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CHAPTER 711. LABOR-MANAGEMENT RELATIONS IN THE VA

SECTION A. GENERAL PROVISIONS

1. SCOPE

a. This issue prescribes policies, principles, and procedures governing relationships with labor organizations in the VA and applies to all categories of employees in the VA. The provisions of this issue do not apply, however, to any labor organization or local of a labor organization composed predominately of non-United States citizen employees located outside the United States.

b. Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization which represents other individuals to whom such provision applies; or which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

2. POLICY

a. It is the policy of the VA to recognize and deal with lawful labor organizations on matters of concern to the employees they represent, and to place primary reliance on informal settlement of any differences or disputes at the earliest stage possible by discussion between VA management and representatives of labor organizations.

b. The right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest; contributes to the effective conduct of public business; and facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment. The public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operation of the Government.

c. VA management shall carry out their duties in a manner consistent with the terms and spirit of personnel policies, principles and procedures that encourage the highest standard of employee performance and the most efficient accomplishment of VA operations.

d. A copy of this issue shall be provided each division and service chief, or official of comparable level, throughout the VA.

e. Each labor organization that is granted exclusive recognition at the local level shall be provided with a copy of this issue and notified that upon its request to the local Human Resources Management Officer, it will be given a copy of MP-5, part I, and all changes and Department supplements thereto. Where professional personnel employed under 38 U.S.C. ch. 73 are included in the unit for which an organization has received exclusive recognition, the organization shall be notified at upon request, it will be given a copy of MP-5, part II, and all changes and

department supplements thereto. Where canteen personnel employed under 38 U.S.C. ch. 73 are included in the unit for which an organization has received exclusive recognition, the organization shall be notified that upon request it will be given a copy of Veterans Canteen Service Operating Procedures, VCS-1, and all changes thereto.

f. Labor organizations holding exclusive recognition will automatically qualify for dues withholding by payroll deduction for members in their bargaining units without a service fee. Additionally, unions may qualify for dues withholding for employees in an appropriate unit where no union holds exclusive recognition upon certification by the Authority that 10 percent of the employees in the appropriate unit have membership in the labor organization.

3. REFERENCES

a. 5 U.S.C. ch. 71.

b. Legislative History of the Federal Service Labor-Management Relations Statute, Title VII of the Civil Service Reform Act of 1978, Committee Print No. 96-7.

c. EO 12871 Labor-Management Partnership

4. DEFINITIONS

a. Employee. "Employee" means any employee of the VA, including Veterans Canteen Service personnel, but does not include a supervisor, management official, or confidential employee for the purpose of exclusive recognition or National Consultation Rights.

b. Supervisor. "Supervisor" means an individual employed by the VA having authority in the interest of the VA to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term supervisor includes only those individuals who devote a preponderance of their employment time to exercising such authority.

c. Management Official. "Management official" means an individual employed by the VA in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the VA.

d. Confidential Employee. "Confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.

e. Professional Employee. A "Professional employee" means:

(1) An employee engaged in the performance of work:

(a) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual mechanical, or physical activities);

(b) Requiring the consistent exercise of discretion and judgment in its performance;

(c) Which is predominately intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

(d) Which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time;

or

(2) An employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (1)(a) above and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee as described above.

f. VA Management. "VA management" means the Secretary and all management officials, supervisors, and other representatives of management employed in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency.

g. Labor Organizations. "Labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include--

(1) An organization which, by its constitution, by-laws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status or handicapping condition;

(2) An organization which advocates the overthrow of the constitutional form of government of the United States;

(3) An organization sponsored by an agency; and

(4) An organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike.

h. Labor Organization Representative. A "labor organization representative" is an individual who may or may not be a VA employee, specifically designated at any time by a labor

organization in dealing with management. This term, for purposes of this issue, is intended to cover the wide variety of titles used by different labor organizations to identify their officials such as officers, stewards, committeemen, negotiators, etc.

i. Authority. "Authority" means the Federal Labor Relations Authority established by Title VII of the Civil Service Reform Act of 1978.

j. Panel. "Panel" means the Federal Service Impasses Panel.

k. The Act. "The Act" means the Civil Service Reform Act of 1978.

5. RESPONSIBILITY

a. The Office of Deputy Assistant Secretary for Human Resources Management is responsible for:

(1) Planning and formulating agency policies and procedures for the VA Labor-Management Relations program.

(2) Acting as the liaison with the national headquarters of labor organizations and representing the VA in national level negotiations and consultations, as appropriate, under consolidated unit recognitions or national consultation rights.

(3) Representing the VA with the Authority and the Panel on labor-management relations policies and programs.

(4) Providing leadership in the establishment of a positive and effective labor-management relations program at all levels of the agency.

