

**2021
Air National Guard
Labor Management
Agreement**

MEMORANDUM OF AGREEMENT

**BETWEEN
THE ADJUTANT GENERAL
STATE OF ARIZONA
AND
ARIZONA AIR CHAPTER 71 of
THE ASSOCIATION OF CIVILIAN TECHNICIANS
ARIZONA AIR CHAPTER 71**

**LABOR MANAGEMENT AGREEMENT
BETWEEN
THE ADJUTANT GENERAL OF ARIZONA AND
ASSOCIATION OF CIVILIAN TECHNICIANS, ARIZONA AIR CHAPTER 71**

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PREAMBLE

Pursuant to authority set forth in 5 USC CH 71, as amended, the following Articles constitute an agreement by and between the Adjutant General of Arizona, hereinafter referred to as the Employer, and the Association of Civilian Technicians, Inc, (ACT Arizona Air Chapter #71), hereinafter referred to as the Labor Organization and collectively known as the Parties. The Employer and the Labor Organization affirm that the public purpose to which both are dedicated can be advanced best through the understanding and cooperation achieved through collective bargaining.

ARTICLE 1 PURPOSE OF AGREEMENT

1.1. General Purpose of Agreement. It is the purpose of this agreement to:

- a. Identify the parties to the agreement and define respective rights and obligations
- b. Promote and improve efficient administration of the Goldwater Air National Guard Base and the well-being of its employees within the meaning of Public Law.
- c. Provide for the highest degree of efficiency in the accomplishment of the operation of the Arizona Air National Guard.
- d. Promote employee communications and information of personnel policy and procedures, and adjustment to matters of mutual interest.
- e. Subject to all applicable Executive Orders, laws, and regulations.

1.2. National Guard's Reason for Existence. The Labor Organization and Employer agree that the enacting of Technician Act of 1968 is the primary basis for the existence of a National Guard Technician workforce.

1.3. Contract Distribution.

- a. The Employer will provide a digital (PDF format) copy of this CBA within thirty (30) calendar days after the effective date of signed CBA to all employees and will maintain electronically in a location where all employees have access.
- b. Employer agrees to allow each union officer and steward the ability to print a copy of the CBA utilizing available copiers/printers.

1.4. Application.

- a. This CBA, in its entirety, is applicable to all bargaining unit employees. Probationary period employees are entitled to membership privileges as any other bargaining unit employee, but are not entitled to additional rights pursuant to applicable law, rules, regulations, and instructions as non-probationary non-trial period employees solely by virtue of their membership.
- b. Indefinite employees are considered members of the bargaining unit and are covered by this CBA. Indefinite employees may be separated at any time with a 30-day notice.

- c. Temporary Employees are not considered members of the bargaining unit and are not normally covered by this CBA. Temporary employee representation in accordance with law, rules, and regulations.

1.5. Probationary Periods.

- a. New employees are subject to a 1 year probationary period. A probationary employee is considered a bargaining unit member and may file a grievance concerning a violation of any of the provisions within the collective bargaining agreement. A probationary period employee may not challenge their separation under the negotiated grievance procedure.
- b. New employees are to be carefully observed and counseled during their probation period. During this period, supervisors should provide specific training and assistance to improve the employee's work performance if needed. A probationary employee may request a meeting with their immediate supervisor periodically to discuss their performance.
- c. Probationary employee removals:
 - (1) Removal action may be taken at any time during the probationary period.
 - (2) When the Employer decides to terminate a probationary period employee based on performance or conduct, the employee must be informed with a general conclusion of deficiencies.
 - (3) Employee can refer to Labor Organization representative for appeal rights.
 - (4) A 30 day notice is not required for removal of probationary employees within their probationary period.

ARTICLE 2 UNIT DESIGNATION

2.1. Certification. It is hereby certified that the Arizona Association of Civilian Technicians, Inc. Air Chapter 71, has been designated and selected by the employees of the Goldwater Air National Guard Base as their representative for purposes of exclusive recognition and that pursuant to the authority of Chapter 71 of United States Code (USC) as amended, the said organization is the exclusive representative of all the employees in such unit. The Labor Organization is responsible for representing the interests of all Employees of the bargaining unit it represents without discrimination and without regard to Labor Organization membership. An ACT National Field Representative is included in this exclusive representation.

2.2. Included Unit Members. All Wage Grade and General Schedule employees employed at the 161st AREFG, 107th TCS and the 111th ATCF, Arizona Air National Guard.

2.3. Excluded Unit Members. All supervisory, management officials and employees described in 5 USC 7112 (b)(2), (3), (4), (5), (6) and (7).

NOTE: In applying this section, §7112 of the statute pertaining to supervisors and others who must be excluded from the bargaining unit will prevail. Any changes to the bargaining unit, after the effective date of this agreement, will be through mutual consent or a Federal Labor Relations Authority (FLRA) clarification of unit.

Article 3 CONFORMITY

3.1. Agreement Not to Strike. In compliance with Chapter 71 of United States Code (USC) as amended, the Labor Organization agrees not to strike in any manner against the operation of the National Guard.

3.2. Informational Picketing. Federal law expressly prohibits federal employees from striking, but allows picketing activity under certain conditions.

- a. Under 5 USC 7311, it is illegal for an individual to hold a position in the Government of the United States if he/she participates in a strike against it. However, it is legal under 5 USC 7116(b) (7) to picket an Employer if the picketing does not interfere with an Employer's operations.
- b. It shall be an Unfair Labor Practice under 5 USC 7116(b) (7) for a Labor Organization to: call or participate in a strike, work stoppage, or slowdown, or picketing of an Employer in a labor-management dispute if such picketing interferes with an Employer's operations; or to condone such activity by failing to take action to prevent or stop such activity.
- c. Employees may participate in informational picketing, under certain conditions, if that picketing does not interfere with the Employer's operations. These conditions include the following: employees must be in a non-duty status; The picketing activity must be conducted in accordance with 5 USC 7116, local laws within fifty (50) yards of a gate, entrance, or exit of a National Guard facility; employees may not wear the military uniform while participating in informational picketing; Signs carried or erected by picketing personnel must be "informational" in purpose.

