based on the membership survey results.

Legal Doctrine and Analytical Frameworks

Objective: Participants will:

- Review scenarios that demonstrate one or more legal strategies used by the agency to end bargaining and propose the union response.

<p>NEGOTIABILITY</p>  <p>99</p>	<p>ARE ANY OF THE UNION'S PROPOSALS NEGOTIABLE?</p> <p>An agency may implement a change if all proposals on the table at the time of implementation are non-negotiable and it has otherwise bargained in good faith. The agency must, however, respond to the union's request to bargain over the proposals, even if all the proposals are non-negotiable.</p> <p><small>ANALYSIS: Negotiation of Government Employees, 4th Ed.</small></p>	<p>ARE ANY OF THE UNION'S PROPOSALS NEGOTIABLE?</p> <p>An agency may implement a change if all proposals on the table at the time of implementation are non-negotiable and it has otherwise bargained in good faith. The agency must, however, respond to the union's request to bargain over the proposals, even if all the proposals are non-negotiable.</p> <p><small>ANALYSIS: Negotiation of Government Employees, 4th Ed.</small></p>	<p>ANALYTICAL FRAMEWORKS</p>  <p>102</p>
<p>ANALYTICAL FRAMEWORKS</p> <p>Analytical frameworks are tools that give agency and union negotiators a common understanding of how to interpret FLRA case law on subjects and situations that may occur in bargaining.</p> <p>103</p>	<p>ANALYTICAL FRAMEWORKS</p> <p>The agency often uses an analytical framework to say no to bargaining.</p> <p>You need to know when the agency is misinformed, bluffing, or are using the correct interpretation.</p> <p>104</p>	<p>GOVERNMENT-WIDE RULES AND REGULATION</p> <p>The agency is not obligated to bargain because a proposal is inconsistent with a government-wide rule or regulation.</p> <p>5 USC §7117(a)(2)</p> <p>105</p>	<p>MANAGEMENT RIGHT VIOLATION</p> <p>The agency is not obligated to bargain over a proposal that excessively violates their management rights.</p> <p>Appropriate Arrangements Procedures 5 USC §7106(b)(2) and (3)</p> <p>106</p>
<p>PERMISSIVE TOPIC</p> <p>The agency is not obligated to bargain over a proposal on a permissive topic.</p> <p>Appropriate Arrangements Procedures 5 USC §7106(b)</p> <p>107</p>	<p>COVERED BY</p> <p>An Invention for Agencies to Avoid Further ("Midterm") Bargaining</p> <p>109</p>	<p>CAN MGT AVOID BARGAINING OVER CHANGES IT PROPOSES TO MAKE?</p> <p>In 1993, the FLRA invented the "covered by" framework because agencies complained they had to negotiate constantly. The test says: If a matter is "covered by" a CBA, there is no statutory requirement for management to bargain "further" on that matter with the Union during the term of the CBA. The Union had its chance to bargain, and the Agency is free to make changes without bargaining if the "matter" is covered by the [term] CBA. 5 USC §7117(b)(1)</p> <p>109</p>	<p>THE TWO-PRONG TEST OF THE "COVERED BY" ANALYTICAL FRAMEWORK</p> <ul style="list-style-type: none"> Prong 1: If the agreement expressly encompasses the matter, the matter is "covered by" the agreement. Prong 2: If not, the FLRA determines whether the matter sought to be bargained is an aspect ("inseparably bound up with") of matters already negotiated. If it is, the matter is "covered by" the agreement. The analysis under Prong 2 will, as deemed necessary, consider the parties, the bargaining history, or intent, as components of the record evidence. <p>110</p>
<p>AVOIDING "COVERED BY"</p> <p>A proposal that the agency waive the second prong of the "covered by" defense is a mandatory subject of bargaining.</p> <p>- <i>NTEU and U.S. Customs Service</i>, 64 FLRA 156 (2009)</p> <p>111</p>	<p>AVOIDING "COVERED BY"</p> <p>"Either Party may propose changes in conditions of employment during the life of the Agreement which are not already covered specifically by the Agreement."</p> <p>Proposal in "<i>Bargaining for the Future</i>" for the Mid-Term Bargaining Article</p> <p>112</p>	<p>AGENCY HEAD REVIEW WILL OVERTURN</p> <p>The agency head review is limited to identifying and rejecting provisions in conflict with government-wide regulations and rules.</p> <p>113</p>	<p>DE MINIMIS</p> <p>The FLRA has defined matters that have not appreciable effect on working conditions as <i>de minimis</i>. The agency is not obligated to bargain over a <i>de minimis</i> matter.</p> <p><small>General Services Administration, Region 9 and NFFE Local 81, 52 FLRA 1107 (1997).</small></p> <p>114</p>
<p>PAST PRACTICE</p> <p>A past practice involves a working condition that has evolved at the workplace outside of the CBA or agency regulations. To be considered a "past practice" the practice must be consistently followed and known to both the Agency and the employees. When the Agency changes a past practice, it must give the Union notice and allow bargaining if there is a timely demand to bargain. Either party can request bargaining to change existing past practice.</p> <p>115</p>	<p>NOT MEETING TIMELINE FOR DEMAND TO BARGAIN</p> <p>What is a "demand to bargain"?</p> <p>What does "timely" mean?</p> <p>CBA vs. "reasonable"</p> <p>116</p>	<p>Exercise: Analytical Frameworks</p>  <p>117</p>	<p>Assignment</p> <p>Identify one or more legal strategies that management is using to end bargaining for each of the following scenarios. Develop a plan for</p>