(5) Appraising the effectiveness of the VA Labor-Management Relations Program and making policy changes that may be required.

(6) Developing training aids to assist field facility management in the conduct of such programs.

b. General Counsel is responsible for:

(1) Furnishing legal advice in all matters arising under the VA Labor-Management Relations Program.

(2) When legal representation by the General Counsel is in the interest of the Government, represents the VA in formal administrative or judicial proceedings under the Act. Provides legal guidance and assistance in consolidated unit bargaining.

c. Administration Heads, Deputy Assistant Secretaries, Directors of Staff Offices and field facilities have the following positive responsibilities:

(1) Carrying out the Labor-Management Relations Program involving employees under their jurisdiction in conformance with the requirements of this issue.

(2) Taking such measures as necessary to insure that the actions and demonstrated attitudes of management and supervisory officials under their jurisdiction are consistent with the provisions of this issue.

(3) Protecting employees in the exercise of their rights under the provisions of this issue.

(4) Seeing that management and supervisors are properly trained and indoctrinated in this program area.

(5) Assuring that employees are informed of their rights and obligations under the provisions of this issue, and that each employee is notified where a copy of this issue is available for reference or study.

d. HRM Officer. The HRM Officer, or in Central Office the Team Leader, Headquarters and Executive Resources Team, is responsible for:

(1) Participating in consultations and negotiations between labor organizations and management officials.

(2) Furnishing management and supervisory officials technical advice, assistance, and interpretation of labor-management policies and regulations.

(3) Training management and supervisory officials in their responsibilities in the Labor-Management Relations program.

(4) Acting as the liaison with representative of local labor organizations.

(5) Acting for the field facility director in developing and maintaining a sound program of effective Labor-Management Relations.

e. Regional Counsel is responsible for:

(1) Furnishing advice to field facility directors in all legal matters arising under the VA Labor-Management Relations program.

(2) When authorized by the General Counsel represents field facility management in formal proceedings under the Act. Provides legal assistance and guidance in negotiations when requested by field facilities.

6. STANDARDS OF CONDUCT

The Office of Human Resources Management is responsible for the enforcement of the Standards of Conduct for labor organizations. Field facilities having questions involving the application of these Standards will refer them to the Office of Human Resource Management (051), through appropriate channels.

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SECTION B. EMPLOYEE PARTICIPATION IN ORGANIZATION ACTIVITIES

1. RIGHT TO ORGANIZE AND JOIN

a. Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal and each employee shall be protected in the exercise of such right. Except as otherwise provided by appropriate law or regulation, such right includes the right:

(1) To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

(2) To engage in collective bargaining with respect to conditions of employment through representative chosen by employees, under provisions of the Act.

b. No interference, restraint, coercion, or discrimination shall be practiced in the VA to encourage or discourage membership in any labor organization. VA management, including supervisors, will maintain a posture of strict neutrality with respect to employees joining or not joining any labor organization.

2. CONFLICT OF INTEREST

a. Employees and supervisors may not participate in the management of, or represent, or assist a labor organization when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

b. VA Management, including supervisors, and employees directly engaged in personnel work in other than a clerical capacity may not participate in the management of, or represent or assist, any labor organization.

c. Employees whose assigned duties require that they represent the interests of management in consultations or negotiations with representatives of labor organizations are excluded from participating in the management of, or representing a labor organization.

d. Field facility directors may determine that a conflict or apparent conflict of interest exists with respect to additional individual positions or categories of positions and limit employees in these positions from participating in the management of, representing or assisting a labor organization.

e. Occasionally, an employee who is representing, participating in the management of, or otherwise assisting a labor organization will come into a conflict of interest situation as the result of a promotion or other personnel action, to a position as noted above. Under such circumstances

the employee and the labor organization shall be promptly advised of the need to arrange for a replacement. Employees may be permitted to remain in such positions during the period of any appropriate appeals.

3. RESERVED EMPLOYEE RIGHTS

Recognition of a labor organization does not preclude an employee from: (a) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or (b) exercising grievance or appellate rights established by law, rule or regulation, except when a grievance or appeal is processed under a negotiated grievance procedure. In such a case, the only representative an employee can have is the exclusive union or a representative approved by the union.

4. SOCIAL, FRATERNAL AND OTHER ASSOCIATIONS

The VA is not precluded from consulting or dealing with a religious, social, fraternal, professional, or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members. Consultations and dealings shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy covering employees in the unit, or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.

5. RIGHTS OF VETERANS ORGANIZATIONS

The VA is not precluded or restricted in consultations and dealings with a veterans organization on matters of particular interest to employees with veterans preference.

