U.S. DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

SECRETARY'S MEMORANDUM 1076-025
July 12, 2018

OneUSDA – Foundational Responsibilities for Labor Relations

1. PURPOSE

For USDA to be the most efficient and effective Department in the Federal government, we must function as one team. To do this, every USDA employee, no matter their title or role, must be accountable, one to another, for faithfully carrying out the work of the American people with integrity, consistency, dedication, fairness, mutual respect, and professional excellence each and every day. These foundational responsibilities -- integrity, consistency, dedication, fairness, mutual respect, and professional excellence -- must be reflected in the negotiation and administration of collective bargaining agreements (CBA).

2. SPECIAL INSTRUCTIONS/CANCELLATIONS

This Secretary's Memorandum (SM) supersedes SM 1076-021, *OneUSDA – Foundational Responsibilities for Labor Relations*, dated February 2, 2018. This SM is effective upon publication.

3. ACTIONS ORDERED

Mission Area, agency, and staff office management officials must comply at all times with the *Federal Service Labor-Management Relations Statute* (FSLMRS or Statute), as contained in Title VII of the *Civil Service Reform Act of 1978* and codified at 5 U.S.C. §§ 7101-7135, Presidential Executive Orders (EO), Departmental Regulation (DR) 4070-711, *Labor Relations*, and other relevant and controlling authorities. The authority to exercise these rights and obligations flows from the Secretary of Agriculture to the Assistant Secretary for Administration (ASA) and, in turn, is delegated to management officials within USDA.

Consistent with EO 13836, *Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining* (dated May 25, 2018), Mission Area, agency, and staff office management officials must do more to apply the Statute in a manner consistent with effective and efficient Government. To fulfill this obligation, agencies should secure CBAs that promote an effective and efficient means of accomplishing agency missions; encourage the highest levels of employee performance and ethical conduct; ensure employees are accountable for their conduct and performance on the job; expand agency

flexibility to address operational needs; reduce the cost of agency operations, including with respect to the use of taxpayer-funded union time; are consistent with applicable laws, rules, and regulations; do not cover matters that are not, by law, subject to bargaining; and preserve management rights under 5 U.S.C. § 7106(a).

Consistent with EO 13837, *Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use* (dated May 25, 2018), Mission Area, agency, and staff office management officials should ensure that taxpayer-funded union time is used efficiently and authorized in amounts that are reasonable, necessary, and in the public interest. Federal employees should spend the majority of their duty hours working for the public. No agency should pay for Federal labor organization expenses, except where required by law. Mission Area, agency, and staff office management officials should eliminate unrestricted grants of taxpayer-funded union time and instead require employees to obtain specific authorization before using such time. Mission Area, agency, and staff office management officials should also monitor use of taxpayer-funded union time, ensure it is used only for authorized purposes, and make information regarding its use readily available to the public.

The provisions of EO 13839, *Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles* (dated May 25, 2018), advance the ability of Mission Area, agency, and staff office management officials to promote civil servant accountability consistent with merit system principles while simultaneously recognizing employees' procedural rights and protections.

In exercising these rights and obligations, all USDA Mission Areas, agencies, and staff offices must collaborate fully with the Department to carry out USDA policy by seeking labor relations subject matter expertise, technical guidance, assistance, and training from the Office of Human Resources Management (OHRM), and legal advice and support from the Office of the General Counsel (OGC).

a. <u>OneUSDA: Departmental Collaboration, Notification, and Clearance</u>

(1) Each Mission Area, Agency, or Staff Office Head must prepare a report on all operative term CBAs at least one year before their expiration or renewal date. The report must be sent to the OHRM Employee and Labor Relations Division (ELRD) Director, OGC, and the relevant Under or Assistant Secretary recommending new or revised CBA language the agency could seek to include in a renegotiated agreement that would better support the objectives of EO 13836. The officials preparing the report must consider the analysis and advice of the Office of Personnel Management (OPM) Labor Relations Group in making recommendations for revisions.

