

U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

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1. PURPOSE

This regulation contains the policies and general operating procedures for the labor relations program within the United States Department of Agriculture (USDA), as a means of implementing USDA's obligations pursuant to the Federal Service Labor Management Relations Statute (FSLMRS) and other relevant laws, rules, and regulations. This policy applies USDA-wide, including Mission Areas, Agencies, and Offices where a union holds or is seeking to hold exclusive recognition.

2. CANCELLATIONS

This regulation replaces USDA Departmental Regulation DR-4070-711, dated February 21, 2002, which is cancelled.

3. POLICY

The FSLMRS establishes a legal right for Federal employees to organize and bargain collectively with Agency management over employees' conditions of employment through labor organizations duly certified for such purposes. It is the policy of the USDA for management officials to meet their obligations under the FSLMRS, Presidential Executive Orders, and other controlling authorities. The USDA labor relations program promotes a collaborative approach to labor-management relations and a labor relations environment that improves the productivity and effectiveness of the Federal government and delivers the highest quality services to the American people.

USDA Mission Areas, Agencies, and Offices are encouraged to establish and maintain a labor relations strategic plan that contains at a minimum: an assessment of the labor-management relationship, goals for the labor relations program, and the operating strategy to be used.

4. BACKGROUND

The basis for labor relations in the Federal government is found in the FSLMRS, codified at 5 USC 7101-7135 (<http://www.flra.gov/statute>), and as implemented by regulations issued by the Office of Personnel Management (Title V, Code of Federal Regulations), the Federal Labor Relations Authority (<http://www.flra.gov/regulations>), the Federal Service Impasses Panel (http://www.flra.gov/chapxiv_subchapter_d), and case law. The authority to exercise the various rights and obligations under the FSLMRS and regulations flows from the Secretary of Agriculture to the Assistant Secretary for Administration (ASA) and, in turn, is delegated to management officials within the USDA. In order to ensure program consistency and integrity in the exercise of these responsibilities, it is necessary to establish a labor relations policy.

5. DEFINITIONS

Agency Head Review – A statutory requirement contained in 5 U.S.C. 7114(c) that negotiated collective bargaining agreements be reviewed for legal sufficiency and conformance with government-wide rules and regulations by the head of an agency. For the purposes of application of this provision of the law in the USDA, the Agency head is the Secretary of Agriculture.

Bargaining Unit – A grouping of employees that the Federal Labor Relations Authority has found appropriate under the criteria of 5 USC 7112 (community of interest, effective dealings, efficiency of operations) for collective bargaining purposes. Certain types of employees cannot be included in units, e.g., management officials and supervisors. See 5 USC 7112(b).

Collaborative Labor Relations Strategy – This approach to labor relations relies on interest based problem-solving where union and management officials resolve issues that would otherwise be addressed through traditional position-based processes. The collaborative strategy is characterized by pre-decisional involvement by union representatives in issue identification and resolution, effective communication between the parties, and mutual trust. It does not involve co-management of the Agency by the union.

Compelling Need Assertion – This is a position that may be taken by management in negotiations under 5 USC 7117 that seeks to impose a valid limitation on the scope of bargaining because there is a compelling need for a particular regulation. There are three "illustrative criteria" of compelling need: (1) the regulation is essential to the effective and efficient accomplishment of the mission of the agency, (2) the regulation is necessary to ensure the maintenance of basic merit principles, and (3) the regulation implements a mandate of law or Government-wide regulation in an essentially nondiscretionary manner. Disputed compelling need assertions may be submitted to the FLRA for resolution.

Compliance Labor Relations Strategy – This method of conducting labor relations relies on the enforcement of rights and obligations created by the FSLMRS, collective bargaining agreements, and past practices. It is characterized by the exercise of formal labor relations dispute resolution mechanisms, defined results or decisions, and application of law and regulations. The procedures employed by this approach are typically adversarial.

Exception to Arbitration Award – Pursuant to 5 USC 7122, either management or the union may raise a claim to the FLRA that an arbitration award is deficient because it is contrary to law, rule, or regulation or on grounds similar to those applied by Federal courts in private sector labor-management relations (e.g., award fails to draw its essence from the agreement, is based on a non-fact, denial of a fair hearing, and violation of public policy).

Exclusive Recognition - The rights a union is accorded as a result of being certified as the exclusive representative of the employees in a bargaining unit to, among other things, negotiate bargainable aspects of the conditions of employment of bargaining unit employees, be afforded an opportunity to be present at formal discussions, free dues check-off arrangements and, at the request of the employee, to be present at *Weingarten* examinations of unit employees.