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SECTION C. NATIONAL CONSULTATION RIGHTS

1. ACCORDING NATIONAL CONSULTATION RIGHTS

A labor organization which is the exclusive representative of a substantial number of the employees of the VA, as determined in accordance with criteria prescribed by the Authority shall be granted national consultation rights by the VA. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

2. RELATIONSHIPS WITH MANAGEMENT UNDER NATIONAL CONSULTATION RIGHTS

Any labor organization having national consultation rights shall be informed of any substantive change in conditions of employment proposed by the VA and be permitted reasonable time to present its views and recommendations regarding the changes. If any views or recommendations are presented, the VA shall consider the views or recommendations before taking final action on any matters with respect to which the views and recommendations are presented, and the VA shall provide the labor organization a written statement of the reasons for taking the final action. Nothing in this section shall be construed to limit the right of the VA or any exclusive representative to engage in collective bargaining.

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SECTION D. EXCLUSIVE RECOGNITION

1. RECOGNITION AS THE EXCLUSIVE REPRESENTATIVE

The VA shall recognize labor organizations as the exclusive representative of an appropriate bargaining unit when they have been certified in accordance with the Rules and Regulations of the Authority.

2. REQUIRED INFORMATION

An organization seeking exclusive recognition is required to file a petition with the appropriate Authority Office and submit the following to the VA:

- a. A roster of its officers and representative;
- b. A copy of its constitution and bylaws;
- c. A statement of its objectives.

3. POSTING NOTICES

a. Upon the request of the Authority, after the filing of a petition, the field facility shall post copies of a notice to all employees in places where notices are normally posted affecting the employees in the unit involved in the proceeding.

b. The notice shall remain posted for a period of 10 days. It shall be posted conspicuously and shall not be covered by other material, altered or defaced.

4. FURNISHING INFORMATION TO THE FEDERAL LABOR RELATIONS AUTHORITY

Upon receipt of a request, the field facility shall promptly furnish the Authority with the names, addresses and telephone numbers of all labor organizations known to represent any of the employees in the claimed unit and other required information.

5. CHALLENGING THE SHOWING OF INTEREST OR THE STATUS OF A LABOR ORGANIZATION

a. The field facility director may, where appropriate, enter a challenge to the organization's showing of interest or status as a labor organization by filing with the Authority. Such a challenge, supported by evidence, must be filed with the Authority within 10 days of the posting of notice as provided in paragraph 3 of this section.

b. If no challenge is filed or if a challenge is dismissed, local management shall promptly take steps to arrange a meeting with the parties to attempt to reach an agreement on the appropriate unit.

6. DETERMINATION OF APPROPRIATE UNITS FOR EXCLUSIVE RECOGNITION

a. Appropriate units may be established on any basis which will insure a clear and identifiable community of interest among the employees concerned and will promote effective labor-management dealings and efficiency of VA operations.

b. An appropriate unit is based on a factual situation; what is appropriate must be decided on a case-by-case basis. Field facility directors in responding to petitions shall consider such factors as:

(1) The extent to which the management official who is responsible for the activities of the unit has authority to make administrative decisions on negotiable personnel matters;

(2) Whether the unit will promote effective labor organization-management dealings and efficiency of agency operations;

(3) Whether the employees have similar duties, working conditions, skills, place of work, organizational structure and are subject to the same personnel policies and management;

(4) Whether all field facility employees with similar interests are included in the unit;

(5) The past history of dealings between management and employees in the unit.

c. No unit shall be established for purposes of exclusive recognition solely on the basis of the extent to which employees in the proposed unit have organized.

d. A labor organization may seek consolidation of existing exclusively recognized units in accordance with Rules and Regulations of the Authority. Facilities will not petition for any consolidation of units without prior approval of VA Central Office.

7. RESPONSE TO THE AUTHORITY

a. Within 10 days after the date of posting the notice of petition, the field facility shall file a response with the Authority. In this response, the field facility may raise any matter relevant to the petition. A copy of this response shall be furnished to all labor organizations involved.

b. If there is agreement between the field facility and the labor organization(s) involved regarding the appropriate unit and other relevant issues, the field facility shall in its response stipulate its agreement for a consent election subject to approval of the Authority.

c. If there is no agreement on the appropriate unit or other relevant issues, the field facility shall in its response give in full its reasons for objecting to the unit or its position on the matter.

8. ELECTIONS

a. Once the appropriate official of the Authority determines that a secret ballot election is to be conducted, management shall promptly meet with the labor organization(s) involved to arrange election details. A stipulation should be made as to the eligibility period for participation in the election, the dates, hours, and places of the election, the designations on the ballot and other related election details.

b. In the event that the parties cannot agree on the election details contained in paragraph a, the Authority will decide these matters.

c. Elections shall be governed by the Rules and Regulations of the Authority.