Team

the union to counter this strategy and have the agency return to bargaining.

SCENARIO 1: NEW REMOTE ACCESS REQUIREMENTS

BACKGROUND:

Local 22000 received a notice that a new Remote Access Requirement would be implemented within five days. The notification of this change occurred through an email sent to all members of the bargaining unit:

Due to the increased use of telework and new federal security requirements from NIST and OMB, the Office of the Chief Information Officer will be deploying a new two-step login process to access www.agencymobile.agency.gov. To enable this, each employee will receive a unique plastic 3" x 2" grid card that will be used to enter the challenge response after entering the Agency ID and password credentials.

The grid cards will be shipped to your office this week. We are requesting that distribution of the cards each employee be completed within ten (10) days after the material have arrived at your office.

If you have any questions or concerns about this process, please contact Selma Itech at 505.727.310A.

Thank you for your assistance.

PROPOSAL LANGUAGE

The Union submitted a demand to bargain with the following proposals:

3. **No Adverse Action:** No adverse action would be taken against an employee who did not have access to the new Remote Access Card due to the card being lost, damaged or stolen, the card being compromised and/or is unable to access the Agency system due to this change.
4. **Replacement Cards:** Replacement cards shall be issued to employees at no cost and shall be sent to employees who are out of the office and require cards or replacement cards.

AGENCY RESPONSE:

These proposals restrict Management's discretion regarding how the agency will be structured to accomplish its mission to strengthen the internal security practices of the agency in a cost-effective manner. Therefore, these proposals excessively interfere with Management's right to determine the mission, budget, organization, and internal security practices of the agency.

UNION: ANALYSIS AND RECOMMENDED RESPONSE

4. Use the checklist below to identify the technique or collective bargaining doctrine the Agency is using in its response:

- Covered-by*
- Management Right violation*
- Permissive topic agency had decided not to bargain*
- Agency Head Review will overturn*
- De Minimis*
- Bargaining for employees not impacted by management action*
- Not allowed under mid-term bargaining*
- Compelling need*
- Not meeting the timeline for demand to bargain*
- Union is not bargaining in good faith*

5. Cite the appropriate section of 5 USC Chapter 71 the Agency is referencing.

§7106 (a) (1)

6. What option(s) are available for the Union to respond? Cite the section of 5 USC Chapter 71 or FLRA case law that supports each option.

Option 1: Drop the proposals as they violate a management right

Option 2: Engage in a conversation with the Agency to determine if there is something that can make the proposal negotiable if you agree with management's declaration of non-negotiability.

Option 3: File a negotiability appeal under 5 U.S.C. §7117 (c).

Recommended response for the Union:

Option 3: Discuss with the Agency to determine concerns. Note that there is no reasonable link between the proposals to assist affected personnel records and their actions related to their management authority for internal security practices. If no progress, file a ULP for bargaining in bad faith or file a negotiability appeal under 5 U.S.C. §7117 (c). See FLRA Guide to Negotiability page 31.

SCENARIO 2: NEGOTIATING TEAM ARRANGMENTS

BACKGROUND:

Local 22000 is bargaining a term contract with the Agency. As part of the Ground Rules negotiation procedure, the Union is proposing the number of representatives it should have on its team and how they will be reimbursed.

PROPOSAL LANGUAGE

The Union submitted a demand to bargain with the following proposals:

The Union is entitled to at least (3) three representatives to negotiate over any proposed changes or their impact and implementation. Negotiations shall be held at mutually agreed upon convenient locations.