Exclusive Representative - The labor organization certified as the exclusive representative of a unit of employees either by virtue of having won a representation election or because it had been recognized as the exclusive representative before passage of the FSLMRS.

Federal Service Labor Management Relations Statute (FSLMRS) – Contained in Title VII of the Civil Service Reform Act of 1978 and codified at 5 USC 7101-7135, this is the law upon which Federal sector labor relations programs are based. It includes the labor relations rights and responsibilities of management, unions, and employees, and it establishes the Federal Labor Relations Authority and the Federal Services Impasses Panel to administer its provisions.

Federal Labor Relations Authority (FLRA or Authority) – The independent agency established by the FSLMRS that is responsible for, among other things: deciding questions of representation; adjudicating unfair labor practices, negotiability appeals, exceptions to arbitration awards, and compelling need disputes; and prescribing criteria for granting national consultation rights. The FLRA is composed of 3 members and a General Counsel who are nominated by the President and confirmed by the Senate.

Federal Service Impasses Panel (FSIP or Panel) – The independent office established by the FSLMRS that is responsible for resolving bargaining stalemates that result from parties not being able to agree on language that will be included in a negotiated agreement. It is composed of at least seven (7) members appointed by the President.

Full-Performance Labor Relations Specialist – A Federal employee or contractor who possesses and has demonstrated a full range of labor relations competencies typically performed in a labor relations position classified at grade GS-12 or higher or equivalents.

Grievance - Under 5 USC 7103(a)(9), a grievance "means any complaint by: (a) an employee concerning any matter relating to the employment of the employee; (b) any labor organization concerning any matter relating to the employment of any employee; or (c) an employee, labor organization, or agency concerning -- (i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or (ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment[.]"

Impasse – The point during bargaining when the parties have reached a deadlock or stalemate. In order for the matter to be properly submitted to the FSIP, the parties are generally required to first seek mediation assistance from the Federal Mediation and

Conciliation Service (FMCS). Impasses in the Federal sector are controlled by the provisions of 5 USC 7119 and 5 CFR Part 2470.

Labor Organization –Pursuant to the requirements of 5 USC 7103(a)(4), an organization that might be certified by the FLRA to exclusively represent bargaining unit employees over matters pertaining to grievances and conditions of employment.

Level of Recognition –This is the organizational unit(s) of an Agency and a union for which the union was certified to represent bargaining unit employees. It is where the collective bargaining relationship officially exists.

Management –Managers, supervisors, and executives who exercise certain authorities on behalf of the USDA that affect conditions of employment.

National Consultation Rights – 5 USC 7113 gives certain certified labor organizations the right to be consulted on Agency-wide regulations before such regulations are promulgated. Section 7113 consultation rights are distinguished from section 7117(d)(1) consultation rights with respect to Government-wide regulations under which a union accorded such recognition must be consulted on proposed government-wide regulations before they are promulgated.

Negotiability Appeal – The process by which the FLRA resolves disputes between unions and agencies over whether management’s declaration that a union’s bargaining proposal is non-negotiable. See 5 USC 7117(c)(1) and 5 CFR Part 2424.

Unfair Labor Practice (ULP) – A violation of 5 USC 7116(a) by management and 5 USC 7116(b) by a union.

Union – See Labor Organization.

Weingarten Rights/Examination Notice – Under 5 USC 7114(a)(2)(b), an employee being examined in an investigation is entitled to union representation if: 1) the examination is conducted by a representative of the agency; 2) the employee reasonably believes that the examination may result in disciplinary action; and 3) the employee asks for representation.

6. DELEGATIONS OF AUTHORITY

The major Federal labor relations program functions that occur within the USDA, along with the officials who are authorized to perform those functions, are found in Appendix A. Requisite conditions associated with the exercise of these functions are also listed.