9. OBJECTIONS TO AN ELECTION

a. Upon the conclusion of an election, the Authority will furnish the field facility and other parties with a tally of ballots. Within 5 days after the tally of ballots has been furnished, the field facility may file with the Authority an original and two copies of objections to the conduct of the election or conduct which may have improperly affected the results of the election. Objections must be supported by a short statement of the reasons for the objections. Copies of the objections shall be served simultaneously on the other parties and a statement of service shall be made.

b. The election may be set aside, a hearing scheduled, or a Certification of Results of Election issued.

10. NOTIFICATION TO CENTRAL OFFICE

a. Field facilities shall promptly furnish the Office of Human Resources Management (051), through appropriate channels, a copy of the following documents as each is received:

(1) Petition for an election to determine if a labor organization should be recognized as the exclusive representative of employees in a unit;

(2) Petition to consolidate existing exclusively recognized units.

(3) Petition for an election to determine if a labor organization should replace another labor organization as the exclusive representative of employees in a unit;

(4) Petition for an election to determine if a labor organization should cease to be the exclusive representative of employees in a unit;

(5) Petition to clarify an existing unit or amend a certification;

(6) A tally of ballots following an election;

(7) Certification of Results of Election;

(8) Notice of Hearing;

(9) Hearing transcripts;

(10) Decisions issued after hearings;

(11) Certification of Representative. When furnishing Central Office a copy of the Certification of Representative, field facilities will include a breakdown on the number of each of the following types of employees in the unit: wage system; nonprofessional General Schedule; professional General Schedule; professional (title 38 U.S.C.); Veterans Canteen Service (specify the number of non-appropriated fund "retail clerical and administrative" positions and "craft and trade" positions).

(12) A copy of any appeals or petitions for review to the Authority.

b. Field facilities shall notify the Office of Human Resources Management (051), through appropriate channels, prior to:

(1) Filing a petition with the Authority for an election to determine if a labor organization should cease to be the exclusive representative of employees in a unit ("RA" petition).

(2) Filing a petition with the Authority to clarify an existing unit ("CU" petition) or amend a certification ("AC" petition).

CHAPTER 711. LABOR-MANAGEMENT RELATIONS IN THE VA

SECTION E. RELATIONSHIPS UNDER EXCLUSIVE RECOGNITION

1. GENERAL

a. When a labor organization has been accorded exclusive recognition, it is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. It is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

b. VA management has an obligation to negotiate seriously, diligently and in good faith. Management shall seek mutually acceptable provisions which enhance the VA's mission with full regard to the interests of employees concerned.

2. REPRESENTING EMPLOYEES

a. An exclusive representative shall be given the opportunity to be represented at any formal discussions between one or more representatives of the agency and or more employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other general conditions of employment.

b. An exclusive representative shall be given the opportunity to be represented at any examination of an employee in the unit by a representative of the agency in connection with an investigation if (1) the employee reasonably believes that the examination may result in disciplinary action against the employee, and (2) the employee request representation. Employees in exclusive bargaining units shall be notified of this right annually.

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SECTION F. NEGOTIATING AGREEMENTS

1. NEGOTIATIONS

a. The VA and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement with respect to personnel policies, practices and matters affecting working conditions.

b. Mandatory Provisions. Each agreement entered into with a labor organization shall contain as a minimum:

(1) A statement identifying the parties to the agreement and covering their mutual rights and obligations under its terms;

(2) A specific definition of the unit covered by the agreement;

(3) A statement designating the duration of the agreement:

(a) Agreements shall be for a minimum period of 1 year, but shall not exceed 3 years duration. Agreements which include automatic renewal clauses must state that the renewal will be for 1- or 2- or 3-year periods as desired and that each new 1- or 2- or 3-year period will be a new duration period with a new effective date. The above does not apply to local supplements to master agreements. The duration and renewal of local supplements are controlled by the provisions of the appropriate master agreement.

(b) Agreements that contain automatic renewal clauses must also include a statement that either party may terminate the agreement at the end of any duration period by notifying the other at least 60 but not more than 105 days in advance of the date the agreement would be renewed.

(4) Provision that final authority for approval of agreements, amendments and modifications rests with the appropriate officials in VA Central Office;

2. NEGOTIATED GRIEVANCE PROCEDURE

a. Collective bargaining agreements shall provide procedures for the settlement of grievances, including questions of arbitrability. Negotiated grievance procedures shall be

(1) Fair and simple

(2) Provide for expeditious processing, and

(3) Include procedures that

(a) Assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances.

