

National Security Personnel System Pre-Collaboration Labor Relations System Options

Introduction

This document outlines concepts that the Department of Defense (DoD) has developed as part of the beginning of the collaborative process of designing and building a new labor management relations system for DoD civilian employees.

Purpose

The concepts in this table represent descriptions of potential elements of a new labor relations system that the Department of Defense could adopt. The system concepts described are not necessarily all-inclusive, but represent the major elements of what could be adopted. These proposed ideas do not represent any decision of the Department of Defense on the content or details of a new labor relations system. The Department will consider these options, as well as ideas and concepts provided by the various exclusive representatives prior to drafting the system proposal, which will be provided at a later date to begin the official collaboration process.

Next Steps

As agreed to in our meeting on January 22, 2004, DoD union representatives will provide an outline of their ideas and concepts for a new labor relations system by February 23, 2004, followed by meetings on February 26 and 27, 2004, to discuss these proposals. The Department looks forward to receiving input from the union representatives, and anticipates a meaningful interchange on our respective concepts.

OUTLINE OF PROPOSED NSPS LABOR RELATIONS SYSTEM CONCEPTS

SYSTEM ELEMENTS	DESCRIPTION OF PROPOSED CONCEPTS
<p>1. Labor Relations Administration</p> <p>(Who will resolve labor-management disputes?)</p> <p><i>Guiding principle: Establish an independent third party that provides for an efficient and streamlined resolution of disputes and appropriately balances the Department's national security mission and employee and union rights.</i></p>	<ul style="list-style-type: none"> • Establish a Defense Labor Relations Board (DLRB) to make final published decisions as the independent third party. • DLRB operates with independence and autonomy within the Department. • There will be 5 to 7 members on the DLRB with some members nominated by the unions. • DLRB will also adjudicate employee appeals in the NSPS appeals process.
<p>2. Employee Rights</p> <p>(What rights will bargaining unit employees have?)</p> <p><i>Guiding principle: Provide fairness and equity concerning labor organizations' obligations to represent bargaining unit employees who choose not to become dues paying members.</i></p>	<p>The NSPS Labor Relations System ensures that employees may organize, bargain collectively as provided for in NSPS, and participate through labor organizations of their own choosing in decisions that affect them, subject to the provisions of NSPS.</p> <p>PARTICIPATION IN LABOR ORGANIZATIONS</p> <ul style="list-style-type: none"> • Establish a fee-for-service arrangement (bargaining unit members not required to join union). • Non-dues paying bargaining unit members must pay a fee-for-service for any union representation provided on individual representation. • Fees would be determined by unions.

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<p>3. Bargaining Units</p> <p>(What are appropriate bargaining units and how are disputes over the make up of bargaining units resolved?)</p> <p><i>Guiding principle: Establish criteria for determining appropriate bargaining units that provides for collective bargaining balanced against considerations of agency mission and organizational structure allowing for more effective and efficient dealings between labor and management.</i></p>	<ul style="list-style-type: none">• Bargaining Unit coverage determinations are based on a standard that the bargaining unit provides for collective bargaining AND efficient and effective administration of the mission of DoD and its Components.• Bargaining units may be described in terms of command structure, geographic location, and/or Component.• When there is a disagreement on the status of the bargaining unit (as it meets the defined standard), the parties may submit to the DLRB to make unit determinations, make determinations on bargaining unit status, and oversee the local election processes using the most efficient method available for the ballot process.• When elections are required for new or existing bargaining units, more than 50% of potential or existing bargaining unit members must participate in a vote with over 50% of actual bargaining unit votes cast in favor of union representation or the bargaining unit.• An outside third party could participate in decisions on a case-by-case basis on sensitive or significant cases and if invited to participate by the DLRB.
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<p>Bargaining Units - Continued</p>	<p>Bargaining units may not include the following categories of employees:</p> <ul style="list-style-type: none"> • management officials; • supervisory employees (including supervisors of military members); • work leaders; • confidential employees; • human resources employees (to include clerical); • employees performing intelligence or counter-intelligence, investigative, and security work that impacts or affects in a significant way DoD physical, personnel, and information security; • Attorneys; • Employees on time limited appointments of 2 years or less; • Students; • Professional employees and employees requiring certification (i.e. DAWIA, accountants, teachers) (unless a majority of the employees vote for inclusion in the unit). • Employees engaged in administering the provisions of NSPS labor relations regulations.
<p>4. Union Dues</p> <p>(What will the process be for collection of union dues?)</p> <p><i>Guiding principle: Provide a mechanism that allows for efficient collection of union dues balancing considerations of impact on unit employees and agency resources utilized to collect such dues.</i></p>	<ul style="list-style-type: none"> • Retain current union dues allotment collection procedures (dues allotments through payroll deductions) with the following changes: <ul style="list-style-type: none"> ○ Bargaining unit employees may cancel dues at any time after one year has passed since initial dues allotment commenced. ○ Management will not be held fiscally responsible for administrative errors related to dues withholding. ○ Disputes between the union and union members concerning dues are not included in any agency complaints procedures.