3.3. Military and Business Courtesy. All employees, in uniform, shall comply with military customs and courtesies, to include saluting and military titles of address. Supervisors shall be cognizant of technician status and limit purely military functions. Civilian titles of address shall be used by union officers and stewards while performing their representational duties. Civilian titles of address (e.g. Mr. or Ms.) shall be used in disciplinary and adverse actions written communication. Technicians may stand in formation on a voluntary basis.

3.4. Compliance with Appropriate Directives. A provision of this Agreement is valid to the extent it does not conflict with the Constitution of the United States, a federal statute, a rule or regulation, or a government-wide regulation that was prescribed on or before the effective date of the provision. The Employer shall comply, and may require employees to comply, with agency rules or regulations to the extent these rules or regulations do not conflict with this Agreement or any supplement or amendment thereto. The Glossary to this agreement is useful to the extent it is accurate and relevant, but it is not binding contract language.

ARTICLE 4 RIGHTS OF THE EMPLOYER

4.1. Law. Management rights are stated in 5 U.S.C. § 7106, and any change thereto. As of the execution of this agreement, 5 U.S.C. § 7106 states:

- a. Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—
 - (1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws—

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from—

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

b. Nothing in this section shall preclude any agency and any labor organization from negotiating—

(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

ARTICLE 5 RIGHTS OF THE LABOR ORGANIZATION

5.1. Exclusive Representation. The Labor Organization is the exclusive representative of the bargaining unit and is entitled to act for, and to negotiate agreements covering, all employees referenced in Article 2 of this agreement. The Labor Organization is responsible for representing the interests of all members of the bargaining unit it represents without discrimination and without regard to Labor Organization membership

5.2. Representation – General. An exclusive representative of the local Labor Organization shall be given the opportunity to be present at any formal discussion between one or more representatives of the Employer and one or more employees in the unit or their representatives concerning any grievance or any personnel policies or practices, or other general conditions of employment. Reference 5 U.S.C 7114 (a) (1).

5.3. Representation during an Examination. An exclusive representative of Labor Organization shall be given the opportunity to be present at any examination of an employee in the unit by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and if the employee requests the representation.

a. If in the course of an examination the employee makes a request for Labor Organization representation, the Employer must cease the examination until the representative arrives or end the interview.

- b. The local Labor Organization representative will be authorized to attend such meetings without charge to leave or loss of pay.

5.4. Representation – Other than by the Labor Organization. A bargaining unit member is not precluded from being represented by an attorney or other representative, other than the Labor Organization, of the employees own choosing, or exercising grievance or appellate rights established by law, rule or regulation, except in cases of negotiated grievance or appeal procedure negotiated within this agreement. With respect to the negotiated grievance procedure employees have the right to present grievances on their own behalf (not withstanding provisions found in 16.4).

5.5 Officers and Stewards. The Labor Organization shall supply the Human Resource Office (HRO), in writing, a complete list of all Labor Organization officers and all authorized stewards. HRO will be notified of any changes. No person shall be recognized as an officer or steward of the Labor Organization unless his/her name appears on the most recent listing supplied to the Employer, interim email is accepted. The Labor Organization will ensure a copy of this list is posted on all bulletin boards established under authority of Article 5, Section 12 of this agreement.

5.6. Stewards and Area of Responsibility. The Labor Organization has the right to select up to ten (10) stewards in addition to the Chief Steward.

5.7. Utilization of Workspace. The Employer agrees to permit employees who are representatives of the Labor Organization to utilize a secure desk or filing cabinet within their work area to maintain Labor Organization records.

5.8. Distribution System. The Labor Organization will be permitted use of the agency internal distribution system. This distribution will not include internal Labor Organization business or literature for general distribution to members. The Employer will not be responsible for any Labor Organization material sent through distribution.

5.9. Office Equipment. The Labor Organization will be allowed access to and use of office equipment when available for representational duties. Use for non-representational purposes will occur only during non-duty time. Consumable supplies (i.e.: ribbons, ink, paper, etc.) used for non-representational purposes will be replaced by the Labor Organization at the Labor Organization's expense, to the extent the consumption is significant and reasonably capable of determination.

5.10. Union and Employee Use of Employer Telephones, Computers, and Email System.

- a. Labor Organization representatives and bargaining unit employees are entitled to use Employer telephones or computers that are made available to them for work purposes for local calls or email communications for purposes permitted by the official time law 5 USC CH 7131.
- b. The Labor Organization will be permitted use of the Employer email system, and any other internal distribution system, to communicate with the Employer for any purpose permitted by the official time law. The Labor Organization also may use the Employer email system and any other internal distribution system to communicate with bargaining unit employees.

5.11. Union Use of Employer Multifunction Printer. The Labor Organization is entitled to use, when reasonably available, Employer multifunction printer to perform representational duties and, during non-duty hours, for Labor Organization internal business matters, with the expense of any use for an internal Labor Organization matter being borne by the Labor Organization.

5.12. Bulletin Boards. A designated space for bulletin boards in major work areas representing all facilities for the display of Labor Organization literature, correspondence, and notices. The Labor Organization agrees that items posted will not violate any law or contain scurrilous or defamatory material. Material found to be in violation of this provision will be promptly removed. It is the responsibility of the Labor Organization to keep bulletin boards neat and orderly. Labor Organization

officials or their designated representatives are the only authorized personnel to post or remove material on the bulletin board areas designated for Labor Organization use. The bulletin boards will not be moved without prior notice and agreement of both parties.

5.13. Meeting Rooms. During normal duty hours, the Labor Organization is entitled to use Employer meeting rooms, when available, for representational purposes. When the Labor Organization desires meeting rooms for the purpose of conducting general membership meetings or other non-representational purposes, the Employer will provide available space when it can be provided without any additional cost other than normal utilities, and when it will not create a need for additional security personnel. The Labor Organization will submit all requests for the use of meeting rooms to the Employer or his designated representatives as soon as possible before the date of the meeting, to include the date, time and facilities desired.