(2) Consistent with the intent of DR-4070-711, at least 30 calendar days prior to determining whether to open negotiations for a new or modified CBA or rollover of an existing CBA, the Mission Area, agency, or staff office must send a notice to the OHRM ELRD Director, OGC, and to the relevant Under or Assistant Secretary

or Staff Office Head stating that contract negotiations are anticipated; describing all subjects or provisions that may be contrary to applicable Departmental directives, of policy concern, or may lead to impasse; and attaching a complete copy of the existing CBA.

b. Adherence to Principles of OneUSDA

(1) To ensure integrity, consistency, and fairness:

(a) All negotiated CBAs must comply with applicable law;

(b) Mission Area, agency, and staff office management officials negotiating CBAs must:

1 Be guided and informed by applicable EOs, DRs, this Memorandum, and any other guidance provided by USDA leadership;

2 Establish collective bargaining objectives that advance the policies of EO 13836, with such objectives informed, as appropriate, by the reports required in paragraph 3a(1) above;

3 Consider the analysis and advice of the OPM Labor Relations office in establishing the above objectives and when evaluating collective bargaining representative proposals;

4 Make every effort to secure a CBA that meets these objectives;

5 Ensure management and supervisor participation in the negotiating team representing the agency; and

6 Keep the affected Under or Assistant Secretary or Staff Office Head reasonably informed regarding the progress of such negotiations.

(c) In the interest of transparency, Mission Area, agency, and staff office management officials are directed to submit:

1 A copy of all currently-enacted CBAs to the OHRM ELRD Director for publication on the Departmental website;

2 Each term CBA currently in effect and its expiration date to the OPM Director within 30 days of OPM prescribing the reporting format;

3 Any new term CBA and its expiration date to the OPM Director within 30 days of its effective date; and

4 Any new arbitral awards to the OPM Director within 10 business days of

receipt.

(d) To ensure integrity, consistency, and fairness, existing CBAs generally should be renegotiated by each Mission Area, agency, and staff office at their earliest opportunity, unless otherwise directed by the affected Under or Assistant Secretary or Staff Office Head.

1 In developing proposed ground rules and during any negotiations, Mission Area, agency, and staff office management officials must request the exchange of written proposals. Mission Area, agency, and staff office management officials should take steps at the soonest opportunity to eliminate any bargaining approach other than the exchange of written proposals addressing specific issues. Management officials must act to rescind requirements for any bargaining approach other than the exchange of written proposals that were based on now-revoked executive orders, including EO 12871, *Labor-Management Principles*, October 1, 1993, and EO 13522, *Creating Labor-Management Forums to Improve Delivery of Government Services*, December 9, 2009.

2 Mission Area, agency, and staff office management officials must begin collective bargaining negotiations by making their best effort to negotiate ground rules that minimize delay, set reasonable time limits for good-faith negotiations, call for Federal Mediation and Conciliation Service (FMCS) mediation of disputed issues not resolved within those time limits, and, as appropriate, promptly bring remaining unresolved issues to the Federal Service Impasses Panel (FSIP or "the Panel") for resolution. A negotiating period of 6 weeks or less to achieve ground rules and a negotiating period of between 4 to 6 months for a term CBA under those ground rules should ordinarily be considered reasonable and would satisfy the "effective and efficient" goal set forth in EO 13836. Mission Area, agency, and staff office management officials must commit the time and resources necessary to satisfy these objectives and fulfill their obligation to bargain in good faith.

(e) During any negotiations, Mission Area, agency, and staff office management officials must negotiate in good faith to reach agreement on a term CBA, memorandum of understanding (MOU), or any other type of binding agreement that promotes the policies outlined in EO 13836. If negotiations last longer than established by the ground rules, Mission Area, agency, or staff office management officials must consider whether to request assistance from the FMCS and FSIP. Such consideration should evaluate the likelihood that continuing negotiations without FMCS assistance or referral to the Panel would produce an agreement consistent with the goals of EO 13836, as well as the cost to the public of continuing to pay for both negotiating teams.

(f) Upon the conclusion of the sixth month of any negotiation, the Mission Area, Agency, or Staff Office Head must notify the OHRM ELRD Director, OGC, and the relevant Under or Assistant Secretary regarding the status of negotiations and must send monthly notifications thereafter until they are complete. The notice must include a summary of negotiations, specific subjects or provisions that remain open, any subjects at impasse and the status of impasse proceedings, i.e., FMCS assistance has been requested and status of FMCS mediation, issue advanced to the Panel and status of Panel actions.