(b) Assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(c) Provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the VA.

b. The coverage of the procedure shall be negotiated by the parties to the agreement, however, it shall not cover any grievance concerning

(1) Prohibited political activities

(2) Retirement, life insurance, or health insurance,

(3) Suspension or removal for reasons of national security,

(4) Any examination, certification or appointment, or

(5) The classification of any position which does not result in the reduction in grade or pay of an employee.*

*(NOTE: Under Title 5 section 5366, employees who are entitled to grade and pay retention may not grieve the classification action upon which it is based.)

c. Negotiated grievance procedures must be the exclusive procedures for employees in the unit for all matters within its scope. In those cases where adverse actions and discrimination complaints are included under the scope of the negotiated procedure, unit employees may use either the negotiated or statutory procedure, but not both. The employee will be deemed to have made his/her election of procedure when he/she timely files a grievance under the negotiated procedure or a timely appeal under the applicable appellate procedure, whichever takes place first. In discrimination cases, selection of the negotiated procedure does not preclude an aggrieved employee from requesting Merit Systems Protection Board review of the final decision in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission. Exceptions to arbitrators' awards may be filed with the Authority in accordance with the provisions of the CSRA and the rules of the Authority.

3. IMPASSE IN NEGOTIATIONS

a. Every effort will be made to resolve all issues at the lowest possible level, including use of the Federal Mediation and Conciliation Service or other appropriate techniques as the parties may negotiate.

b. The Federal Mediation and Conciliation Service provides services and assistance to Federal agencies and lab-organizations in the resolution of negotiation disputes. The Service determines under what circumstances and in what manner it shall proffer its services.

c. VA field facilities shall participate fully and promptly in any meetings called by the Federal mediation and Conciliation Service.

d. When voluntary arrangements, including the services of the Federal Mediation and Conciliation Service under the circumstances it determines, or other third-party mediation, fail to resolve a negotiation impasse, either party may request the Panel to consider the matter. The Panel, in its discretion and under the regulations it has prescribed, may consider the matter and may recommend procedures to the parties for the resolution of the impasse or may settle the impasse by appropriate action. Arbitration or third-party fact-finding with recommendations to assist in the resolution of an impasse may be used by the parties only when authorized or directed by the Panel.

e. Field facilities shall promptly notify the Office of Human Resources Management (051), through appropriate channels when the services of a Federal Mediation and Conciliation Service mediator are requested by a labor organization or prior to field facilities initiating such a request. Field facilities shall also promptly notify the Office of Human Resources Management (051), through appropriate channels when a labor organization refers an impasse to the Federal Service Impasses Panel and prior to field facilities initiating such a request.

4. NEGOTIABILITY ISSUES

a. If, in connection with negotiations, a proposal is made which management alleges is contrary to law, rule, regulation or agency policy and therefore not negotiable, the labor organization may petition the Authority for review when it disagrees with the management position.

b. The labor organization shall first request a statement of the non-negotiable position by management in writing. The time limit for the labor organization to file a petition for review to the Authority is 15 days after receipt of management's written position. However, if management has not furnished the labor organization a written position within 10 days after their request, the labor organization may then file its petition. A copy of the labor organization's petition to the Authority must be served on the Agency head and the principal agency bargaining representatives at the negotiations.

c. Within 30 days after the date of receipt by the agency head, the VA must provide the Authority with a statement of position. A copy must be served on the labor organization. The

labor organization must, within 15 days after date of receipt, file a full and detailed response to the Authority. A copy of the response of the exclusive representative shall be served on the agency head and on the agency's representative of record in the proceeding before the Authority.

5. UNILATERAL TERMINATION

Unilateral termination clauses shall ordinarily not be included in agreements negotiated in VA. No new agreements with such clauses shall be negotiated. By definition, such clauses are provisions in an agreement through which one of the parties may terminate an agreement without mutual consent on other than its terminal date.

6. APPROVAL OF AGREEMENTS

a. The field facility will forward for approval the original agreement, or amendment with seven copies, to the Office of Human Resources Management (051). Administration heads or other appropriate officials must approve or disapprove the agreement within 30 days from the date of its execution, or it will go into effect without the required approval and shall be binding on the parties subject to the provisions of law, and regulations of appropriate authority outside the VA.

b. An agreement shall be approved if it conforms to applicable laws, existing published VA policies and regulations and regulations of other appropriate authorities. Agreements are effective upon approval and the duration begins from the date signed by the approving official.

c. Where the parties wish to renew or extend agreements, including those with automatic self-renewing clauses, the agreements should first be brought into conformance with current law, appropriate regulations and Agency policy.

7. NOTIFICATION TO CENTRAL OFFICE

a. Field facilities shall promptly notify the Office of Human Resources Management (051), through appropriate channels when:

(1) A request to negotiate a new agreement or changes to existing agreements is received.

(2) A request for the services of the Federal Mediation and Conciliation Service is made.

