



#### Introduction

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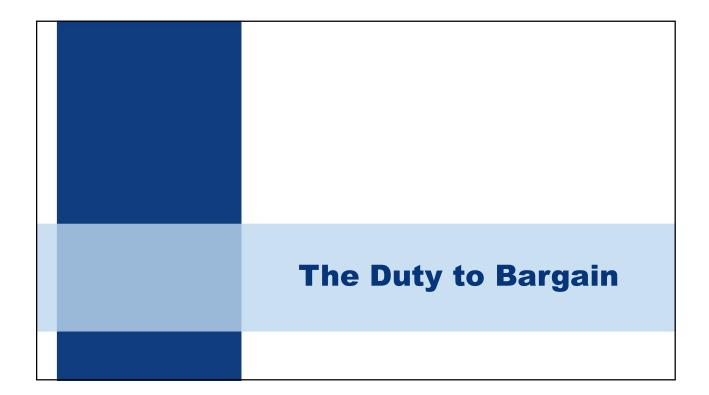
#### **Outline**

Part 1 – From Certification to Contract Bargaining

- Summary of the duty to bargain
- Prohibition on changing conditions of employment w/o bargaining
- · Substantive bargaining vs. impact and implementation bargaining
- Maintaining status quo during contract bargaining
- Resources and questions

#### **Disclaimers**

- · This is not legal advice
- This presentation is not comprehensive it is a practical overview
- This meeting is not confidential
- Please ask questions! But feel free to follow-up one-on-one if you'd prefer to ask confidentially.



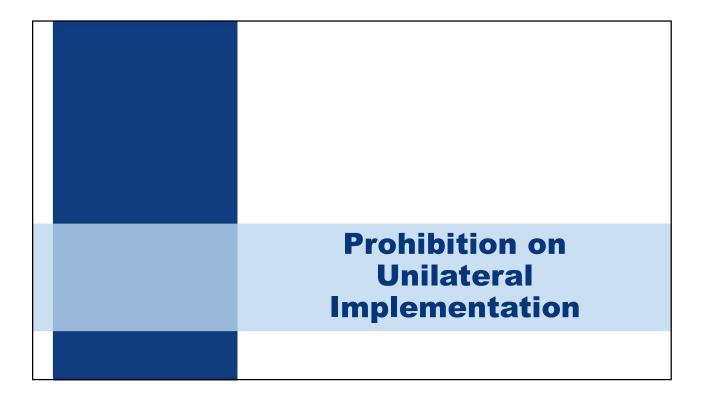
# **Background**

- The Congressional Accountability Act of 1995 applied the Federal Service Labor-Management Relations Statute to most employing offices of the legislative branch.
- The FLRA enforces the FSLMRS for executive branch employees
- The OCWR is the FLRA of the legislative branch
- OCWR relies on FLRA interpretation of the Statute

## The Duty to Bargain in Good Faith

- Statute requires employers and unions to meet and:
  - 1. Approach negotiations with a sincere resolve to reach an agreement;
  - 2. Meet at reasonable times and convenient places as often as necessary; and
  - 3. Avoid unnecessary delay.
- Failure to do any of the above is an unfair labor practice, filed with the OCWR.

5 U.S.C. § 7114(b)



# **Unilateral Implementation is Prohibited**

- Before changing conditions of employment, an employing office must provide the union with notice and an opportunity to bargain.
- If union demands to bargain, employer must maintain status quo until there is agreement or until impasse proceeding is completed.
- Failure to do so is an unfair labor practice.

See U.S. Dep't of Homeland Sec., U.S. Citizenship & Immigr. Servs., 69 F.L.R.A. 515 (2016)

# What is a Condition of Employment?

 Defined as: "personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions[.]"

5 U.S.C. § 7103(a)(14)

#### What is NOT a Condition of Employment?

- Changes related to political activities prohibited by the Hatch Act;
- · Changes related to the classification of any position; or
- Changes specifically provided for by Federal statute.

5 U.S.C. § 7103(a)(14)

- Change must be more than de minimis.
  - For example, reassignment of one employee, less than a mile from original duty station, with no change in pay or hours worked, was found to be *de minimis* and no bargaining was required. *FAA* & *PASS*, 20 F.L.R.A. 430, 434 (1985).