(g) If the commencement or any other stage of bargaining is delayed or impeded because of a union's failure to negotiate in good faith, Mission Area, agency, or staff office management officials must consider whether to:

1 File an unfair labor practice (ULP) complaint after considering evidence of bad-faith negotiating, such as refusal to meet to bargain, refusal to meet as frequently as necessary, refusal to submit proposals or counterproposals, undue delays in bargaining, undue delays in submission of proposals or counterproposals, inadequate preparation for bargaining, and other conduct that constitutes bad-faith negotiating; or

2 Propose a new contract, memorandum, or other change in agency policy and implement that proposal if the collective bargaining representative does not offer counterproposals in a timely manner.

(h) A filing of a ULP complaint against a collective bargaining representative must not further delay negotiations. Mission Area, agency, and staff office management officials must negotiate in good faith or request assistance from the FMCS and, as appropriate, the Panel, while a ULP complaint is pending.

(i) If negotiations last longer than 9 months, the Agency and Staff Office Heads must notify the President, through the OPM Director.

c. OneUSDA: Fairness, Transparency, and Accountability

(1) The representatives of agencies and staff offices and a union holding exclusive recognition for a bargaining unit are required to bargain in good faith on the "conditions of employment" of such employees (5 U.S.C. § 7102(2)). To ensure fairness and consistency, agency and staff office representatives must consult with OHRM and OGC when considering whether a change or proposal concerns a "condition of employment" requiring negotiations under the FSLMRS (see Appendix A). Additionally, agency and staff office representatives must also consult with OHRM and OGC to ensure proper application of labor-relations doctrine concerning the negotiability of a proposal, including the application of the "covered by" and compelling need principles discussed in this memorandum.

(2) Bargaining proposals fall into three categories under the FSLMRS:

(a) Subjects that are within the duty to bargain under section 7117 of the Statute (sometimes referred to as "mandatory" subjects of bargaining);

(b) Prohibited subjects of bargaining; and

(c) Permissive subjects of bargaining.

Proposals in the first category have been described as "negotiable" by the Federal Labor Relations Authority (FLRA). For example, "procedures" and "appropriate arrangements" are considered mandatory subjects of bargaining under sections 7106(a) and 7106(b) of the FSLMRS. Proposals in the second category are outside the duty to bargain under section 7117 because the parties are prohibited by law to negotiate over them. Proposals in the third category are bargainable only at the mutual election of the parties, and in accordance with EO 13836, Mission Area, agency, and staff office management officials may not negotiate over the substance of permissive subjects.

(3) Similarly, a union may submit proposals that constitute procedures under 5 U.S.C. § 7106(b)(2) or appropriate arrangements under 5 U.S.C. § 7106(b)(3). Mission Area, agency, and staff office management must be cognizant of whether such proposals are in fact procedures or arrangements, or whether they are "covered by" an existing CBA. (See, e.g., *NTEU*, 65 FLRA 509, 511-15 [2011], and *SSA*, 47 FLRA 1004, 1018 [1993], respectively.) The "covered by" doctrine is a defense which allows the agency not to engage in midterm bargaining over subjects already contained in or "covered by" an existing agreement. If an existing CBA already covers such matters, then management officials must not bargain over them.

(4) Agencies and staff offices may prescribe rules, regulations, and official declarations of policy that govern the resolution of matters within their agencies. Agencies must bargain over proposals that may conflict with agency rules and regulations. (See, e.g., *AFGE, Local 3824*, 52 FLRA 332, 336 [1996] (claim that proposal was contrary to agency regulation did not demonstrate that proposal was outside the duty to bargain); see also *AFGE, SSA Gen. Comm. and SSA Baltimore*, 68 FLRA 407, 409 [2015] (Pizzella, P., dissenting) (Agency conceded that the compelling-need exception did not apply because the union represented a majority of the employees to whom the [policy] was applicable.)) However, circumstances may allow management the option to impose a valid limitation on the scope of bargaining if a proposal conflicts with an agency or staff office regulation, or if there is a compelling need for the agency or staff office regulation. In other circumstances, an agency regulation may provide a basis for declaring a proposal nonnegotiable because of a compelling need. There are three "illustrative criteria" of compelling need:

(a) The regulation is essential to the effective and efficient accomplishment of

the mission of the agency;

(b) The regulation is necessary to ensure the maintenance of basic merit principles; or

(c) The regulation implements a mandate of law or Governmentwide regulation in an essentially nondiscretionary manner (5 U.S.C. § 7117, 5 CFR § 2424.50). Ultimately, a compelling need claim may only be resolved by the FLRA in a negotiability proceeding. (See, e.g., *AFGE, Local 1786*, 49 FLRA 534, 542 [1994].)