All negotiations over proposed changes in personnel policies, practices and working conditions shall be held when the Union representatives are otherwise in duty time during the work day and negotiators designated by the Union shall be entitled to travel and per diem in addition to official time provided by law for negotiations and impasse proceedings. Union representatives shall be entitled to two days of official time to prepare for each day of negotiations or impasse proceedings.

AGENCY RESPONSE:

The Agency notes that the proposal does not require that officials designated to represent the Union travel away from their normal job sites in order to obtain travel and per diem payments. According to the Agency, the proposal conflicts with the Federal Travel Regulations (FTRs) and the Joint Travel Regulations, an Agency regulation for which a compelling need exists.

The Agency cites specifically only to 5 U.S.C. 5702 which provides that a Federal employee "traveling on official business away from his designated post of duty . . . is entitled to . . . a per diem allowance" in support of its position.

The Agency alleges that payment of travel expenses is not a condition of employment under section 7103(a)(14)(C) of the Statute and is not subject to bargaining. The Agency also relies on a decision of the Comptroller General, 46 Comp. Gen. 21 (1966), authorizing payment of travel and per diem expenses to employee representatives when the agency head has certified that the travel would be in the "primary interest of the Government." The general rule, according to the Agency, would be to deny such payments. This certification, it is argued, must be made by the agency head and the decision-making cannot be shared.

UNION: ANALYSIS AND RECOMMENDED RESPONSE

4. Use the checklist below to identify the technique or collective bargaining doctrine the Agency is using in its response:

- Covered-by*
- Management Right violation*
- Permissive topic agency had decided not to bargain*
- Agency Head Review will overturn*
- De Minimis*
- Bargaining for employees not impacted by management action*
- Not allowed under mid-term bargaining*
- Compelling need*
- Not meeting the timeline for demand to bargain*
- Union is not bargaining in good faith*

5. Cite the appropriate section of 5 USC Chapter 71 the Agency is referencing.

§7117 (a) (2)

6. What option(s) are available for the Union to respond? Cite the section of 5 USC Chapter 71 or FLRA case law that supports each option.

Option 1: Drop the proposals as management states that there a compelling need

Option 2: Engage in a conversation with the Agency to determine if there is something that can make the proposal negotiable if you agree with management's declaration of compelling need.

Option 3: File a negotiability appeal under 5 U.S.C. §7117 (c).

Recommended response for the Union:

Discuss with the Agency to determine concerns. If no progress, file a ULP for bargaining in bad faith or file a negotiability appeal under 5 U.S.C. §7117 (c). See FLRA Guide to Negotiability page 45-46.

SCENARIO 3: ASSIGNMENT OF MEDICAL ASSISTANTS

BACKGROUND:

Local 22000 and the Agency are engaged in impact bargaining over the agency's decision to change its practice regarding the assignment of medical assistants to accompany high-risk patients during routine daily treatments.

PROPOSAL LANGUAGE

The Union proposes continuation with the "status quo" of assigning medical assistants to accompany high-risk patients until good faith negotiations are completed. This will ensure that the high-risk patients will have the assistance of qualified medical assistants who will accompany them during routine daily treatments. This proposal is a negotiable arrangement and a procedure which the employer will observe while negotiating the action of changing a practice. The proposal will have no impact if it is not changing the current practice that is in effect.

AGENCY RESPONSE:

The Agency stated that the proposal would unduly restrict and interfere with the Agency's right to assign work to medical assistants.

UNION: ANALYSIS AND RECOMMENDED RESPONSE

4. Use the checklist below to identify the technique or collective bargaining doctrine the Agency is using in its response:

- Covered-by
- Management Right violation
- Permissive topic agency had decided not to bargain
- Agency Head Review will overturn
- De Minimis
- Bargaining for employees not impacted by management action
- Not allowed under mid-term bargaining
- Compelling need
- Not meeting the timeline for demand to bargain
- Union is not bargaining in good faith

5. Cite the appropriate section of 5 USC Chapter 71 the Agency is referencing.

§7106 (a)(2)(B)

6. What option(s) are available for the Union to respond? Cite the section of 5 USC Chapter 71 or FLRA case law that supports each option.

Option 1: Drop the proposals as management states that this is a management right

Option 2: Engage in a conversation with the Agency to determine if there is something that can make the proposal negotiable if you agree that this is a management right.

Option 3: File a negotiability appeal under 5 U.S.C. §7117 (c).

Recommended response for the Union:

Discuss with the Agency to determine concerns. Argue that the status quo provision is a procedure and therefore a mandatory subject of bargaining under 7106(b)(2). If no progress, file a ULP for bargaining in bad faith or file a negotiability appeal under 5 U.S.C. §7117 (c). See FLRA Guide to Negotiability page 39-43.