(3) A request for the services of the Federal Service Impasses Panel is made.

(4) The exclusive representative requests from management a written statement of position concerning a negotiability issue.

(5) A request for arbitration is made.

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**SECTION G. USE OF AGENCY FACILITIES AND INTERNAL BUSINESS OF
LABOR ORGANIZATIONS**

1. BULLETIN BOARDS AND DISTRIBUTION OF MATERIALS

a. Space on bulletin boards may be provided for the posting of notices and literature of labor organizations.

b. Distribution of appropriate literature by field facility employees and nonemployee representatives of labor organizations may be permitted under the following conditions:

(1) Employees: the distribution may be permitted provided it takes place outside the duty hours of the employees distributing and receiving the literature. Under these conditions permission may also be granted for the placement of literature on desks or at other work locations provided the placement is compatible with safety and security requirements. Authorization for the distribution of literature shall not include direct patient care and treatment areas.

(2) Nonemployee representatives: the distribution of literature is subject to the same restrictions as for employees. Where there is an incumbent exclusive representative such privileges may not be granted to an outside labor organization, unless the outside organization has achieved equivalent status with the recognized labor organization by having filed a petition or intervened in a representation proceeding. All nonemployee representatives of labor organizations are required to secure prior approval of local management before entering VA premises for the purpose of distributing literature or posting notices of labor organization business.

c. VA management officials may negotiate or reach an understanding with representatives of the labor organizations as to the content and size of material and will place responsibility for adherence to such understanding upon the labor organizations. This could include provision for prior approval by management of material proposed for posting or distribution on VA premises. The following standards will be observed:

(1) Notices or literature must be properly identified as material of the labor organization. It must be clearly understood that such material is not official VA material or endorsed by the VA, and the material must not contain anything which would identify it as such.

(2) The material may not contain attacks upon any person, group, or organization.

d. Where no prior approval by management has taken place and if the material posted or distributed is found to be objectionable, the appropriate management official will so inform the representatives, explaining the basis therefor. In the case of posted material, steps will be taken by management to have the objectionable material removed from the bulletin boards.

e. Repeated nonconformance to VA standards governing the posting or distribution of labor organization material may be cause for denial by the responsible official concerned of the privilege of posting and distribution.

f. The posting of material on bulletin boards and its removal therefrom will be governed by agency policy covering the maintenance of bulletin boards and such other instructions as may be negotiated locally. Management officials will advise the representative of the organization of the proper procedure to follow.

2. INTERNAL BUSINESS OF LABOR ORGANIZATIONS

a. Solicitation of membership or dues, and other internal business of a labor organization, shall be conducted during the nonwork hours of the employees concerned. Employees outside their regular working hours may solicit membership, or collect membership dues on VA premises provided such activities do not interfere with VA operations and are not conducted during official working hours of the employees contacted. Nonemployee representatives of labor organizations with the prior approval of the field facility director, or designee, may be granted permission to hold organization meetings to solicit membership on VA premises subject to these same restrictions. Official working hours for these purposes do not include luncheon period.

b. Subject to safety and security regulations and where facilities for holding meetings of labor organizations are available on VA premises, labor organizations may negotiate or be granted permission to use such facilities for business and membership meetings outside the regularly scheduled working hours of the employees involved, provided such action will not interfere with proper functioning of VA activities. Such meetings may be attended and conducted by nonemployees.

3. ORGANIZING ACTIVITIES

a. Employees have the right to campaign on VA premises for or against any labor organization on their nonduty time and in nonduty areas subject to field facility safety and security requirements. Such activities, however, may not interfere with agency operations.

b. When organizational activities are permitted on VA premises, all labor organizations which seek to organize the same employees and which have equivalent status must be accorded equivalent treatment.

c. Nonemployee representatives of labor organizations are subject to the following:

(1) Where there is an incumbent exclusive representative, nonemployee representatives of outside labor organizations may not be granted the use of VA facilities, unless the outside organization has achieved equivalent status with the recognized labor organization by having filed a petition or intervened in a representation proceeding.

(2) Where there is no incumbent exclusive representative, nonemployee representatives may be permitted to engage in such reasonable organizational activities on VA premises as will facilitate communication with employees and will not interfere with VA operations.

d. Questions regarding organizing activities should be directed to the Office of Human Resources Management (051), through appropriate channels.