(5) Pursuant to the FSLMRS, union representatives are entitled to receive taxpayer-funded union time (commonly known as "official time") when engaged in the actual negotiation of a CBA, when in attendance at an impasse proceeding, or appearing at FLRA proceedings (5 U.S.C. § 7131(a) and (c)), and those entitlements remain intact under EO 13837. Aside from these statutory entitlements, an agency and its union(s) may negotiate an amount of taxpayer-funded union time that is "reasonable, necessary, and in the public interest" under 5 U.S.C. § 7131(d). To ensure fairness and consistency among USDA employees, and as faithful stewards of the taxpayers' dollars, we must appropriately balance the need for taxpayer-funded union time with our responsibility to carry out our mission and our obligations of accountability to our fellow employees and arrive at a negotiated solution that is the least burdensome to the taxpayer. Agreements authorizing official time under 5 U.S.C. § 7131(d) during any fiscal year that would cause the union time rate (i.e., the total hours of official time used in the bargaining unit divided by the number of bargaining unit members) to exceed 1 hour should ordinarily not be considered reasonable, necessary, and in the public interest, nor would it satisfy the "effective and efficient" requirement in the Statute. Mission Area, agency, and staff office management officials must commit the time and resources necessary to strive for a negotiated union time rate of 1 hour or less, and to fulfill their obligation to bargain in good faith.

(a) If a Mission Area, agency, or staff office agrees to authorize a union time rate greater than 1 hour, the Secretary must report this agreement or proposal to the President (through the OPM Director) within 15 days of the agreement or proposal, explaining why such expenditures are reasonable, necessary and/or in the public interest. Therefore, each Mission Area, agency, or staff office must notify the OHRM ELRD Director, OGC, and the relevant Under or Assistant Secretary 15 business days prior to any subordinate management official presenting and/or accepting a proposal that would result in a union time rate of greater than 1 hour for any bargaining unit. The notice must include any bargaining history related to the proposal and an explanation of why such expenditures are reasonable, necessary, and/or in the public interest. This reporting requirement does not apply to a union time rate established pursuant to an FSIP order or arbitrator's decision.

(b) Consistent with EO 13837, following are additional considerations when Mission Area, agency, and staff office management officials negotiate official time under 5 U.S.C. § 7131(d):

1 Employees may not engage in lobbying activities during paid time, except in their official capacities as an employee.

2 Employees must spend at least three-quarters of their paid time, each fiscal year, performing agency business or attending necessary training. Although employees may exceed 25 percent of the time during a fiscal year on official time for statutorily-mandated purposes (i.e., negotiating a CBA), that additional time must be tracked and will count towards the limitation in subsequent fiscal years.

3 Employees may not use official time to prepare or pursue grievances (including arbitration of grievances) brought against an agency under the negotiated grievance procedure. However, this prohibition does not apply to employees using official time to prepare for a grievance, to confer with a union regarding a grievance, or to present a grievance brought on the employee's own behalf; or employees using official time to challenge an adverse personnel action taken against them in retaliation for protected whistleblowing.

4 Each Mission Area, agency, and staff office must develop and implement procedures governing the authorization of official time that requires a requesting employee to specify the number of hours to be used, the specific purposes for which the time will be used, and allow the authorizing official to assess whether it is reasonable and necessary to grant such amount of time to accomplish such tasks. Employees may not use official time without advance written authorization from an appropriate management official, except where obtaining prior approval is deemed impracticable under regulations/guidance. A separate advance authorization is required for any use of time more than previously authorized hours or for purposes for which time was not previously authorized. For continuing or ongoing requests, requests for authorization renewals must be submitted not less than once per pay period. Any employee who uses official time without advance written agency authorization, or for purposes not specifically authorized, must be considered absent without leave (AWOL) and subject to discipline.

5 Nothing prohibits employees from taking unpaid leave to perform representational activities, including grievance processing.