7. RESPONSIBILITIES

- a. Director, Office of Human Resources Management (OHRM) -
The Director is responsible for the oversight and general administration of the

Department's labor relations program. The Director also ensures various authorities as delegated from the Assistant Secretary for Administration are exercised effectively, issues labor relations policy, conducts program reviews, and evaluates program effectiveness. The OHRM Director (or designee) is also responsible for the following and all other implied duties related to administering the labor relations program:

- (1) Representing the USDA before the FLRA, OPM, and other Federal and non-Federal agencies and organizations in matters affecting the policy, statutory, and regulatory responsibilities of the USDA at the departmental level in such matters.
- (2) Coordinating with the USDA Office of the General Counsel (OGC) on legal matters relative to labor relations issues involving proposed and pending litigation in the courts.
- (3) Guiding, supporting, and directing USDA Mission Areas, Agencies, and Offices in any phase of activity dealing with labor relations matters, except that proposed or pending court litigation shall be coordinated with OGC.
- (4) Establishing procedures to ensure the prompt receipt of information, reports, and correspondence as determined by OHRM regarding significant labor relations issues.

b. Heads of Mission Areas, Agencies, and Offices -

Heads of Mission Areas, Agencies, and Offices are responsible for:

- (1) Implementing the USDA labor relations program consistent with the FSLMRS and this regulation.
- (2) Establishing a point-of-contact for labor relations at the Mission Area/Agency/Office level if a collective bargaining relationship exists within the Mission Area, Agency, or Office.
- (3) Ensuring the requirements for notification and coordination with the Department, as described in this regulation, are met.
- (4) Providing information and/or data to the Department, as requested, for USDA's use and/or for responding to OPM or other Federal or non-Federal agencies.

c. USDA Labor Relations Officer -

The USDA Labor Relations Officer (LRO) is responsible for overall implementation of the Department's labor relations program by exercising those authorities delegated from the Director of OHRM including: conducting Agency head reviews of collective bargaining agreements; initiating and conducting national consultations; issuing annual *Weingarten* notices at the Department level and reminders to the Mission Areas, Agencies, and Offices; and representing the USDA consistent with USDA delegations of authority. The LRO serves as the labor relations subject matter expert providing technical advice and assistance to the OHRM Director. The LRO also: provides technical advice, assistance, and training to USDA Mission Areas, Agencies, and Offices; conducts regular meetings of LROs from Mission Areas, Agencies, and Offices; and serves as the principal liaison in labor relations matters between the Department and other Federal and non-Federal agencies or organizations.

- d. USDA General Counsel -
The General Counsel or designee will serve as the principal contact with the Department of Justice on cases for which the USDA seeks judicial review of FLRA decisions. On request, the General Counsel may provide advice and assistance to the Director, OHRM. Mission Areas, Agencies, and Offices involved in third party proceedings (e.g., Unfair Labor Practice hearings, arbitrations) and other matters of law with respect to labor issues may only request OGC assistance through the OHRM Director.
- e. USDA Mission Area Human Resources Directors -
Mission Area Human Resources Directors are responsible for labor relations program implementation within their respective areas of responsibility through the exercise and appropriate delegation of authorities, developing strategic labor relations plans, carrying out and supplementing USDA program policy, and performing internal program oversight. They ensure that adequate resources are made available to meet program requirements and meet the goals established in their strategic labor relations plans.

8. PROCEDURES

- a. Questions Concerning Representation
The USDA LRO must be notified by the Mission Areas, Agencies, and Offices of any union organizing efforts for certification as the exclusive representative. A copy of all related representation petitions filed by a labor organization shall be sent to the LRO. Where there is doubt as to whether the group of employees that a labor organization seeks to organize is an appropriate unit under the FSLMRS, the Mission Area, Agency, or Office will promptly consult with the USDA LRO. The USDA LRO must be provided a copy of any Certification of Representation issued by the FLRA within three (3) business days after receipt by the Mission Area, Agency, or Office. The USDA LRO will promptly notify OPM and request a bargaining unit status code which, once assigned, will be provided to the involved headquarters locals and the appropriate Mission Area, Agency, or Office.
- b. National Consultation Rights
If requested, labor organizations that qualify under the criteria established by the FSLMRS and 5 CFR 2426 will be granted National Consultation Rights (NCR) by the Department, Mission Areas, Agencies, or Offices, as appropriate.
- c. Negotiations
At least thirty (30) calendar days prior to commencing negotiations for new or modified collective bargaining agreements subject to review by the Secretary of Agriculture, the Mission Area, Agency, or Office shall notify the USDA LRO that contract negotiations are anticipated with a description of all subjects that are expected to be difficult to reach agreement.

d. Agency Head Review

In accordance with 5 USC 7114(c), USDA Mission Areas, Agencies, and Offices shall submit to the USDA LRO for agency head review (AHR) all: 1) term and master collective bargaining agreements (CBAs) ; 2) supplemental agreements however designated, e.g., Letter of Agreement, Memorandum of Understanding, etc; 3) term, master, and supplemental agreements that the parties agree to rollover; 4) provisions imposed on the parties by the FSIP or by an FSIP-appointed arbitrator; and 5) final proposals before they are submitted to voluntary binding arbitration **not** directed by the FSIP.

