

Federal Labor Relations Authority



DUTY TO BARGAIN

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TWO ASPECTS OF COLLECTIVE BARGAINING

Duty to Bargain

Scope of Bargaining

Whether

What

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WHAT IS COLLECTIVE BARGAINING? §7103 (a) (12)

- ✓Performance of mutual obligation
- ✓By representative of an agency and the exclusive representative of employees
- ✓To meet at reasonable times
- ✓To bargain in good faith effort to reach agreement
- ✓With respect to conditions of employment
- ✓To execute a written agreement, if requested
- ✓Neither party compelled to agree to a proposal or make a concession***

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WHY IS MANAGEMENT OBLIGATED TO BARGAIN WITH A UNION?

§ 7114(A) (1) - A Labor Organization which has been accorded exclusive representation is the exclusive representative of the unit it represents – it is entitled to act for and negotiate collective bargaining agreements covering all employees in the unit. ***

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WHEN IS MANAGEMENT OBLIGATED TO NEGOTIATE WITH A UNION?

Term Negotiations for a contract - either union or management may initiate

Mid-term union initiated or union initiated after expiration of contract

Management initiates a change in working conditions during term or after agreement expires

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WHEN CAN A UNION INITIATE MID-TERM BARGAINING?

Union may initiate bargaining over matters not "covered by" the contract

Contract does not have a "zipper clause" which waives right to bargain over matters not contained in the contract

Individual contract provision does not have waiver of right to bargain over matter ***

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UNION RIGHT TO INITIATE MID-TERM BARGAINING

FLRA first decided that right did not exist.

IRS I, 17 FLRA 731 (1985)

D.C. Circuit reversed, holding that unions had right to initiate mid-term bargaining.

NTEU v. FLRA, 810 F2d 295 (D.C. Cir. 1985)

FLRA adopted D.C. Circuit's interpretation.

IRS II, 29 FLRA 162 (1987)***

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UNION RIGHT TO INITIATE MID-TERM BARGAINING

4th Circuit held that right did not exist.

SSA v. FLRA, 956 F2d 1280 (4th Cir. 1992)

Energy v. FLRA, 106 F3d 1158 (4th Cir. 1997)

FLRA held that agency must bargain over union's proposal giving the union right to initiate mid-term bargaining

Geological Survey, 52 FLRA 475 (1996)

4th Circuit held that agency may not be required to bargain union's proposal giving the union the right to initiate mid-term bargaining

Geological Survey v. FLRA, 132 F3d 157 (4th Cir. 1997) ***

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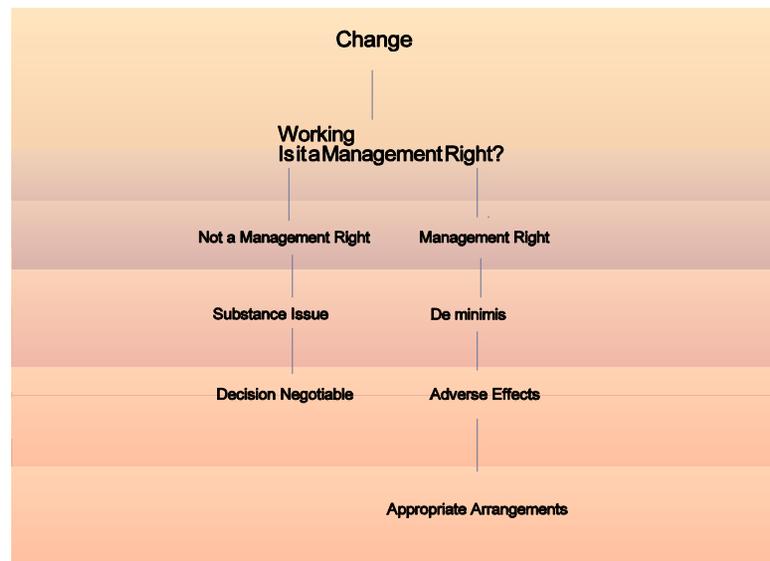
UNION RIGHT TO INITIATE MID-TERM BARGAINING

U.S. Supreme Court vacated the decision of the 4th Circuit. The Statute is ambiguous with respect to the question of whether agencies are required to bargain over union initiated midterm proposals and Congress delegated to the Authority the power to determine whether, when, where, and what sort of midterm bargaining is required.

NFFE, Local 1309 and FLRA, 526 U.S. 86, 119 S. Ct. 1003 (1999)

On remand, the FLRA found that an agency is required to bargain over a proposal obligating the agency to engage in midterm bargaining over matters not contained in or covered by the term agreement. Such a proposal merely restates the statutory obligation of the agency to bargain midterm.