(6) Consistent with EO 13837, Mission Areas, Agencies, and Staff Office management officials negotiating CBAs must not agree to pay for labor

organization expenses outside of official time, nor must they permit any employee, when acting on behalf of a union, the free or discounted use of government property or agency resources if such free/discounted use isn't generally available for non-agency business by employees when acting on behalf of non-Federal organizations—this includes office or meeting space, reserved parking spaces, phones, computers, and computer systems. Furthermore, management officials must not agree to reimburse employees for expenses incurred performing non-agency business, such as travel, per diem, or other expenses while an employee is on official time.

(7) Consistency is critical to deliver the effective and efficient service we have pledged to the American public, and to ensure the fairness, transparency, and accountability we owe our fellow USDA employees. However, the contractually required timeframes for agencies to provide unions advance notice of proposed organizational changes substantially differ. Therefore, Mission Area, agency, and staff office management officials negotiating CBAs must strive to achieve consistency in this area by consulting with OHRM and OGC when negotiating defined notice time periods for proposed organizational changes and other negotiable matters that are potentially appropriate for either substantive mid-term or impact and implementation bargaining *exceeding* 15 calendar days, and notice of meetings that may constitute "formal meetings" exceeding one work day.

(8) Grievance procedures should also reflect this Memorandum's foundational principles of integrity, consistency, dedication, fairness, mutual respect, and professional excellence. This generally means negotiating grievance procedures requiring formal written submissions and avoiding unnecessary or duplicative steps or practices that might delay the fair resolution of the covered matters. Consistent with EO 13839, Mission Area, agency, and staff office management officials negotiating CBAs must:

(a) Endeavor to exclude any dispute concerning removals for misconduct or unacceptable performance from negotiated grievance procedures. If an agreement cannot be reached, the respective management officials must request the assistance of the FMCS and FSIP. Within 30 days after the adoption of any CBA that fails to achieve this goal, the Secretary must provide an explanation to the President (through the OPM Director). Therefore, each Mission Area, agency, or staff office must notify the OHRM ELRD Director, OGC, and the relevant Under or Assistant Secretary 10 calendar days prior to any subordinate management official requesting assistance of the FMCS. The notice must include any bargaining history related to this issue and an explanation of the management proposal/position being presented for mediation. If mediation is unsuccessful, a similar notice will be sent to the same officials 10 calendar days prior to requesting assistance from the Panel, with a summary of the mediation efforts and an explanation of the proposal/position being presented by management. If the resulting language in the CBA differs from the stated goal of the EO 13839,

the Mission Area, agency, or staff office must notify the same officials 5 calendar days after adoption of the language, with an explanation of why the language was adopted; and

(b) Not subject assignment of ratings of record or awards of incentive pay (including cash awards, quality step increases, and recruitment, retention, or relocation payments) to grievance procedures or binding arbitration.

(9) Mission Area, agency, and staff office management officials must renegotiate any provisions of existing CBAs that are inconsistent with EO 13839 or any OPM regulations issued pursuant to EO 13839 at the earliest practicable date permitted by law, and must be guided in any negotiations by the provisions of EO 13839, to include the following:

(a) Supervisors and deciding officials should not be required to use progressive discipline. The penalty for an instance of misconduct should be tailored to the facts and circumstances;

(b) Suspension of an employee should not be required before proposing removal, except as may be appropriate under applicable facts.

(c) To the extent practicable, the written notice of adverse action should be limited to the 30 days prescribed in 5 U.S.C. § 7513(b)(1).

(d) In appropriate cases, Chapter 75 removal procedures (5 U.S.C. § 75, *Adverse Actions*) should be used to address instances of unacceptable performance.

(e) Mission Area, agency, and staff office management officials must not make any agreements (including CBAs) that:

1 Limit the agency's discretion to use Chapter 75 procedures to address unacceptable performance;

2 Require use of Chapter 43 procedures (5 U.S.C. § 43, *Performance Appraisal*) before removing an employee for unacceptable performance; or

3 Limit the agency's discretion to remove an employee without first engaging in progressive discipline.

(f) Opportunity periods to demonstrate acceptable performance should generally be limited to 30 days, except when management determines that a longer period is necessary to provide sufficient time to evaluate an employee's performance.

d. OneUSDA: Mutual Respect.