CHAPTER 711. LABOR-MANAGEMENT RELATIONS IN THE VA

SECTION H. UNFAIR LABOR PRACTICES

1. PROHIBITED PRACTICES

a. VA Management shall not:

(1) Interfere with, restrain, or coerce any employee in the exercise by the employee of any right under the Act;

(2) Encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) Sponsor, control, or otherwise assist any labor organization other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

(4) Discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit or petition, or has given any information or testimony under the Act;

(5) Refuse to consult or negotiate in good faith with a labor organization as required by the Act;

(6) Fail or refuse to cooperate in impasse procedures and impasse decisions as required by the Act;

(7) Enforce any rule or regulation (other than a rule or regulation pertaining to prohibited personnel practices under 5 U.S.C. 2302) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) Otherwise fail or refuse to comply with any provision of the Act;

b. A labor organization shall not:

(1) Interfere with, restrain, or coerce any employee in the exercise by an employee of any right under the Act;

(2) Cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under the Act;

(3) Coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) Discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) Refuse to consult or negotiate in good faith with an agency as required by the Act;

(6) Fail or refuse to cooperate in impasse procedures and impasse decisions as required by the Act;

(7) (a) Call, or participate in, a strike, work stoppage or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations or (b) Condone any activity described in (a) above by failing to take action to prevent or stop such activity; or

(8) Otherwise fail or refuse to comply with any provision of the Act;

c. A labor organization which is accorded exclusive recognition shall not deny membership to any employee in the appropriate unit except for failure to meet reasonable occupational standards uniformly required for admission, or for failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. This paragraph does not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or by-laws which conform to the requirements of the Civil Service Reform Act.

d. Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices under the procedures of the Act. except for matters wherein, under 5 U.S.C. 7121(e) and (f) of Title VII, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

2. ATTEMPT AT RESOLUTION

It is the policy of the VA to encourage all parties to an unfair labor practice allegation to attempt resolution of such matters prior to filing of charges with the Authority.

3. FILING OF CHARGES

Should there be no resolution of the charge between the parties, an original and four copies of each charge should be filed on forms prescribed by the Authority with the Regional Director for the region in which the alleged unfair labor practice has occurred along with any supporting evidence. A copy of the charge must also be served on the party against whom the charge is made. The charge shall contain the names, addresses and telephone numbers of the party making the charge and the party against whom the charge is made. It should include a clear and concise statement of the facts and a reference to the section of the Civil Service Reform Act allegedly violated.

4. RESPONDING TO CHARGES

a. Although many of the Authority's Regional Offices do not require formal management responses to charges prior to investigation, it is the VA policy in all but unusual cases to file a formal, timely response. Responses to charges may be prepared by the field installation, the Regional Counsel's Office or the VA Central Office, Office of Human Resources Management (051) staff. However, in all instances, coordination between the respective offices is mandatory so that consistency in agency policy may be maintained.

b. In each instance, the response to the charge will name an attorney from the Office of either the General Counsel or the Regional Counsel to represent the field facility during the investigation phase of the proceeding, and the complaint stage, and to answer the complaint, should one be issued. During the course of an investigation by the Authority, the General Counsel's or Regional Counsel's staff are expected to provide VA management officials with legal representation. Management officials are entitled to representation while being questioned during the investigation of an unfair labor practice charge and are encouraged to request representation from their respective Regional Counsel's Office for this purpose.

5. INVESTIGATION OF CHARGES

The Regional Director shall conduct such investigation of the charge as is deemed necessary. During the course of the investigation, all parties involved will have an opportunity to present their evidence and views.

6. ACTION BY THE REGIONAL DIRECTOR AFTER INVESTIGATION

The Regional director may (a) approve a request to withdraw the charge; (b) approve a written settlement; (c) refuse to issue a complaint; (d) or issue a complaint. The Regional Director will issue a formal complaint if it finds that a reasonable basis for the charge exists. In such cases, the General counsel of the Authority will prosecute on behalf of the charging party at a hearing before an Administrative Law Judge. If no exceptions to the decision are filed, the decision of the Administrative Law Judge is final and binding. If, however, either party files an exception to the decision, the Authority, after considering the Administrative Law Judge's decision, will affirm or reverse the decision. If there has been a violation, the Authority shall issue an appropriate order or, upon finding no violation, shall dismiss the complaint.

7. NOTIFICATION TO CENTRAL OFFICE

a. Field facilities must promptly furnish the Office of Human Resources Management (051), and the appropriate Office of the Regional Counsel, a copy of the following documents as each is received:

- (1) An unfair labor practice charge.
- (2) Unfair labor practice complaint.

(3) Any additional correspondence to or from either party or the Authority relative to a complaint.

(4) Notice of a hearing directed by the Authority.

(5) Withdrawal or dismissal of a charge.

b. Field facilities shall notify the Office of Human Resources Management (051), and Regional Counsel immediately of any job actions that occur such as slowdowns, sick outs, work stoppages or picketing.