Geological Survey II, 56 FLRA 45 (2000) ***



DOES THE CHANGE INVOLVE A MANAGEMENT RIGHT?

Not always easy to tell. May depend on how the change is defined.

Example, Air Force Logistics Command, Warner Robins, 53 FLRA 1664 (1998).

Supervisor decided to lock her office for security reasons, and moved telephone available for personal use by employees from office to table outside the office, in open shop area.

Is change locking office? (Internal security, must show greater than de minimis adverse impact)

Is change moving telephone? (Negotiate substance. No need to show greater than de minimis) ***

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WHAT IS THE DE MINIMIS STANDARD ?

Nature and extent of the effect or reasonably foreseeable effect of the change on conditions of employment

Equitable considerations will also be taken into account in balancing various interests involved

DHHS, Social Security Administration , 24 FLRA 403 (1986).; GSA, Region 9 , 52 FLRA 1107 (1997)***

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WHAT IS A PAST PRACTICE ?

1. Must be condition of employment
2. Practice must be consistently exercised
3. Over significant period of time
4. Followed by both parties or followed by one and not challenged by the other

FAILURE TO GIVE NOTICE AND BARGAIN OVER A CHANGE IN A PAST PRACTICE IS AN UNFAIR LABOR PRACTICE

U.S. Department of Labor, Washington, D.C. , 38 FLRA 899 (1990). ***

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WHAT MUST MANAGEMENT DO WHEN IT INITIATES CHANGES IN WORKING CONDITIONS?

MANAGEMENT OBLIGATIONS:

1. Determine whether management is making a change in working conditions
 - Is matter a working condition subject to bargaining?
 - Is action a change?
2. Provide timely notice to the union
3. Bargain in good faith
4. Complete bargaining prior to implementation ***

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WHAT ARE THE NOTICE REQUIREMENTS WHEN THERE IS A CHANGE SUBJECT TO BARGAINING?

- Management must give notice to the union of a change in working conditions before the change is implemented

- It must be timely

- It must adequately describe the change

- It must be given to the appropriate union official

FAILURE TO GIVE ADEQUATE TIMELY NOTICE IS AN UNFAIR LABOR PRACTICE ***

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WHAT IS GOOD FAITH BARGAINING UNDER §7114(b) ?

Standard - Totality of Circumstances

Applies to both Labor and Management:

- Did parties approach negotiations with sincere resolve to reach agreement?
- Were parties prepared to discuss and negotiate any condition of employment?
- Did parties meet as frequently as necessary?
- Did parties avoid unnecessary delays?
- Did parties explore and discuss each other's position?

IT IS AN UNFAIR LABOR PRACTICE TO ENGAGE IN BAD FAITH BARGAINING ***

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WHAT ARE THE UNION'S OBLIGATIONS WHEN MANAGEMENT GIVES NOTICE OF INTENT TO INITIATE A CHANGE IN WORKING CONDITIONS?

Timely request bargaining

Make negotiable proposals

Bargain in good faith

Attempt to reach agreement ***

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HOW TO REQUEST TO BARGAIN

Can be oral or in writing

Must be timely

- Must comply with any applicable contractual requirement
- If no contractual requirement, request must be timely under the circumstances

Must clearly request bargaining, not simply a meeting or discussion ***

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MAKE NEGOTIABLE PROPOSALS

Once there is a duty to bargain, proposals must be within scope of bargaining.

If management is exercising a right, proposals must be concerning procedure and appropriate arrangements.

If management action is not exercise of a management right, union can bargain over substance of the decision. ***

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CAN THERE BE A ULP EVEN IF THE UNION NEVER SUBMITTED NEGOTIABLE PROPOSALS?

To establish that an Agency has failed to bargain, it is not always necessary to show that the Union submitted negotiable proposals in response to the notice of change.

An Agency must respond to the Union's proposals before implementing the change, and must assert the nonnegotiability of the proposals as the basis for implementing the change.

Agency acts at its peril if it then implements the proposed change. (If proposal is later found to be negotiable, it is an unfair labor practice).

U.S. Department of Justice, INS , 55 FLRA 892 (1999) ***

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WHEN IS NEGOTIABILITY CONTROLLING?

The negotiability of Union proposals is only controlling when the Agency:

- ▶ Declares the proposals nonnegotiable
- ▶ Continues to bargain in good faith by giving the Union the opportunity to submit other proposals
- ▶ Bargains to impasse on those proposals not declared nonnegotiable
- ▶ Gives the Union an opportunity to initiate impasse procedures under section 7119 of the Statute
- ▶ If impasse procedures are not timely invoked, implements its last best offer. ***