# **Examples of Conditions of Employment**

- Cancelling already-approved leave
- Disciplinary actions, including terminations and imposition of lastchance agreements
- · Changing an employee's shift
- Changing already-existing program such that employee travel increased
- Changing criteria for approval of outside employment
- Employer-provided lockers or other secure area for personal belongings

Peter Broida, A Guide to Federal Labor Relations Authority Law and Practice, 435-463 (2016)

#### **Other Notes About Conditions of Employment**

- For conditions of employment outside of employing office's control like ventilation the parties can bargain over a recommendation/ communication to the office with control. *Library of Congress v. FLRA*, 699 F.2d 1280 (D.C. Cir. 1983).
- Must be a condition of employment of the bargaining unit employees.
   For example, request that supervisor be accountable for implementation of an EEO program is not negotiable. AFGE & Healthcare Financing Admin., 44 F.L.R.A. 1405 (1992).
- Proposal directed at the public is not a condition of employment, even if it implicates conditions of employment indirectly. For example, union proposal that public tours show employee workstations was not negotiable. AFGE Local 1812 & Broadcasting Board of Governors, 59 F.L.R.A. 447 (2003).

#### What is Sufficient Notice?

- In advance, with enough time to request to bargain.
- Must include "the scope and nature of the proposed change in conditions of employment, the certainty of the change, and the planned timing of the change."
- Sufficiency of notice depends on parties' relationship and circumstances surrounding the proposed change.

Army Corps of Eng'rs, Memphis Dist., 53 F.L.R.A. 79 (1997)

# Substantive vs. Impact and Implementation Bargaining

## **Management Rights**

- · Management has the right to:
  - Determine the mission, budget, organization, number of employees, and internal security practices;
  - · Hire, assign, direct, layoff, and retain employees;
  - Suspend, remove, reduce pay, and discipline employees;
  - Take whatever actions may be necessary to carry out agency mission during emergencies.

5 U.S.C. § 7106

#### **Right to Negotiate Appropriate Arrangements**

- BUT! Union can negotiate:
  - "procedures which management officials of the agency will observe in exercising any authority under this section"; and
  - "appropriate arrangements for employees affected by the exercise of authority under this section."
- This is known as "impact and implementation" bargaining.

5 U.S.C. § 7106(b)

# **Examples of I&I Bargaining**

- Management action: Re-assigning employees in a manner that reduced overtime pay.
- Union Proposal: Solicit volunteers for assignment, with management retaining right to assess qualifications among volunteers.
  - Finding: proper for I&I bargaining proper procedure under the statute as long as management makes final selection for assignment

Dep't of Transp., FAA, 63 F.L.R.A. 502 (2009) (discussing "procedures" under § 7106(b)(2))

#### **Examples of I&I Bargaining**

- Management action: Installing metal detectors at prison yard.
- Union proposal: All watches that do not clear metal detectors will be confiscated, limiting "bottlenecking" of inmates a safety hazard.
  - Finding: Proper for I&I bargaining minimal burden on management, provides benefit for adversely affected employees.
- Union proposal: Install additional access gate to remove inmates during metal detector process.
  - Finding NOT proper for I&I bargaining too much of an impact on management right to determine internal security practices.

AFGE Local 506 & BOP, FCC Coleman, 66 F.L.R.A. 819 (2012)

# Maintaining Status Quo During Contract Bargaining

#### **Maintaining Status Quo During Contract Bargaining**

- "Where parties are bargaining over a proposed change in conditions of employment, an agency is generally obligated to maintain the status quo pending the completion of the bargaining, including impasse procedures." Space Sys. Div. Los Angeles, 45 F.L.R.A. 899, 903-904 (1992)
- "It is well established that the duty to bargain extends to ground rules for negotiations." *Dep't of Treasury & NTEU*, 59 F.L.R.A. 703, 709 (2004)
- "[P]roposals which require an agency to maintain the status quo during the bargaining process, consistent with its obligation to bargain, are negotiable procedures under the Statute." Nat'l Weather Serv. Emps. Org. & Nat'l Weather Serv., 37 F.L.R.A. 392, 396 (1990)



#### Resources

- OCWR Materials
  - Labor-Management Relations in the Legislative Branch: Duty to Bargain and Scope of Bargaining FAQs
- FLRA Materials
  - ULP Case Law Outline
  - Guide to Negotiability
    - flra.gov → Resources & Training → Guides & Manuals
- Peter Broida, A Guide to Federal Labor Relations Authority Law and Practice (2016)

# **Preview of Coming Attractions**

- Part 2 the Duty to Bargain During Contract Bargaining
- Part 3 the Duty to Bargain with a Contract in Effect
- Dates TBD!