CHAPTER 711. LABOR-MANAGEMENT RELATIONS IN THE VA

**SECTION I. ADDRESSES AND JURISDICTION OF THE FEDERAL LABOR
RELATIONS AUTHORITY AND REGIONAL DIRECTORS**

The addresses and jurisdiction of the Federal Labor Relations Authority and Regional Directors of the Authority may be found in Appendix A to 5 CFR Chapter XIV--Rules and Regulations of the Federal Labor Relations Authority.

CHAPTER 711. LABOR-MANAGEMENT RELATIONS IN THE VA

SECTION J. RECORDING THE USE OF OFFICIAL TIME

1. PURPOSE

This section provides guidelines for the recording of official time and associated travel and per diem costs for representational functions, as defined herein. It is important to note that these record-keeping requirements should not be read as a source of rights to official time or travel or per diem. The propriety of granting official time, and payment of travel and per diem costs, is based solely on statute, rule, regulation, and negotiated agreement.

2. DEFINITIONS

a. Representational Functions. "Representational function" means those authority activities undertaken by employees on behalf of other employees pursuant to such employees' rights to representation under statute, regulation, executive order, or the terms of a collective bargaining agreement. It includes activities undertaken by specific individual designation (such as the designation of a representative in a grievance action or an EEO complaint even where no labor organization is present) as well as those activities authorized by a general, collective designation (such as the designation of a labor organization recognized as exclusive representative under chapter 71 of title 5, U.S.C.).

b. Official Time.

(1) "Official time" means all time granted an employee by the agency to perform representational functions as defined above when the employee would otherwise be in a duty status without charge to leave or loss of pay, and shall be considered hours of work. This includes time spent by an employee performing such functions during regular working hours (including regularly scheduled overtime hours), or during a period of irregular, unscheduled overtime work, provided an event arises incident to representational functions that must be dealt with during the irregular, unscheduled overtime period.

(2) Official time may be granted to union representatives under section 7131 of 5 U.S.C. chapter 71. Certain executive orders and Government-wide regulations also require the use of official time for representational functions: for example, in connection with certain health and safety matters, agency administrative grievance procedures, prevailing wage rate appeals, and EEO complaints. In addition, agency regulations and practice and collective bargaining agreements may provide official time for other representational functions.

3. POLICY. Effective January 1, 1982, all facilities were required to maintain records of the amount of official time granted employees for representational functions, including any travel and per diem costs associated with such functions.

a. There is no uniform requirement within the VA concerning the degree and specificity of records kept, except that as a minimum, the information in the following categories will be recorded:

(1) Category I

(a) Negotiations of Collective Bargaining Agreements. This includes negotiation of a basic agreement; renegotiation of an existing agreement; and negotiation of amendments to an existing agreement under a reopener clause. Title 5 U.S.C. 7131(a) provides that official time is to be granted to employees representing an exclusive representative for negotiation of a collective bargaining agreement, when they would otherwise be in a duty status, with no limitation on time, except that the number of employees authorized such official time shall not exceed the number of designated management representatives. Official time spent in negotiation or renegotiation of a collective bargaining agreement, or pursuant to a contract reopener clause, meets the above definition. This includes time spent with Federal Mediation and Conciliation Service and Federal Service Impasses Panel in connection with these negotiations.

(b) Mid-term Bargaining. midterm bargaining refers to negotiations over management initiated changes in personnel policies, practices, and working conditions. This does not include contract bargaining as covered in paragraph (a) above.

(2) Category II--Ongoing Labor-Management Relationship. Official time granted for representational functions in connection with all labor-management committees (general and specific), consultation, walkaround time for OSHA inspections, FLRA proceedings, labor relations training for union representatives, and formal and Weingarten-type meetings under 5 U.S.C. 7114(a)(2)(A) and (B).

(3) Category III--Grievances and Appeals. Official time granted for employee representational functions in connection with grievances, arbitrations, adverse actions, EEO complaints and other complaints and appellate processes.

(4) Category IV--Travel and Per Diem. All travel and per diem costs associated with employee representational functions reported above.

(b) Field facilities are encouraged to maintain records in such a manner as not to constitute a system of records within the meaning of the Privacy Act of 1974. However, individual field facilities may elect to include these records in an existing, approved system of records. In these cases, FPM Letter 711-161 provides Privacy Act coverage for these files under the OPM/GOVT-1, "General Personnel Records," system of records. The following is a sample format that is recommended to assist field facilities in recording Official Time:

DATE	NAME	TIME BY CATEGORY					TOTAL	TRAVEL AND PER DIEM
		Ia	Ib	II	II	III		

CATEGORY Ia –NEGOTIATION OF COLLECTIVE BARGAINING AGREEMENT

CATEGORY Ib – MIDTERM BARGAINING

CATEGORY II – ON-GOING LABOR MANAGEMENT RELATIONSHIP

CATEGORY III – GRIEVANCE AND APPEALS