5.14. Office Space.

- a. The Employer will provide office space (Civil Engineering (CE), building 6 room 30A) at the 161st ARW. The office will be environmentally controlled with heating, ventilation and air conditioning (HVAC), and accessible at the Labor Organization's discretion. The entry door access key located in Security Forces available 24/7.
- b. The Employer agrees to allow the Labor Organization to erect a sign outside of the office location that meets base standards.

**ARTICLE 6
RIGHTS OF EMPLOYEES**

6.1. General. Parties to this agreement recognize that each employee shall have the right to form, join, or assist any Labor Organization, or to refrain from 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 under this chapter, such right includes the right:

- a. 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
- b. to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

**ARTICLE 7
NEW EMPLOYEE ORIENTATION**

7.1 Procedures. The Employer will establish procedures to ensure new bargaining unit employees are counseled on all aspects of employee employment.

7.2. Orientation. An orientation guide checklist for newly appointed employees will be used to cover all items of which each new employee should be made aware of.

- a. After the employee has been counseled, the employee and the counselor will sign the guide checklist form and it will be placed in the employee's personnel record.

- b. One of the items in the checklist will be that there is a Labor Organization. The employee will be provided a list of Labor Organization representatives assigned to his/her area and the website location of the Labor Organization's contract.

7.3. Notification.

- a. Notification: A letter with the names of new employees will be forwarded to the Labor Organization within one (1) pay period after the effective date of employment. This will serve as the official notification of any new hires.
- b. The supervisor may allow a reasonable amount of time for the new employee to meet with the Shop Steward. The Shop Steward will briefly explain the contents, purpose and importance of the agreement.

ARTICLE 8 OFFICIAL TIME

8.1. Official Time Entitlement. Employees are entitled to use official time for any purpose permitted by the official time law, i.e. 5 U.S.C. § 7131 and any amendment thereto. The amount of official time to which an employee is entitled is the amount reasonably necessary to accomplish its purpose. The Employer may delay the start of official time to the extent reasonably necessary to ensure agency mission accomplishment, but must agree to adjust events for which the official time is needed—to the extent the Employer controls or influences them and adjustment is reasonably necessary.

- a. Each calendar year, the Chapter President and other representatives designated by the Labor Organization are each entitled to official time, in addition to any other official time to which they are entitled under this Agreement, to travel to, attend, and travel from annual training, congressional meetings, and other uses of official time scheduled by the National Association of Civilian Technicians during a period of approximately one week each year. The Labor Organization will inform the Employer reasonably in advance which representatives will use this official time and the expected schedule for its use, so that duty hours and official time may be scheduled in accordance with Section 8.7. Upon return, the representatives will report any changes of or additions to the expected schedule, to enable retroactive adjustments in accordance with Section 8.7.

8.2. Procedure. An employee who requests official time through their supervisor will state its purpose and requested timing and duration. The Employer promptly will grant the request if (a) it is for a purpose permitted by the official time law and (b) the amount of time requested is reasonably necessary to accomplish the purpose. The Employer may grant the request but delay the start of the official time, and any related events, to the extent reasonably necessary, as provided in Section 8.1.

8.3. Examples of Permissible Purposes for Official Time. Examples of purposes for which official time is permitted include, but are not necessarily limited to, investigation, discussion, research of subjects, and drafting of documents relevant to representational functions or other matters covered by 5 U.S.C. Chapter 7131; preparation for and attendance at meetings, investigations, or hearings in connection with these matters; and travel to and from locations where these functions or matters occur or are performed. Representational functions and other matters covered by 5 U.S.C. Chapter 7131 include, but are not necessarily limited to, actual or contemplated collective bargaining, grievances, arbitration cases, impasse proceedings, or other matters within the jurisdiction of the Federal Labor Relations Authority; training in labor or personnel law or processes, or other representational subjects; and presenting views of the Labor Organization to agency or other executive branch officials, Congress, or other appropriate authorities to the extent not prohibited by law. A current, proposed, or potential condition of employment or position classification matters.

8.4. Wear of Military Uniform Not Required on Official Time. When on official time, employees are not required to wear military uniforms. When official time is granted, it will include time reasonably necessary to change out of and back into military uniforms.

8.5. Labor Organizational Training. Unless management designates another representative, the HRO (Labor Relations Specialist) will facilitate the review and communication of training agendas. Training agendas and projected attendance lists will be submitted by the Labor Organization to the HRO no later than two (2) weeks prior to the start of training. The purpose of this time is to allow these employees to attend Labor Organization – sponsored training that is of mutual concern to the Labor Organization and Employer, and in the best interest of the government for the employee to attend. The Labor Organization will be administratively excused in accordance with the applicable Employer policies governing the approval of, and timekeeping and payroll coding for, official time.

ARTICLE 9 TRAINING

9.1. Employer Commitment to Training. It is necessary and desirable in the public interest that education, self-improvement and self-training by employees be supplemented and extended by Employer sponsored programs. Such training of employees in the performance of official duties and the development of skills, knowledge and abilities will best qualify them for the performance of official duties. The Employer agrees that all employees who are required to be skilled in their work or trade will be provided opportunity to learn new ideas and methods related to assigned duties, as necessary, and to consider recommendations from the Labor Organization.

9.2. Financial and Leave Loss to Employees. The Employer will strive to ensure that the employee will not incur a financial or leave loss when directed to attend training.

ARTICLE 10 EQUAL EMPLOYMENT OPPORTUNITY

10.1. General. The Employer and the Labor Organization agree to cooperate on providing equal employment opportunity for all employees, regardless of sex, race, religion, color, national origin and age, and to ensure that all personnel programs, procedures and assignments are free of prohibited discriminatory practices. This section does not apply to dual-status positions subject to specifically exempted military requirements.

10.2. Equal Opportunity. The Employer will provide opportunity and promotion and advancement for all employees, competitive service and excepted service, in accordance with this article.

10.3. EEO Counselors. The Employer agrees to appoint and train, in accordance with applicable regulations, the number of Equal Employment Opportunity counselors required by the National Guard Bureau.

10.4. Employee Assistance Program (EAP). Although particular emphasis will be given to those technicians with health problems related to drug abuse and alcohol abuse that may affect a technician's work performance, nothing in this contract shall prohibit a technician from receiving assistance under this program for other personal problems, such as financial difficulties, legal, family or other problems, that may affect job performance. EAP coordinator also responsible for providing advice, assistance and training to commanders, managers, and supervisors on effective use and participation in the program; ensuring their understanding of the procedures for dealing with technicians with alcohol or drug problems and the benefits derived from successful rehabilitation.