Mutual respect must be a cornerstone of our work at USDA. Therefore, all our employees, whether representing an agency, staff office, or a union, must bargain in good faith and treat their fellow USDA team members with respect, in compliance with USDA policies, including DR 4070-735-001, *Employee Responsibilities and Conduct*. We expect our employees to take their representational duties very seriously; however, flagrant misconduct or behavior that otherwise exceeds the bounds of protected activity is damaging to the good order and mission of USDA and will not be tolerated. Those engaging in such conduct may face potential discipline. (See *IRS, Chamblee, Ga.*, 60 FLRA 230 [2004]; *Davis-Monthan AFB*, 58 FLRA 636 [2003]).

4. EXISTING DELEGATIONS

Prior delegations of authority, administrative regulations, and other directives not inconsistent with the provisions of this SM must remain in full force and effect.

5. EFFECTIVE DATE AND TERMINATION

This SM is effective immediately, and will remain in effect for 1 year from the effective date or until such earlier time as the Department's applicable Departmental regulation(s) have been revised to incorporate the provisions of this SM.

/s/ SONNY PERDUE
SECRETARY OF AGRICULTURE

APPENDIX A

NEGOTIABLE CONDITIONS OF EMPLOYMENT

a. Negotiable Conditions of Employment

Although not exhaustive, and subject to a factual analysis, the following list of subjects represent types of "personnel policies, practices, and matters" the FLRA has deemed to be potentially negotiable as "conditions of employment:"

1. Duty Assignments – Details, temporary assignments, reassignments, rotations, tours-of- duty, shifts, part-time schedules, light duty, reasonable accommodations, etc.

2. Discipline – Last chance agreements, union representation, time limits, documentation, etc.

3. Drug Testing – Process for notification, verification, retesting, rehabilitation, transportation, etc.

4. Hours of Work – Flextime, alternate work schedules, telework, meal and rest periods, etc.

5. Employee Standards of Conduct – Financial obligations, outside employment, standards of conduct, etc.

6. Facilities, Equipment, and Services – Cafeteria, commissary, parking, day care centers, recreation facilities, uniforms, office work space, etc.

7. Procedures for Filling Vacancies/Promotions – Career ladder positions, merit promotion procedures, temporary promotion, seniority, re-promotion/rehire, etc.

8. Health and Safety – Employee assistance programs, smoking, solitary assignments, establishment of health and safety committees, physical fitness programs, etc.

9. Incentive Awards – Award criteria, establishment of award committees, quality step increases, etc.

10. Internal Security Procedures – Access procedures, customer complaint procedures, investigation, liability, searches, etc.

11. Leave Procedures – Administrative leave, compensatory time off, leave without pay, religious observance, sick leave, etc.

12. Negotiated Grievance Procedures and Arbitration Hearings – Employee options, scope and coverage, time limits, stays, etc.

13. Official Time – Contract negotiations, contract and grievance preparation time, union representation duties, official time request procedures, union training, etc.

14. Overtime Procedures – Assignment procedures, call-back, seniority, qualifications, etc.

15. Performance Appraisal and Evaluation – Counseling, frequency, documentation, performance-based action procedures, arbitration review, etc.

16. Reduction-In-Force – Bumping and retreat rights, competitive area, competitive level, furlough, layoff, rehire, etc.

17. Representation Rights – Access, advance notice, information disclosure, warnings, etc.

18. Training – Required training, retraining, instructor qualifications, documentation, reimbursement, etc.

19. Work Schedules – Shifts, stand-by, tours-of-duty, schedules, etc.

b. Non-Negotiable Proposals

Conversely, and again, subject to further factual analysis, the following non-exhaustive list of subjects represent types of "proposals or procedures" the FLRA has deemed to be non-negotiable:

1. A proposal that precluded agencies from exercising management rights unless or until other events (other than completion of bargaining or applicable appellate processes) occurred.

2. A proposal that delayed implementation of management actions that were "necessary for the functioning of the agency."

3. A proposal that conditioned the exercise of management rights on the agreement of employees or a union.

4. A proposal that required agencies to give advance notice of investigative interviews when the decisions not to do so were part of the agencies' investigative techniques.

5. A proposal that prevented agencies from determining employee qualifications.

6. A proposal that prescribed or precluded assignments to particular individuals identified by name or title.

7. A proposal that required management to assign employees certain duties, at the employees' option.

8. A proposal that precluded management from assigning employees certain duties.

9. A proposal that required management to reassign employees to sites designated by the employees.