SCENARIO 4: CIVILIAN ACCESS TO COMMISSARY

BACKGROUND:

The Shoppette, part of the base exchange, sells food, gas, and certain health and household items. Local 3300 unit employees currently have access to the Shoppette only to purchase food that can be consumed on the premises. These unit employees work varying shifts during the week and on weekends, and many have limited break periods. And they often have to drive off of the base during breaks in their shifts to "satisfy their shopping needs,"⁴ which can contribute to traffic congestion on the base.

The Union and the Agency went arbitration over the negotiability of the proposal. The arbitrator ruled that the proposal was acceptable under the Statute.

PROPOSAL LANGUAGE

The Union proposed to grant unit employees broad access to base commissary and exchange facilities, including the Shoppette. The proposal stated:

Bargaining unit employees with a valid DOD [identification] card shall be granted full access to the Luke Air Force Base Exchange Shoppette, including the gas station. Employees may not purchase uniform items, "tax free" tobacco items, and "tax-free" alcoholic beverages.

The Union and the Agency went arbitration over the negotiability of the proposal. The arbitrator ruled that the proposal was acceptable under the Statute.

AGENCY RESPONSE:

The Agency head disapproved the provision, without elaboration, as contrary to "law, rule, or regulation."

UNION: ANALYSIS AND RECOMMENDED RESPONSE

7. Use the checklist below to identify the technique or collective bargaining doctrine the Agency is using in its response:

- Covered-by*
- Management Right violation*
- Permissive topic agency had decided not to bargain*
- Agency Head Review will overturn*
- De Minimis*
- Bargaining for employees not impacted by management action*
- Not allowed under mid-term bargaining*
- Compelling need*
- Not meeting the timeline for demand to bargain*
- Union is not bargaining in good faith*

8. Cite the appropriate section of 5 USC Chapter 71 the Agency is referencing.

§7114 (c)(2)

9. What option(s) are available for the Union to respond? Cite the section of 5 USC Chapter 71 or FLRA case law that supports each option.

Option 1: Drop the proposal and return to bargaining.

Option 2: File a Unfair Labor Practice.

Option 3: File a negotiability appeal under 5 U.S.C. §7117 (c).

Recommended response for the Union:

Discuss with the Agency to determine concerns. If no progress, file a ULP for bargaining in bad faith or file a negotiability appeal under 5 U.S.C. §7117 (c). See FLRA Guide to Negotiability page 5.

SCENARIO 5: FURLOUGHS

BACKGROUND:

The Agency will be conducting a furlough and provided a 60 day notice as provided by the current Agreement. The collective bargaining agreement currently has the following language on this topic:

Section 5.0 Furloughs

Section 5.1

Employees who are furloughed during a lapse of appropriation will be retroactively paid and otherwise compensated to the extent permitted by law and regulation, if appropriations are approved.

Section 5.2

The Agency will ensure that the government's share of the employee's health insurance premium is paid during any period of furlough to the extent permitted by law and/or regulation.

PROPOSAL LANGUAGE

The Union is proposing the following language:

If the Agency places an employee(s) on furlough for more than 30 days in a reduction in force, the Agency will explore options to allow the employee(s) to serve the furlough on a discontinuous or continuous basis so as to qualify for unemployment compensation.

AGENCY RESPONSE:

The Agency states that the decision to furlough employees is a management right protected from collective bargaining. Additionally, the Agency states that this matter is currently addressed through the current collective bargaining agreement.

UNION: ANALYSIS AND RECOMMENDED RESPONSE

4. Use the checklist below to identify the technique or collective bargaining doctrine the Agency is using in its response:

- Covered-by*
- Management Right violation*
- Permissive topic agency had decided not to bargain*
- Agency Head Review will overturn*
- De Minimis*
- Bargaining for employees not impacted by management action*
- Not allowed under mid-term bargaining*
- Compelling need*
- Not meeting the timeline for demand to bargain*
- Union is not bargaining in good faith*

5. Cite the appropriate section of 5 USC Chapter 71 the Agency and any related legal doctrine the Agency is referencing.

5 U.S.C. 7106 (a)(2)(A).

“Covered by” doctrine.

6. What option(s) are available for the Union to respond? Cite the section of 5 USC Chapter 71 or FLRA case law that supports each option.


Option 1: Drop the proposal.


Option 2: File a negotiability appeal under 5 U.S.C. §7117 (c).

Recommended response for the Union:

Discuss with the Agency to determine concerns. If no progress, file a ULP for bargaining in bad faith or file a negotiability appeal under 5 U.S.C. §7117 (c). See FLRA Guide to Negotiability page 45-46.