ARTICLE 11 HOURS OF WORK

11.1. Normal Workday. The standard work week is comprised of five 8-hour days (referred to as a 5-eight schedule), resulting in 80 hours being worked in ten work days. Based on mission requirements, employees may be required to work a compressed work schedule. The Adjutant General or their designee is authorized to approve alternative work schedules as

long as agency functions are maintained as required. Authorized compressed schedules for the Federal Technician work force are 4 ten-hour days or 5-4-9 schedule. Authorized compressed schedules for State work force are 4 ten-hour days or 9/9/9/9/4. Approval authorities are ATAG Army, ANG Wing Commanders, Director of Emergency Management, and Director Joint Staff.

11.2. Shift Change. Employees will be notified no less than two (2) weeks in advance of a shift change, except when the head of an agency determines that the agency would be seriously handicapped in carrying out its functions or that costs would be substantially increased. Changes to work schedules are to be forwarded to the affected employee(s) by email notification and/or verbally by the Employer. The Chapter President will be notified of shift changes that affects the majority of the bargaining unit members.

11.3. Clean-Up Time. The Employer agrees to allow time immediately preceding the lunch period and at the end of each workday to permit employees engaged in work involving dirty, toxic, or hazardous substances, for personal clean-up, if necessary. Additional time will be allowed at the end of each workday to permit employees engaged in work-related activities to allow for the appropriate accountability and return of all tools and equipment and work-area cleanliness.

11.4. Physical Fitness Training.

- a. All bargaining unit members (technicians) will be afforded an opportunity to participate in the physical fitness training program during duty hours.
- b. All Bargaining Unit members (technicians) are authorized up to one (1) hour of duty time each day on three (3) different workdays per week.
- c. On any given day it is the management's right to cancel physical fitness training on that day based on mission requirements.
- d. Any physical fitness training program performed outdoors on a DEMA/AZNG installation is to be performed using a buddy or group system when the temperature is greater than 100°F degree Fahrenheit.
- e. The program must start and finish at the workplace location.
- f. The location and type of physical fitness must be communicated to the supervisor. PT is to be conducted IAW applicable laws, rules, and regulations or any amendments thereto.

11.5. Lunch Period & Break Time. Meal periods will be conducted in accordance with OPM guidelines. Employees will be compensated for any work performed during these periods.

11.6. Holiday Pay. Holiday pay per OPM guidelines.

**ARTICLE 12
ASSIGNMENT OF WORK**

12.1. Other Duties as Assigned.

- a. Employees should not be required to perform duties unrelated to their primary employment except as required by special circumstances. The employer and the Labor Organization agree that the cleanup of employees' immediate work area and general facility cleanup, where janitor service is not available, are appropriate as other duties as assigned.

When an employee is assigned to recurring unrelated duties, an HRO Form 904-2 will be initiated to document these assignments.

b. The term "other duties as assigned" as part of the position description is defined to mean, reasonably related duties to the job/position, and should be of the same level and classification that the individual is currently graded. This does not preclude management from assigning unrelated additional duties. If unrelated duties are assigned on a routine basis, the position description should be amended to include such. Work assignments shall not be in violation of prohibited personnel practices or any relevant law, rule, regulation or this agreement. Supervisors should avoid insofar as possible assigning additional or incidental duties to employees, which are inappropriate to their positions and qualifications. However, an employee refusal to carry out legitimate work assignments may be cause for disciplinary action.

c. Employees assigned to duties requiring specific training or certification will be provided adequate formal training or paired with a trained or certified employee and adequately cross-trained prior to being graded or evaluated on assigned work (e.g. Aircraft technician assigned to assist in hydraulics shop). Management will implement adequate quality control measures to check work performed while cross-training.

d. Supervisory duties will not be assigned to bargaining unit members without being recorded on an SF-52. A senior technician in an area may be assigned leadership duties necessary to continue operations (e.g. assigning work, setting priorities, scheduling, etc) but may not perform supervisory duties (e.g. approving leave, grading or evaluating employees, counseling or disciplinary action), these responsibilities will fall on the next supervisor in the management chain.

12.2. Details.

a. A detail is the temporary assignment of an employee to a different position for a specified period, with the employee returning to his or her regular duties at the end of the detail.

b. Details for over 120 days that are made to a higher grade position or to a position with known promotion potential must be made under competitive promotion procedures as set forth in the Merit Placement Plan. Competition may be held from the onset if management feels that the position will be filled permanently.

c. Details of more than 30 calendar days will be recorded on SF52, and a copy filed in the official personnel folder (OPF). Details for periods less than 30 calendar days, but more than one pay period, will be recorded on a SF 52 with one copy for the employee and one copy to be filed in his/her OPF, at the request of the employee.

d. Where possible, qualified and experienced volunteers for details will be sought and used before non-volunteers are assigned.

ARTICLE 13 SAFETY / HEALTH

13.1 Employer and Labor Organization Responsibility. The Employer will make every reasonable effort to provide and maintain safety equipment and safe working conditions. The Labor Organization will co-operate to that end and encourage the employees to work in a safe manner IAW government directives and regulations.

13.2. Employee Responsibility. Each individual has a primary responsibility for his/her own safety and an obligation to know and observe safety rules. These practices are for the protection of each individual and his/her fellow employees, and for the conservation of valuable (often irreplaceable) resources and equipment. Employees are responsible to appropriately

utilize personal protective equipment (PPE) or be subject to disciplinary action consistent with laws and regulations and this agreement.

13.3. Standard for Safe Performance of Work. Management agrees to take reasonable precautions to ensure employee safety prior to assigning duties that directly or indirectly threaten the health, safety and/or welfare of the employee. Management agrees to provide briefings, instructions, training, or schooling, safety precautions, devices and PPE required by the TM, SOP, and standard shop practices whenever possible.

13.4. Safety Inspections. A Labor Organization representative shall be given, on official time, the right to be present during any safety survey or inspection conducted by any state or federal agency or persons contracted to perform these services.