[illegible]

<p>6. Scope of Bargaining</p> <p>(Once a duty to bargain is established, what are the parameters of what must be bargained?)</p> <p><i>Guiding principle: Simplifies the parameters of what must be bargained when collective bargaining does occur by eliminating complex and confusing legal standards that have resulted in extensive disputes and litigation.</i></p>	<p>AGENCY REGULATIONS – Existing and new DoD-wide and Component-wide regulations, policies and other similar issuances will supersede any conflicting provisions of collective bargaining agreements and past practice issues.</p> <p>MANAGEMENT RIGHTS –</p> <ul style="list-style-type: none"> • Management retains the right to take whatever actions may be necessary to carry out the agency mission during emergencies or for national security reasons (not subject to any bargaining obligations prior to implementation). • Management retains existing rights, and also has the right to: <ul style="list-style-type: none"> a) Determine cash awards & incentives b) Determine performance ratings and payouts c) Set pay d) Determine pay and allowances, and differentials e) Offer VERA/VSIP f) Make FLSA determinations <p>The exercise of these rights is subject only the NSPS bargaining process.</p>
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<p>7. Bargaining Processes – At the Level of Recognition</p> <p>(When there is a duty to bargain, what processes are used to meet this obligation?)</p> <p><i>Guiding principle: Provide for an efficient and effective local bargaining process that balances the need for a meaningful exchange of interests and concerns and the need to accomplish mission requirements in a timely manner.</i></p>	<p>Bargaining is accomplished through a form of local “consultation” with the exclusive representative when there is a “duty to bargain” on a matter and the union has timely requested to bargain.</p> <p>Consultation means a form of collective bargaining that is an issue-based process of collaborating over changes to conditions of employment that have a significant impact on the bargaining unit. Consultation affords the employee representatives and management the opportunity to have a meaningful exchange of views in an attempt to reach agreement on the resulting policy document that is issued.</p> <ul style="list-style-type: none"> • Immediate implementation for emergencies and national security with post-implementation consultation. • Consultation process in all cases lasts no more than 60 calendar days (notification period and consult period combined). If no agreement is reached after good faith efforts (within the time limits provided), management may implement the proposed changes. • A copy of any resulting policy will be provided to the union(s) with the reasons for taking the final action. • Post-implementation consultation may continue by mutual agreement. • Union will have opportunity to seek a review of procedural compliance with the DLRB. There are no status quo ante remedies.
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<p>8. Bargaining Processes – Above the Level of Recognition (National Level Bargaining)</p> <p>(When there is a duty to bargain, what processes are used to meet this obligation?)</p> <p><i>Guiding principle: Provide for an efficient and effective national level bargaining process that streamlines bargaining on Department-wide and Component-wide issues and allows for a meaningful exchange of interests and concerns balanced with the need to accomplish mission requirements in a timely manner.</i></p>	<p>National level bargaining replaces both the traditional national consultation process and local bargaining on the issue. National level bargaining can occur at the DoD level on DoD policy changes or at the Component level on Component level policy changes not covered at the DoD level.</p> <p>Such bargaining is accomplished through a form of consultation with the exclusive representative when there is a duty to bargain on a matter and the union has timely requested to bargain. National level bargaining will use the same process as the local bargaining.</p>
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<p>9. Union Rights and Obligations</p> <p>(What rights does the union have when representing bargaining unit employees and what are its obligations when doing so?)</p> <p><i>Guiding principle: Provide simplified criteria of union rights and obligations that ensure the union may represent the interests of the bargaining unit balanced with effective and efficient accomplishment of mission requirements.</i></p>	<p>UNION PARTICIPATION IN MEETINGS WITH EMPLOYEES</p> <p>Formal Discussions <i>(Addresses exclusive representative's independent right to be present at certain discussions held with bargaining unit employees)</i></p> <ul style="list-style-type: none"> • Retain the “formal discussion” concept with modifications: <ul style="list-style-type: none"> ○ Management will invite the union to meetings where it is known in advance that there will be a discussion of changes in general conditions of employment having a significant impact on the bargaining unit. ○ Any matters concerning any employee complaint(s) will not be considered a formal discussion. There is no automatic right for union attendance at such meetings. However, employees may invite union attendance. ○ Witness preparation or interviews will not be considered a formal discussion in any formal complaint process. ○ No portion of the EEO process will be considered a formal discussion in any administrative or statutory process.
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Union Rights and Obligations – Cont'd

Investigations (a.k.a. Weingarten rights) *(Addresses exclusive representative's right to be present at certain investigatory meetings held with bargaining unit employees)*

- Employees have a right to union representation during management investigations (and the employee reasonably believes will result in discipline and requests representation); however, management may limit delays to investigations awaiting union representation. This determination is based on geographic location of closest steward, security, health, safety, and integrity of the interview process.
- Unions do not have a right to be present during investigations by CID, AFOSI, DCIA, NCIS, DCIS, IG, and similar investigative organizations.
- Conflict of interest will be considered a reason for disapproval of a particular union representative's involvement.