The following procedures apply:

- (1) The Mission Area, Agency, or Office will provide the USDA LRO executed (i.e., signed) collective bargaining agreements for review within three (3) business days of: 1) execution of the agreement; 2) receipt of an order, decision, or award from the FSIP or an arbitrator appointed by the FSIP; or 3) agreement of the parties to rollover an existing agreement.
- (2) In the case of proposals that are intended to be submitted to voluntary binding arbitration **not** directed by the FSIP, management shall provide the USDA LRO the final proposals not less than ten (10) workdays prior to their submission to the arbitrator.
- (3) Submission shall be by e-mail, fax, express mail or hand delivery. Only one copy of the signed agreement (or final proposals if voluntary arbitration will be used) need be submitted. Electronic copies should be forwarded whenever possible.
- (4) The review will be completed according to the requirements of the FSLMRS.

e. Negotiability Appeals

The Mission Area, Agency, or Office shall notify the USDA LRO of any negotiability appeals filed by a union in response to management's allegation that a bargaining proposal is non-negotiable under the FSLMRS. The following procedures apply:

- (1) Initial notification by the USDA Mission Area, Agency or Office, along with a copy of the written allegation of non-negotiability, must be sent to the USDA LRO within three (3) business days after issuance by management.
- (2) Copies of all appeal documents submitted by the union and FLRA orders received by a Mission Area, Agency or Office, must be submitted to the USDA LRO within three (3) business days of receipt by management.
- (3) Prior to filing statements of position with the FLRA or responses to union replies, USDA Mission Areas, Agencies or Offices must consult with the USDA LRO.
- (4) The USDA LRO must be provided by management copies of all documents served on the FLRA.

f. Compelling Need Assertions

Mission Areas, Agencies, and Offices may not agree to proposals that are inconsistent with Departmental rules or regulations without prior Departmental approval. Requests to bargain exceptions to Department-wide rules or regulations must be submitted to the USDA LRO by memorandum describing the reasons for the request

for exceptions and containing the language of the specific proposal(s).

Only the OHRM Director, or designee, may grant exceptions to Departmental rules and regulations to permit negotiations on specific proposals. If a request for an exception is denied because of a “compelling need” for the rule or regulation, the Department will assist the Mission Area, Agency, or Office defend this determination before the FLRA if contested.

g. Arbitration/Impasses/Unfair Labor Practices

Normally, notification to the Department of pending hearings before arbitrators, impasse resolution before the FSIP, and ULPs at the FLRA are not required. However, in the event the Mission Area, Agency, or Office has concerns regarding such cases and/or does not believe there is adequate expertise within their organization to address the matter, the Mission Area, Agency, or Office should consult with the USDA LRO so that a joint decision on how to proceed might be made.

h. Judicial Reviews of FLRA Orders; FLRA-Initiated Enforcement/Temporary Relief/Restraining Orders; and Exceptions to Arbitrator Awards

Prior to deciding whether to pursue a review of an FLRA decision or an exception to an arbitration award, the USDA Mission Area, Agency, or Office will contact the USDA LRO to discuss the case and merits of seeking the action. Immediate notice to the USDA LRO is also required by a Mission Area, Agency, or Office upon learning that the FLRA or FLRA General Counsel has initiated action to petition the U.S. Court of Appeals or U.S. District Court for enforcement of FLRA orders or temporary relief from actions giving rise to a ULP.

(1) Judicial Review of FLRA Orders.

After contacting the USDA LRO, the Mission Area, Agency, or Office seeking the review must submit a written request to the OHRM Director. The request must contain the reasons for the request, including legal arguments and appropriate citations. The request must be received by the OHRM Director no later than twenty (20) days after the date the FLRA order was issued. The OHRM Director will brief the Assistant Secretary for Administration (ASA) and USDA Office of the General Counsel (OGC). After consultation with the ASA, OGC will decide whether to pursue the review with the Department of Justice and notify the appropriate parties of the decision.

(2) Exceptions to Arbitration Awards.

After contacting the USDA LRO, the Mission Area, Agency, or Office may proceed to file the exception with the FLRA in accordance with FLRA regulations.