13.5. Personal Protective Equipment (PPE).

- a. The Employer and the Labor Organization agree to promote the use of PPE by employees.
- b. Required PPE needed before a position or task will be provided to the employee before work begins.
- c. The Employer agrees to provide PPE at no cost to the employee. Unserviceable PPE will be replaced on a direct exchange basis or put on order (and annotated that this is a safety item).
- d. Each shop or facility in accordance with applicable rules and regulations will maintain adequate supplies of PPE.
- e. Prescription safety eyewear will be made available at no cost to the employee. The employee at their own personal expense to the Employer will submit a current prescription. The employee will have an option of clear or tinted lenses. The employee will furnish current eyeglass prescriptions and new prescriptions as his/her vision changes. All issued safety glasses broken on the job will be replaced at no cost to the technician.
- f. Supervisors will ensure required PPE is in compliance with government wide rules and OSHA regulations.

13.6. Hazardous Work Situations. All applicable safety directives and regulations shall be followed in the performance of an employee's duties. All employees and supervisors will address any safety violations in the workplace immediately.

- a. An employee may refuse to perform a task when both of the following criteria are met:
 - (1) There is reasonable and good faith belief that there exists an imminent risk of life or serious bodily harm and;
 - (2) There is sufficient time for the individual to have the situation resolved by any method other than refusing to perform the task which would subject the employee to the imminent danger.
- b. The Employer recognizes that in some circumstances, the interruption of utility services such as water, electricity, and heating, ventilation, air-conditioning (HVAC), can violate OSHA and other safety regulations and place employees at increased risk of injury. The Employer agrees to abate or correct any safety violation, hazard or increased risk of injury to employees, and make every effort to provide advance notice to the Labor Organization and employees, when such interruption is planned and foreseen. When unforeseen utility interruption occurs, the Employer will inform a Labor Organization representative as soon as possible. Examples include but are not limited to:
 - (1) Not performing work on batteries when deluge shower and eye wash stations are inoperative when water service is interrupted.
 - (2) Providing alternative sources of heating, ventilation, and air conditioning (HVAC) when service is inoperable.

- (3) Providing alternative sources of drinking water when water service is interrupted.
- (4) Limiting refueling operations when shower and/or fire suppression is inoperable.

13.7. Extreme Temperature / Work Situations. Work in extreme temperatures will be conducted IAW wing policy. The Employer and the Labor Organization mutually recognize the hazards of working in extreme temperatures, while at the same time, acknowledge the necessity for accomplishing certain tasks to varying extent even in the most extreme temperatures. The Labor Organization acknowledges that it is the responsibility of each employee to ensure the adequacy of personal clothing worn to make full and proper use of all such protective equipment prior to working in extreme temperatures.

- a. The Employer acknowledges that there are certain extremes of temperature and weather beyond which employees are incapable of performing sustained work. Employees will not be required to work in extreme temperature situations for extended periods of time without reasonable relief away from the extreme temperature situation. Follow guidance for work rest cycles.
- b. The employee will communicate concerns to the supervisor in order for the supervisor to determine what these periods will be. Any dispute will utilize the hazardous work situation reporting procedure in Section 7.
- c. The Employer agrees to provide environmental control measures sufficient to mitigate extreme temperatures where central cooling or heating is not installed or insufficient to maintain a safe working environment. As a general guideline, one cooler or heater should be available for every two work days.

13.8. Injuries to Employees. Employees shall immediately report job connected injuries or illness to their supervisor. It is the responsibility of the supervisor, along with the employee, to ensure that the proper procedures are followed and that all necessary forms and notices are completed. Employees with serious injuries will be treated first, followed by the necessary paperwork. Employees will be fully advised by the Employer as to his/her rights and obligations under the Employee Federal Compensation Act.

13.9. Light Duty.

- a. Definition: Light duty is defined as medical restrictions due to injury or illness. Assignment to light duty is considered temporary when the employee is in the recovery process from an injury or in the recuperating process from illness.
- b. When an employee is released to return to work in a temporary light duty status by a medical professional, the employee will submit a completed Medical Evaluation / Light Duty request to the immediate supervisor for consideration of light duty assignment.
- c. The Employer agrees to make every reasonable effort to provide suitable temporary light duty work, which the employee is qualified to perform, under the following circumstances:
 - (1) Work is available.
 - (2) The work provided will not present undue risk of liability to the Employer or hazard to other employees.
- d. The employee will provide the supervisor with an updated medical evaluation / light duty request form not later than the next scheduled medical evaluation.

13.10. Personal Hygiene. The Employer agrees to provide and maintain adequate facilities and supplies for personnel to perform personal hygiene in accordance with OSHA regulations and accepted industry practice. At a minimum, this will include hot and cold running water, hand soap, and paper towels or other means for employees to dry their hands. Employees who perform maintenance or industrial duties will also have available to them waterless-type hand cleaner and be provided with securable lockers adequate to store PPE and uniforms required in the performance of their assigned duties.

13.11. Sanitation and Health Standards of Facilities.

- a. In accordance with applicable health, safety and government regulations, the Employer agrees to maintain its facilities in a hygienic manner. At a minimum this includes:
 - (1) Indoor work place temperatures will be maintained within the range specified by industry standards.
 - (2) Lighting adequate to perform the work required of employees.
 - (3) Adequate supplies of hot and cold running water, toilet paper, soap, and paper towels to perform personal hygiene required during the work day (i.e., hand washing after use of toilets and after exposure to harmful chemicals). Alternative technologies that substitute for paper towels are allowed.
 - (4) Adequate ventilation of work, office, showers and restrooms.
 - (5) A supply of drinking water at the work facility or site for all personnel, adequate for the days-planned duration and activities.
 - (6) Any building will comply with OSHA requirements for restroom facilities.
- b. With the exception of emergencies, the Employer agrees to provide advance notice to the Labor Organization and affected employees when construction or required repairs affect or impact the minimum hygiene standards agreed to in section 1, and / or disables required safety devices / measures or otherwise affects conditions of employment. The length of notice shall be adequate to allow for bargaining on the issue before the construction / repairs begin. When emergencies occur, the Employer agrees to notify the Labor Organization and affected employees as soon as possible.