Mock Bargaining

<p>BARGAINING 101</p>  <p>118</p>	<p>TYPES OF BARGAINING</p> <p><u>Traditional Bargaining:</u> Proposals are adopted that each party believes will meet its needs, regardless of the effect on the other party. Deceit and manipulation are expected.</p> <p><u>Interest-based Bargaining</u> (IBB/"win-win"/principled bargaining/etc.): Problems are discussed and solutions are sought that meet the underlying common interests of both parties. Open and honest dialogue is required.</p>	<p>NOTE TAKING</p> <p>Good note taking is critical!</p> <p>Maintain copies of all proposals and notes</p> <p>Separate proposals by Article, organized by date presented</p> <p>Maintain a separate file of notes on table discussion on core issues</p> <p>120</p>	<p>CHIEF NEGOTIATOR</p> <p>The Chief Negotiator serves as the spokesperson for their bargaining team.</p> <p>This enables a cohesive - directed strategy</p> <p>Statements by other team members will be delegated in order to maintain consistent positions and strategy.</p> <p>Team members may be asked to speak on specific issues on a pre-determined basis.</p> <p>121</p>
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<p>CAUCUSES</p> <p>If either side needs a break to discuss an issue with their team they may ask for a caucus (break).</p> <p>A caucus request can be made by team members by passing a note or using a pre-planned signal to their Chief Negotiator.</p> <p>Caucuses can be a valuable tool for checking facts and regrouping arguments.</p> <p>Call a caucus if there is confusion at the table .</p> <p>Excessive caucuses can show the team is not prepared.</p> <p>122</p>	<p>BARGAINING BEHAVIOR</p> <p><i>Always, always, always....</i></p> <p><i>Present a united front at the table. No team member should be allowed to undercut any other member in front of management.</i></p> <p><i>Request a caucus if you disagree with what is happening!</i></p> <p>123</p>	<p>Exercise: MOCK BARGAINING</p>  <p>124</p>
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- Break the class into 3-4 teams, depending on the size of the class. Have each team assign a chief negotiator, note taker, and determine a negotiating strategy for the proposals. Allow 20 minutes for the team to prepare to bargain.
- Call each team up and allow 10-20 minutes to bargain with the instructor(s).
- Instructor (or team) Play different types of managers with each team to allow the class to see how different personalities can affect bargaining.
- Resist bargaining by stating that the office relocation is a management right. Use analytical framework tactics to attempt to end negotiation. Use common negotiating tactics to intimidate/distract the other side.
- Debrief what worked and what could be improved at the conclusion of each session. Emphasize the need to identify the member's core issue - parking (as discussed in membership survey in Appendix A-2 of the Participant Workbook).

Review/Wrap Up

Objective: Participants will:

- Recall key points of the legal framework federal collective bargaining
- Review the content from the course
- Complete evaluation forms

Write down 1-2 key points that you remember on the following topics:

- Requirements of 5 U.S.C. Chapter 71

- Common legal strategies that the Agency can use as an obstacle to negotiations

- Actions the Union can take to prepare for federal collective bargaining

APPENDIX A: Office Relocation Case Study Materials

- **A-1: Collective Bargaining Agreement, Article 30 – Office Relocation and Renovation, Section 1.0**
- **A-2: Office Relocation Member Survey Results**
- **A-3:**

A-1: DIS/AFGE Master Labor Agreement

Article 30 – Office Relocation and Renovation

Section 1.0 Policy

The efficient and effective use of office space supports the performance of the Agency's mission. The layout, features, and design of office space contribute to the quality of employees' work life. The parties will work together to see that the space used by employees achieves these goals.

A-2: AFGE Local 90001 Member Survey Results

Q1: Before you received this survey, did you know that there's a Union for the staff at the U.S. DIS?

- Answered: 5
- Skipped: 0

Answer Choices	Responses
Yes	60.00% 3
No	40.00% 2
Total	5

Q2: Did you know that the Union, Local 90001 of the American Federation of Government Employees (AFGE), negotiates a contract with DIS covering working conditions at the agency?

- Answered: 5
- Skipped: 0

Answer Choices	Responses
– Yes	20.00% 1
– No	80.00% 4
Total	5

Q3: Did you know that union members are eligible for representation in workplace disputes?

