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 -- shall be reflected in the negotiation and administration of collective bargaining agreements (CBA).

2. ACTIONS ORDERED

Mission Area, agency, and staff office management officials shall comply at all times with the Federal Service Labor-Management Relations Statute (FSLMRS), 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, Departmental Regulation (DR) 4070-711, Labor Relations (dated September 30, 2010), 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.

In exercising these rights, all USDA Mission Areas, agencies, and staff offices shall 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. OneUSDA: Departmental Collaboration, Notification, and Clearance

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 shall send a notice to the USDA Labor Relations Officer (LRO), 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 shall be guided and informed by applicable Departmental Regulations, this Memorandum, and any other guidance provided by USDA leadership; and

(c) Mission Area, agency, and staff office management officials negotiating CBAs shall keep the affected Under or Assistant Secretary or staff office head reasonably informed regarding the progress of such negotiations.

(2) In the interest of transparency, Mission Area, agency and staff office management officials are directed to ensure a copy of all currently enacted CBAs are provided to the USDA LRO for publication on the Departmental website.

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

c. OneUSDA: Fairness, Transparency, and Accountability

(1) The representatives of an agency 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 representatives shall 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 representatives shall 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 herein.

(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 should not occur unless specifically approved by the relevant Mission Area, agency, or staff office head.

(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). Agency 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.

(4) Agencies and staff offices may prescribe rules, regulations, and official declarations of policy that govern the resolution of matters within their particular agencies. Generally speaking, 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 regulation, or if there is a compelling need for the particular agency regulation. In other circumstances, an agency regulation may provide a basis for declaring a particular 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”):

(a) When engaged in the actual negotiation of a CBA; and

(b) When in attendance at an impasse proceeding (5 U.S.C. §7131(a)).

Also, 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.

(6) 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 shall 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.

(7) 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.

d. **OneUSDA: Mutual Respect.**

Mutual respect must be a cornerstone of our work at USDA. Therefore, all of our employees, whether representing an agency or a union, shall bargain in good faith and treat their fellow USDA team members with respect, in compliance with USDA policies, including DR 4070-735, 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, and those
engaging in such conduct may face potential discipline. *IRS, Chamblee, Ga.*, 60 FLRA 230 (2004); *Davis-Monthan AFB*, 58 FLRA 636 (2003).

3. EXISTING DELEGATIONS

Prior delegations of authority, administrative regulations, and other directives not inconsistent with the provisions of this Secretary’s Memorandum (SM) shall remain in full force and effect.

4. EFFECTIVE DATE AND TERMINATION

This SM is effective immediately, and shall remain in effect for one 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 nonnegotiable:

   (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.