13.12. Hazardous Material and Emergency Responses.

- a. **Incidental Spill:** Defined as a chemical or a substance that is either spilled punctured or released from its source container and the chemical release is not identified as dangerous or toxic. The amount of chemical released is no larger than one gallon and only requires minimal amount of Personal Protective Equipment (PPE) to be cleaned up.

Note: Minimal PPE is considered the following: chemical goggles and non-permeable gloves.

**ARTICLE 14
LEAVE**

14.1 Leave and Excused Absences. Leave will be carried out in accordance with applicable laws, rules, and regulations, and any changes thereto.

- a. **Sick Leave.** An agency may grant sick leave only when the need for sick leave is supported by administratively acceptable evidence. An agency may consider an employee's self-certification as to the reason for his or her absence as administratively acceptable evidence, regardless of the duration of the absence. An agency may also

require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in § 630.401(a) for an absence in excess of 3 workdays, or for a lesser period when the agency determines it is necessary.

14.2 Medical Certificates for Sick Leave.

- a. **Employer Authority to Require Certificate.** The Employer may require an employee to provide a medical certificate to authorize sick leave for absences in excess of three (3) work days. Unless the Employer determines otherwise, an employee upon request will be authorized sick leave for absences that are three (3) work days or less without providing a medical certificate.
- b. **Notice to Employee of Certificate Requirement.** If the Employer requires a medical certificate to authorize sick leave, of any duration, the Employer will inform the employee of the requirement in advance or within a reasonable time after the employee notifies the Employer of the sick leave request.
- c. **Determination that Sick Leave Record is Questionable; Notice to Employee.** If the Employer determines that an employee's sick leave record is questionable—due to absences for short periods at frequent intervals and reason to believe the sick leave privilege is being abused, or another reason—the Employer will notify the employee of the determination and may advise the employee that a medical certificate will be required to support any future grant of sick leave regardless of duration.
- d. **Facts and Reasons Other than Questionable Record Supporting Certificate Requirement for Short Absence; Notice to Employee.** If the Employer requires a medical certificate to authorize sick leave for an absence of three (3) work days or less, without in advance having made and informed the employee of a determination that the employee's sick leave record is questionable, the Employer within a reasonable time after the requirement is imposed will notify the employee in writing of any reasons, and any facts supporting the reasons, that are the basis for the requirement. A copy of the notice, with the employee's personal identifiers deleted, will be delivered to the Labor Organization.
- e. **Meetings to Discuss Notice.** Upon the employee's request, the Employer will meet with the employee to discuss a notice provided under paragraph d. The Employer will afford the Labor Organization opportunity to attend the meeting unless the employee objects.

14.3. Compensatory Time. All Compensatory Time is governed by applicable law, rules, regulations, and instructions, and any change thereto.

14.4. Furlough. All Furlough time is governed by applicable law, rules, regulations, and instructions, and any change thereto.

ARTICLE 15 PERFORMANCE MANAGEMENT

15.1. Responsibilities. Management and the Labor Organization recognized the vital nature of the performance evaluation process to the entire bargaining unit work force. Performance Management will be carried out in accordance with applicable laws, rules, and regulations, and any changes thereto. The effectiveness of the performance evaluation system is a combined responsibility of each employee and their supervisor. Performance standards shall be equitable, objective and reasonably related to the duties set forth in the position description. Supervisors will, to the greatest extent possible, establish identical critical elements (job objectives) for employees with the same position description and performing the same duties in accordance with applicable laws, rules, and regulations, supervisors will define measurable requirements to achieve each level of critical element ratings (outstanding (5) through unacceptable (1)).

15.2. Meetings; Future Bargaining. Except to the extent a future amendment of or supplement to this agreement otherwise provides, performance management will be conducted in accordance with Section 15.2a and applicable National Guard Bureau (NGB) and Department of Defense (DoD) policies. Upon request, the Employer will meet with the Labor Organization as often as reasonably may be necessary to discuss implementation of these NGB and DoD policies. At any time between April 1, 2018, and July 1, 2018, the Labor Organization may demand bargaining to amend or supplement this agreement on the subject of performance management. This right to bargain is in addition to any other right to mid-term or mid-point bargaining provided by this agreement.

- a. The times spent away from the assigned job by union representatives in the performance of their representation duties should not be taken into account when accomplishing a performance appraisal. The performance appraisal should be based only on the performance of their officially assigned work.

ARTICLE 16 GRIEVANCE PROCEDURES

16.1. Exclusivity of Procedure. Except as provided in 5 U.S.C. § 7121(d), (e), and (g), and § 7116(d), the negotiated procedure provided by this Article shall be the exclusive procedure for resolving grievances not excluded under Section 3. An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both.

16.2. Grievance Definition.

- a. For purposes of this Article, "grievance" means
 - (1) any complaint by any bargaining unit member concerning any matter relating to the employment of the employee;
 - (2) any complaint by the Labor Organization concerning any matter relating to the employment of any bargaining unit member;
 - (3) any complaint by any bargaining unit member, the Labor Organization, or Employer concerning
 - (A) the effect of interpretation or a claim of breach of collective bargaining agreement or;
 - (B) any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment.
- b. Exclusions from Grievance Procedure Federal civil service employee grievance coverage, as outlined herein, does NOT apply to:
 - (1) Any claimed violation to subchapter III of Chapter 73 of Title 5, United States Code (relating to prohibited political activities);
 - (2) Retirement, life insurance or health insurance;
 - (3) A suspension or removal under Title 5 U.S.C. section 7532 of this title (in the interest of National Security)

- (4) Any examination, certification or appointment;
- (5) Action based on classification or job degrading determination that does not result in reduction in grade or pay of any employee. Statutory classification appeals' procedures will be the resolution method used for the classification action.
- (6) A "timely initiated action" under statutory procedure pursuant to provisions of 5 U.S.C. § 7121(d). Therein employees have the option to elect a statutory procedure or the negotiated procedure, but not both.
- (7) A final decision made by the Adjutant General pursuant to the provisions of 32 USC 709(f)(4) that concerns activities occurring while the member is in a military pay status, or concerns fitness for duty in the reserve components.