- Answered: 5
- Skipped: 0

Answer Choices	Responses
Yes	40.00% 2
No	60.00% 3
Total	5

Q4: The agency is proposing to relocate your work area to a new building on Primrose Street. Please rank the top three (3) areas of concern you may have regarding this move:

- Answered: 5
- Skipped: 0

Answer Choices	Responses
– Office format	0.00% 0
– Parking	100.00% 5
– Desk location and set up	20.00% 1
– Access to the main building	60.00% 3
– Access to cafeteria and eating areas	20.00% 1
– Impact on hours of work	40.00% 2
Total Respondents: 5	
Comments(0)	

Q5: How can we best communicate with you about the negotiations we will have with the agency regarding this issue (we will communicate on your personal device to avoid agency monitoring):

- Answered: 5
- Skipped: 0

Answer Choices	Responses
Responses Personal email:	100.00% 5

- ksing@wiredtothemax.net
- maylee@famous.com
- paljim@its.com
- tsmitty@its.com
- balicia@itworld.com

Responses Email address:	80.00% 4
Responses Personal cellphone:	40.00% 2
Responses Personal cell phone #:	0.00% 0
Responses Home phone:	20.00% 1
Responses Home phone #:	0.00% 0

A-4: DIS/AFGE Local 90001 Office Relocation Correspondence

- **A-4.1** UNION NOTIFICATION-RELOCATION OF ADMINISTRATIVE OFFICE
- **A-4.2** REQUEST FOR INFORMATION: OFFICE RELOCATION
- **A-4.3** INFORMATION ON RELOCATION OF ADMINISTRATIVE OFFICE

A-4.1: U.S. Department of Important Stuff

Government Center
100 Washington Avenue
Pennstreetoc, AZ 19000-3389

DATE: March 30, 20__

MEMORANDUM FOR: Julie Milly, Local President, AFGE Local 90001

FROM: Jon Imawatchin, Senior Advisor, Employee & Labor Relations
Ms. Marinda Agencia, Director, Office of Regulatory Affairs

RE: UNION NOTIFICATION-RELOCATION OF ADMINISTRATIVE OFFICE

Please accept this communication as notification pursuant to applicable provisions of the DIS/AFGE Agreement that the ORA will be relocating five bargaining unit employees in the Administrative Office to a new office facility on 52 Shole Street, four blocks from the main office location, effective December 1, 20__, to address current space restrictions. The affected employees are listed below:

- Alicia Bumbry, Program Officer, GS-12010-11
- Tori Smith, Program Specialist, GS-12010-10
- Jim Palmer, Program Officer, GS-12010-11
- Lisa May, Program Specialist, GS-12010-10
- Ken Singleton, Program Specialist, GS-12010-10

All employees will maintain their current supervisor, Earl Weaver.

If you have questions, please contact Earl Weaver, Director, Administrative Office, at 777.555.9999 or Jim Imawatchin, Senior Advisor, Employee & Labor Relations, at 777.555.9991.

A-4.2: AFGÉ Local 90001

DATE: April 5, 20__

MEMORANDUM FOR: Jon Imawatchin, Senior Advisor, Employee & Labor Relations
Ms. Marinda Agencia, Director, Office of Regulatory Affairs

FROM: Julie Milly, Local President, AFGÉ Local 90001

RE: REQUEST FOR INFORMATION: OFFICE RELOCATION

Pursuant to 5 U.S.C. §7114 (b)(4) and Article 30 of the DIS/AFGE Collective Bargaining Agreement (the Agreement), AFGÉ Local 90001 requests that the Department of Important Stuff (“DIS”, “the Agency”, “the Department”, or “Management”) provide information to the Local concerning the Department’s planned relocation of five bargaining unit employees in the Administrative Office to a new office facility on 52 Shore Street.

On March 30, ____, the Local received the Department’s Notification-Relocation of Administrative Office. In anticipation of bargaining the office relocation, the Local is submitting this request for information.

The standard adopted by the U.S. Federal Labor Relations Authority (FLRA) requires a union requesting information under 5 U.S.C. §7114 (b)(4) to establish a particularized need for the information by articulating with specificity why it needs the requested information including the uses to which the union will put the information and the connection between those uses and the union’s representational responsibilities under the statute.

The Local, as exclusive representative of the Department’s bargaining unit requires the information requested in this memorandum for full and proper analysis in order to determine the impact of the Department’s planned relocation of five members of the bargaining unit to the Shore office facility and to assist the Union in formulating collective bargaining proposals and negotiating with the Department on the Office Relocation Supplement to the Agreement.

The Local must have specific information requested in this memorandum to allow it to ensure that AFGÉ bargaining unit employees are treated fairly and equitably and their rights under the Agreement, law, rule or regulation are not diminished as a result of the impact and implementation of the office relocation. This information will assist the Local in negotiating over the procedures and appropriate arrangements for the affected bargaining unit employees pursuant to 5 U.S.C. §7106 (b)(2) and (3).