UNION ACCESS TO INFORMATION MAINTAINED BY THE AGENCY

The Freedom of Information Act (FOIA) procedures will be used as the method for union requests for information.

UNION DUTY TO REPRESENT BARGAINING UNIT EMPLOYEES

- The union has the right to not represent a bargaining unit member if a fee is required and not received. If a fee is received, the union must fairly and competently represent the member.
- Failure by the union to adequately adhere to this provision will not result in the reversal of any management action.

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<p>10. Official Time</p> <p>(What duty status is the union representative in while representing an employee or the bargaining unit during duty hours?)</p> <p><i>Guiding principle: Simplify the criteria for when official time may be granted minimizing disputes between labor and management on official time use.</i></p>	<ul style="list-style-type: none"> • Official time is available only for designated uses as specified below with advance approval by the appropriate supervisor. • Designated uses for official time: <ul style="list-style-type: none"> ○ Consultation (negotiations) ○ Preparation time for consultation (negotiations) ○ Presentation of labor disputes ○ Management initiated meetings ○ For other situations as requested by the union and approved by management at its sole and exclusive discretion.
<p>11. All Inclusive Complaints Review</p> <p>(What dispute process will management, unions and employees use?)</p> <p><i>Guiding principle: Streamline and expedite processing of complaints providing for quicker resolution of labor disputes.</i></p>	<p>Employee Individual Complaints Under NSPS, employee complaints (currently filed under negotiated grievance procedures, administrative grievance procedures, and the statutory MSPB appeals process) are consolidated into a new NSPS appeals system.</p> <p>Local Union and Management Complaints (in lieu of union and management grievances filed under negotiated grievance procedures or unfair labor practice charges).</p> <ul style="list-style-type: none"> • An alleged violation of NSPS labor relations regulations is appealable to DLRB, with a copy furnished to charged party. • These complaints must be filed within 15 calendar days of the event or the date the charging party became aware of the event.

<p>All Inclusive Complaints Review – Cont’d</p>	<p>In addition -</p> <ul style="list-style-type: none"> • An alleged violation of the local application of agency policy is reviewable by an appropriate management official as determined by the Component or designee or by an appropriate union official if a management initiated complaint. • The complaint process lasts no more than 30 calendar days (time to file and time to make decisions). This will not preclude extension of individual time limits as necessary. • Decisions in the complaint process are final and binding unless mediation is invoked by either party. • The DLRB may do a limited, substantive review of the original complaint decision. <p>Bargaining Unit Employee Complaints Against the Union</p> <ul style="list-style-type: none"> • A complaint by a bargaining unit member against the exclusive representative will be filed with the DLRB with a copy furnished to charged party. • These complaints must be filed within 15 calendar days of the event or the date the charging party became aware of the event. • Decisions on these complaints will not direct the taking of any action by management. <p>National Level Management and Union Complaints</p> <ul style="list-style-type: none"> • Alleged procedural violations at the national level of the NSPS labor relations regulations are appealable to the DLRB, with a copy furnished to charged party. <p>These complaints must be filed within 15 calendar days of the event or the date the charging party became aware of the event.</p>
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<p>MISCELLANEOUS ISSUES</p> <p><i>Guiding principle: Establish a collaborative, issue-based approach to bargaining while minimizing disruption to existing policies and collective bargaining agreements when transitioning to the NSPS labor relations system.</i></p> <p><i>Guiding principle: Provide the parties a single, streamlined labor relations system that is effective and efficient.</i></p> <p><i>Guiding principle: Ensure that the Department's national security mission is accomplished without disruption due to labor disputes.</i></p>	<p>Term Collective Bargaining Agreements</p> <ul style="list-style-type: none"> Provisions in <u>current</u> term collective bargaining agreements at the time NSPS is implemented will remain in effect until they expire or their current rollover expires except: <ul style="list-style-type: none"> When there is a conflict with existing or subsequently issued NSPS, DoD, or Component regulations; or When there is a conflict with other laws or government-wide regulations. No term collective bargaining agreement can be renewed, rolled-over or negotiated at the time NSPS is implemented. Provisions in <u>expired</u> term collective bargaining agreements may continue until they are replaced by policy or regulations issued at any level subject to the consultation process. <p>Status of 5 USC Chapter 71</p> <p>The new NSPS labor relations system will not employ any provisions of 5 USC Chapter 71.</p> <p>Prohibition on Striking</p> <p>It will be a violation of NSPS regulations for employees or labor unions to call or participate in a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations. It will be a violation of NSPS regulations for a labor union to condone any activity described above by failing to take action to prevent or stop such activity.</p>
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