16.3. Grievance Representation. The Labor Organization is the exclusive representative for itself and any member(s) in the presentation and processing of any grievance.

16.4 Right to Grieve Without Representation. An employee presenting a grievance under this Article may do so either without representation; or with representation by the Labor Organization, unless the Labor Organization lawfully declines to represent the employee.

16.5. Procedure – Employee Grievance. If a settlement cannot verbally be agreed to, the following procedure will be used:

Step 1: If the grievance is a complaint about the employee's immediate supervisor and that supervisor has full authority to provide redress, the grievance must be presented in writing or electronic format, using the agreed form, STARC AZ Form 690-1, dated 10 July 2011 (see Appendix 1) not later than forty-five (45) calendar days after the grievant knew or reasonably should have known the conduct complained of, whichever is later. In-depth grievances (complex legal disputes normally require substantial investigation, communication, and legal analysis), above the immediate supervisor, must be so presented not later than six months after the grievant knew or reasonably should have known the conduct complained of, whichever is later.

Step 2: If the aggrieved individual is still dissatisfied, the individual may appeal to the Director of Staff, through HRO within ten (10) working days. The Director of Staff or their designee will provide their decision, in writing, to the grieved individual and the Labor Organization, within fifteen (15) calendar days from the date the grievance is received by HRO.

Step 3. If the aggrieved individual is still dissatisfied, the individual may appeal to TAG, through HRO, within ten (10) working days. TAG or their designee will provide their decision in writing to the aggrieved individual and the Labor Organization, within ten (10) working days from the date the grievance is received by HRO.

16.6. Procedure – Labor Organization Grievance.

a. Labor Organization initiated grievances will name the 161st Air Refueling Wing (ARW) Commander, as the respondent. The Labor Organization agrees to consider an attempt to informally resolve the grievance at an appropriate level prior to formal presentation. The grievance must be presented not later than forty-five (45) days after the organization knew or reasonably should have known the conduct complained of, whichever is later.

b. The following procedures will be used for all Labor Organization grievances:

Step 1: The grievance will be prepared in writing and submitted to the Labor Relations Specialist (LRS) at HRO and the LRS or their designee will forward the grievance to the 161st ARW Commander. The 161st Air Refueling Wing

Commander or their designee will provide a decision, in writing, within fifteen (15) calendar days, to the Labor Organization President or their designated representative.

Step 2: If the Labor Organization is dissatisfied with the decision of the 161st ARW Commander, an appeal will be forwarded to TAG within fifteen (15) calendar days after receipt of the decision. If TAG or their designee does not sustain the grievance, a reason, in writing, will be forwarded to the Labor Organization.

16.7. Extension of Time Limits. The above-mentioned time limits can be extended by mutual agreement, in writing.

ARTICLE 17 GRIEVANCE ARBITRATION

Any grievance not satisfactorily settled under Article 16 may be subject to binding arbitration.

17.1 Authority to Invoke Arbitration. Only the Employer or the Labor Organization may invoke arbitration. Both the Employer and Labor Organization will honor an employee's decision not to arbitrate/discontinue arbitration.

17.2 Deadline. To invoke arbitration, the Employer or the Labor Organization must deliver to the other party a written invocation of arbitration not later than thirty (30) calendar days from the date of the final decision of the grievance under Article 16.

17.3 Arbitrator Selection. Within ten (10) workdays after invocation of arbitration, the parties jointly will either agree on an arbitrator or request the Federal Mediation and Conciliation Service (FMCS) to submit a list of seven (7) impartial persons qualified to act as arbitrators. Either party may require that the request to the FMCS state that each of the seven (7) persons must be a lawyer. The parties shall meet within ten (10) workdays after receipt of the list. If the parties cannot mutually agree upon one of the listed arbitrators, the Employer and the Labor Organization shall alternately strike one arbitrator's name from the list of seven (7) until a single name remains on the list. The Labor Organization shall strike first and the sole remaining name shall be the selected arbitrator.

17.4 Pre-Hearing Motions and Scope of Evidentiary Hearing, if Required.

- a. A challenge to the arbitrability of a grievance, or any aspect thereof, must be presented by motion that states facts and reasons supporting the challenge and that is submitted to the arbitrator and served on the other party within thirty (30) calendar days after the arbitrator is selected. If a motion challenging arbitrability is not timely submitted and served, the challenge is waived and the grievance will be deemed to be arbitrable. If a motion challenging arbitrability is timely submitted and served, other proceedings shall be suspended until the arbitrator decides the motion, unless the motion does not challenge the arbitrability of the grievance in its entirety. If the arbitrator finds the grievance in its entirety to be non-arbitrable, this finding shall be the arbitrator's award unless the award is overturned by the Federal Labor Relations Authority.
- b. Either party by pre-hearing motion may seek resolution by the arbitrator of any procedural matter, such as pre-hearing production of documents, identities of witnesses, and their expected testimony; deadlines for pre-hearing motions, responses, and replies; and scheduling of motion oral arguments, pre-hearing conferences, and an evidentiary hearing, if required. Pre-hearing procedures will allow each party reasonable time to require the other to produce documents, witness identities, and their expected testimony and to submit other pre-hearing motions, including motions based on the information received.
- c. Either party by pre-hearing motion may submit a statement of the issues on the merits that the party maintains the arbitrator must decide; request the arbitrator's agreement with the statement; and request, if the arbitrator disagrees

in whole or in part, the arbitrator's own statement of the issues. To the extent the parties agree on the issues to be decided, the agreement is binding on the arbitrator.