Therefore the Local requests the following information in unsanitized form. This request is consistent with the guidance established by FLRA General Counsel guidelines. The Local has shown the necessity for the information and has established the right to such information to fulfill its representational duties towards bargaining unit employees.

This information is or should be normally maintained by the Department in its regular course of business. The information should be reasonably available and accessible and is necessary for a full and proper discussion. There is no inconsistency with the provisions of the Privacy Act, 5 U.S.C. 552a related to the information being requested.

Additionally, the Union contends the unsanitized information is to be correctly provided since such disclosure is clearly defined as serving the public interest in assuring the actions of the Department are done in accordance with law, rule, and regulation.

For this purpose, and that of FLRA guidance, the public interest is considered under the extent this information will shed light on the Department's performance of its statutory duties.

Therefore, the Union requests the following information, including any documentation in paper, electronic and other form justifying the requested information:

1. Complete and accurate rationale for the Administrative Office Relocation including the expected savings for relocating the Administrative Office to the Shole facility.
2. Copies of the proposed floor plans that reflect the office format for the Shole Street facility
3. Parking costs for the proposed Shole Street office location and the Washington Avenue location where the bargaining unit employees are currently stationed.
4. Copies of documentation indicating the desk location and set up in the new office.
5. Access to the main building for relocated employees.
6. Access to the cafeteria and other eating areas for relocated employees.
7. Hours of work for relocated employees.

In accordance with the principles established in FLRA case law we need and expect to receive this information no later than April 17, 20__.

If the Department believes that it cannot provide the Local with some of its information because of legal impediments, or if there are questions concerning the contents of this request, please contact me by close of the business the day of receipt. In this manner, we may discuss the problem and I may be able to revise my request so as to remove the impediment(s) and you will be able to provide me the information.

If this request is denied, in whole or in part, please state in writing the name, position, title, and grade of the official making the decision, and the statutory, regulatory, or contractual citation it is based upon.

If you have any further questions regarding this memo, please contact me at 777.933.9366.

Thank you in advance for providing this information.

A-4.3: U.S. Department of Important Stuff

Government Center
100 Washington Avenue
Pennstreetoc, AZ 19000-3389

DATE: April 17, 20__

MEMORANDUM FOR: Julie Milly, Local President, AFGE Local 90001

FROM: Jon Imawatchin, Senior Advisor, Employee & Labor Relations
Ms. Marinda Agencia, Director, Office of Regulatory Affairs

RE: INFORMATION ON RELOCATION OF ADMINISTRATIVE OFFICE

Per the request for information from Local 90001, the following is a comprehensive response in full compliance with the statutory requirements of 5 U.S.C. 7114(b). No further information on this topic can be disseminated at this time.

Reason for the Administrative Office Relocation:

The formation of several new Acting Assistant Deputy Directors to the Lower Undersecretary of the DIS Office of Regulatory Affair Division has generated a requisite requirement for supplementary office arrangements in the Government Center facility located at 100 Washington Avenue. After a thorough and expeditious exploration of alternate layouts and designs, the 52 Shole Office facility has been identified as the prime candidate for affected DIS employee relocation. Given the intensive documentation involved in this decision and its subsequent implementation, the agency cannot provide further documentation at this time due to the excessive and extreme measures requisite to the collection, organization and dissemination of said data.

Office Format:

See Attachment A to see the office format layout for the 52 Shole Street location.

Parking:

See Attachment C for a description of the parking costs for the garage at the 52 Shole Street location. As requested, a description of the costs for parking at the 100 Washington Avenue location are included in Attachment D.

Desk location and set up:

The appropriate desk location can be identified on Attachment A with the following assignments:

Alicia Bumbry, Program Officer, GS-12010-11	Office 13
Tori Smith, Program Specialist, GS-12010-10	Office 15
Jim Palmer, Program Officer, GS-12010-11	Office 14
Lisa May, Program Specialist, GS-12010-10	Office 15
Ken Singleton, Program Specialist, GS-12010-10	Office 15

Specific desk assignments to Office 15 will be determined by the acting supervisor.

A sample of the desk arrangement is located in Attachment B. Each desk will be set up in the same arrangement as found in the main Administrative Office location on Washington Avenue, including a desk, office chair and two guest chairs, file cabinet, computer, bookcase (optional), and phone.

Access to the main building:

Access to the main building will remain the same. A 24-hour building pass for the Government Center office on 100 Washington Avenue will be provided to the ORA employees relocated to the Shole Street office.