9. RECORDS

USDA Mission Areas, Agencies, and Offices, at the level of recognition, are expected to maintain the records indicated below. Records listed may be maintained at offices below the level of recognition consistent with the delegation of labor relations authorities.

- a. FLRA certification and FLRA representation decisions. Copies must be submitted to the USDA LRO.
- b. Master collective bargaining agreements, current subordinate or mid-term agreements, and any supplemental agreements or memorandums of understanding. Copies must be submitted to the USDA LRO.
- c. Grievance and arbitration files including Agency and arbitrator decisions, exceptions filed with the FLRA, and FLRA decisions.
- d. Unfair labor practice (ULP) files including charges, FLRA orders, agency responses, settlement agreements, complaints issued, hearing records, and FLRA decisions, compliant compliance records (e.g. postings).
- e. Impasse records, including positions presented by the parties to the Federal Services Impasses Panel (FSIP), mediated agreements, and FSIP orders, decisions and awards.
- f. Negotiability case files including union requests for declarations, agency declarations, petitions filed, position filings, and FLRA decisions.
- g. Strategic labor relations plans, collaborative labor-management agreements and/or charters, and meeting minutes, accomplishment reports, or records of agreements as applicable. Copies of the strategic plans and collaborative agreements or charters must be submitted to the USDA LRO.

APPENDIX A
DELEGATIONS OF LABOR RELATIONS AUTHORITIES IN USDA

x = authorized to perform listed function. Function may be further re-delegated to a line manager or designated staff within USDA.

/ = provides recommendations and substantive staff work in the completion of the listed function

O= authorized to perform the listed function and the function may not be re-delegated.

LR Function and Authority	USDA				Conditions
	ASA	OHRM Director	USDA LRO	Mission Areas, Agencies, and Offices	
1. Establish USDA policy, direction and guidance.	X	X	/		
2. Performs national consultation (5 USC 7113)	X	X	O		
3. Represents USDA in negotiating collective bargaining agreements, including the authority to execute collective bargaining agreements (CBA).	X	X	X	X	May be delegated to USDA line managers at level of recognition and to line managers below that level if subordinate CBA's are permitted in the Master CBA provided a full performance level Labor Relations Specialist is a negotiation team member.
4. Makes allegations concerning the duty to bargain-negotiability (5 CFR 2424, Subpart A)	X	X	X	X	May be delegated to USDA line managers at the level of recognition provided a full performance level LR Specialist concurs. The USDA LRO must be notified of formal declarations of non-negotiability.
5. Represents the USDA before the FLRA in negotiability disputes (5 CFR 2424, Subpart C& D)	X	X	X	O	Formal declarations of non-negotiability must be provided to the USDA LRO for review as well as all subsequent submissions to the FLRA by both labor and management.

6. Represents the USDA at FSIP proceedings-impasses (5 CFR, Part 2470)	X	X	X	X	Representation team must include a full performance level LR Specialist. USDA LRO must be notified of any requests for assistance by the FSIP.
7. Agency Head Review (5 USC 7114)	X	X	O		USDA LRO must receive executed CBA within 3 business days of contract execution.
8. Assertion of compelling need (5USC 7117 & 5 CFR 2424.50)	X	X	O		Requests for exceptions to department-wide rules or regulations must be submitted to USDA LRO.
9. Filing exceptions to arbitration awards with the FLRA (5 USC 7122 & 5 CFR 2425)	X	X	X	X	Mission Areas, Agencies, and Staff Offices must consult with USDA LRO prior to filing exceptions.
10. Agency representation for election, unit clarification or consolidation petitions (5 CFR 2422)	X	X	X	X	A full-performance level LR Specialist must perform this function.
11. Agency representation for unfair labor practice (ULP) proceedings (5 CFR 2423)	X	X	X	X	Function to be performed by a full-performance level LR Specialist, OGC attorney or qualified contract counsel.
12. Requesting judicial review of FLRA decisions (5 USC 7123)	X	/	/		Consult with USDA LRO prior to submitting written request to OHRM Director. USDA General Counsel, after consultation with the ASA, will decide whether Department will submit request to the Department of Justice.
13. Agency representative in arbitrations	X	X	X	X	Function to be performed by a full-performance level LR Specialist, OGC attorney or qualified contract counsel.

14. Issuing annual <i>Weingarten</i> notice (5 USC 7114(a)(3))	X	X	X	X	Mission Areas, Agencies, and Offices responsible for distribution of notices to bargaining unit employees after notices are issued.
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