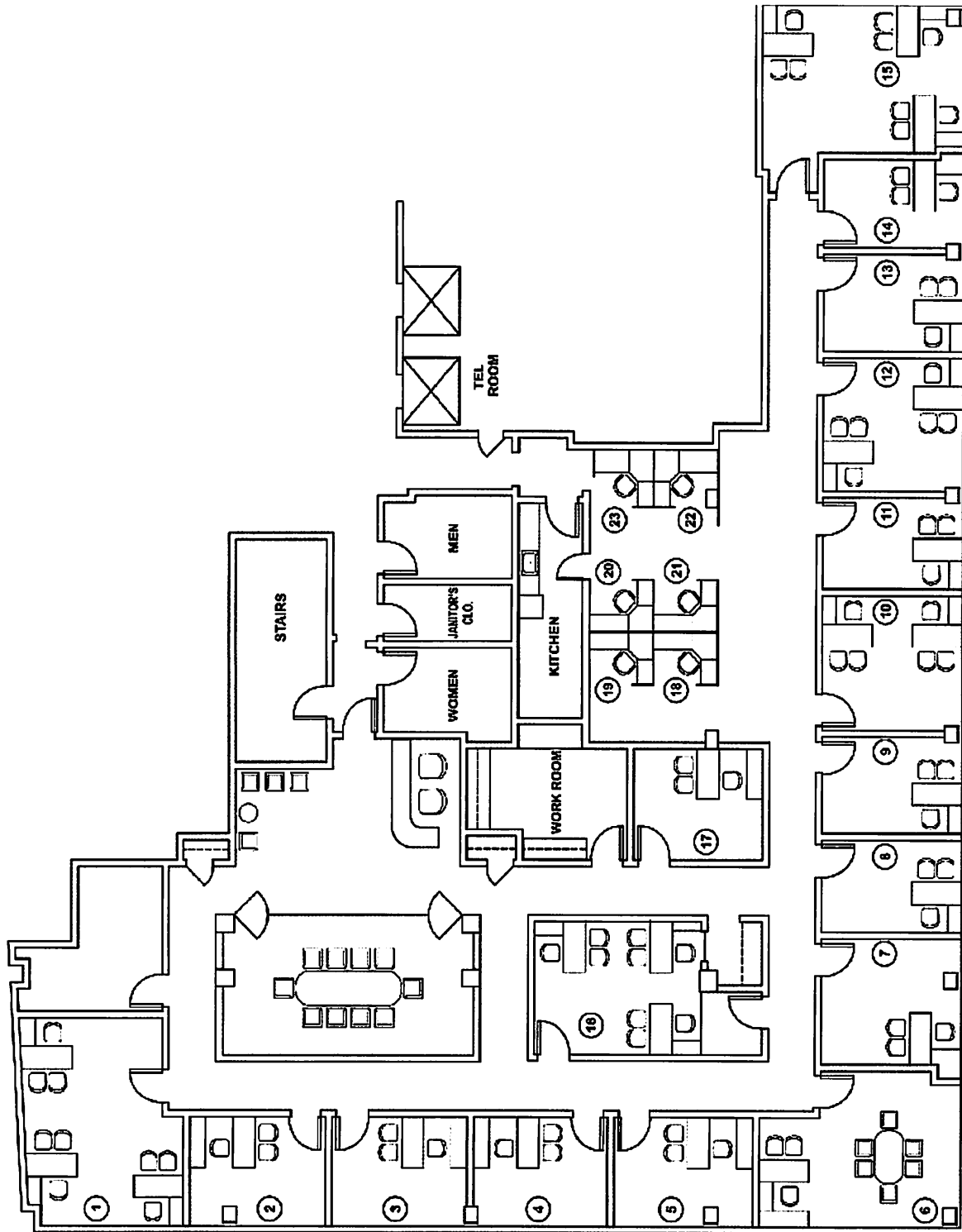
Access to the cafeteria and other eating areas:

Access to the cafeteria and associated eating areas will remain the same. A 24-hour building pass for the Government Center office on 100 Washington Avenue will be provided to the ORA employees relocated to the Shole Street office.

Hours of work:

The hours of work for the Shole Street office will be 9:00 am to 5:00 pm MST, these are the same hours of work as the Washington Street location. The relocation of employees to the Shole Street office location will not affect the employees' schedule or working hours.

Attachment A: Office Format



Attachment B: Desk Setup



Attachment C: Shole Street Parking

Shole Street Garage (Shole and Primrose)

Weekday rates (6 a.m. to 5 p.m.)	\$1.50 each half hour
	\$20.00 daily maximum charge
Evening Rates (5 p.m. to 6 a.m.)	\$1.50 each half hour
	\$10 nightly maximum charge

American Federation of Government Employees

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Washington, DC 20001

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