- d. The party not bearing the burden of proof may, by pre-hearing motion, require the party bearing the burden of proof to produce admissible documentary evidence, or a sworn declaration of a competent witness having personal knowledge, that is sufficient, if unrebutted by other evidence, to prove any material fact, or all material facts, that the party bearing the burden of proof must prove in order to prevail. If in response to the motion the party bearing the burden of proof fails to satisfy this requirement as to such a material fact, the arbitrator shall find that the party not bearing the burden of proof is entitled to prevail.
- e. If a party by pre-hearing motion asserts a material fact is not genuinely disputed and produces admissible documentary evidence, or a sworn declaration of a competent witness having personal knowledge, that is sufficient, if unrebutted by other evidence, to prove the material fact, the arbitrator shall deem the material fact to be established unless the other party in response to the motion produces admissible documentary evidence, or a sworn declaration of a competent witness having personal knowledge, that is sufficient show that the material fact is genuinely disputed. If a material fact deemed by the arbitrator to be established is contrary to a material fact that the party bearing the burden of proof must prove in order to prevail, the arbitrator shall find that the party not bearing the burden of proof is entitled to prevail. If by motion under this subsection all material facts that the party bearing the burden of proof must prove in order to prevail are deemed by the arbitrator to be established, the arbitrator shall find that the party bearing the burden of proof is entitled to prevail.
- f. If motions under subsections d and e are properly made and decided, an evidentiary hearing should be necessary only if, as to at least one material fact, the parties have produced conflicting sworn statements by competent witnesses having personal knowledge, whose credibility must personally be assessed by the arbitrator in order to determine the truth.
- g. As to any motion under this section, opportunity for response, reply to the response, and oral argument by teleconference shall be afforded, unless the motion is unopposed.
- h. An evidentiary hearing shall be strictly limited to determination of genuinely disputed material matters, with no testimony allowed on any material matter that by motion has been deemed by the arbitrator to be established.

17.5 Hearing Facilities. The Employer shall provide appropriate facilities for any necessary arbitration hearing, including; (a) an ample hearing room arranged in the manner of a courtroom, with appropriate tables, chairs, and electrical connections for computers; (b) an ample nearby witness waiting room; (c) nearby restroom and food service facilities; and (d) an ample nearby room for exclusive use by the Union for purposes of consultation among Labor Organization representatives and witnesses.

17.6 Arbitration Fee.

- a. Prior to the appointment of an arbitrator, the parties shall attempt to determine all significant aspects of the arbitrator 's basis for charges and fees and expenses including the hearing, travel, study, and writing time.
- b. Expenses incurred for the arbitrator and transcript will be shared equally by the agency and the union.

17.7 Decision. The arbitrator will be requested to render the award within thirty (30) calendar days after the decision of the last pre-hearing motion or the conclusion of the evidentiary hearing, unless the parties otherwise agree. The arbitrator's decision shall be furnished to the Employer with a copy to the Labor Organization. Such decision shall be final and binding on all parties except when sustained or modified by the Federal Labor Relations Authority acting upon an exception filed by

either party. An exception must be filed during the thirty (30)-day period beginning on the date the award is served on the party.

ARTICLE 18 DUES WITHHOLDING

18.1. General. Dues withholding will be extended to the Labor Organization throughout the period that ACT, Inc., Arizona Chapter 71 remains the official representative of the bargaining unit.

18.2. Procedures. The completed standard form will be given by the labor organization to the Civilian Pay Office. Such requests must be handled promptly.

- a. The Standard Form 1187 will be completed and certified as to the amount of withholding (.008 of base pay) and that the member has been advised of the contents of the form, and the individual's earliest date of dues revocation will be annotated on the form and initialed by the individual.
- b. The Standard Form 1187 may be submitted at any time. The effective date for withholding will start the first pay period beginning after the submission of the form to the Civilian Pay Office. Adjustments to dues allotments will occur within two (2) pay periods whenever the member's rates of base pay changes.
- c. An allotment shall be terminated when the employee leaves the bargaining unit as a result of any type of separation, transfer, or other personnel action; upon loss of exclusive recognition by the Labor Organization; when the agreement providing for dues withholding is suspended or terminated by an appropriate authority outside DOD or when the employee has been suspended from the Labor Organization.
- d. When an employee is temporarily promoted or detailed to a position outside of the bargaining unit, the Agency agrees to automatically reinstate the dues withholding of the employee upon the employee's return to the bargaining unit.
- e. The Labor Organization agrees to provide the HRO with SF form 1187 when requested.
- f. It is the individual's responsibility when temporarily assigned outside the bargaining unit to maintain dues payments, if the employee so desires, in order to protect union associated insurance, or other union benefits.
- g. Probationary technicians are entitled to membership privileges as any other bargaining unit employee.

18.3. Dues Revocation. The agency agrees to provide the labor organization with copies of the standard form SF 1188 for use in revoking dues allotments. These forms will be available in the Labor Organization office to those individuals wishing to revoke their dues withholding.

- a. The individual will turn the completed standard form into the Civilian Pay Office.
- b. The Civilian Pay Officer shall date and initial all copies of the standard form upon receipt from individual. The Civilian Pay Office will provide the labor organization, within three (3) working days, the second copy of the standard form after receipt of the signed form from the employee.
- c. New members shall have the option of dues revocation on the first annual anniversary date after employee election to participate. Upon receipt of a properly completed SF-1188 and following one calendar year after the employee's dues have been withheld, revocation will be processed as soon as administratively feasible once received in the Payroll Office.

Note: Union will not be held accountable for untimely revocation of employee's union due once properly submitted to the Payroll Office.

ARTICLE 19 DISCIPLINE

19.1 Applicability. This article applies to counseling, admonition, or reprimand of, or adverse action against, an employee based on allegation that (a) the employee's conduct was an offense stated in Table D-1 of CNGBI 1400.25, Vol. 752 or any change thereto. Unless it is inconsistent with this agreement, in which case the Employer shall comply with this agreement.

19.2 Admonition Procedures: See CNGBI 1400.25, Vol. 752

19.3 Reprimand Procedures: See CNGBI 1400.25, Vol. 752

19.4 Challenges to Letter of Reprimand. A letter of reprimand may be challenged by grievance under this agreement or through any other applicable procedure. Failure to challenge a reprimand, however, shall not be deemed to be an admission that the basis for the reprimand is true or just.

19.5 Adverse Actions: CNGBI 1400.25, Vol. 752

ARTICLE 20 EXCHANGE OF INFORMATION

20.1. Employer Information. The Employer agrees to place the Labor Organization on distribution for all pertinent changes to technician personnel regulations, policies and directives of NGB and OPM except where this information is restricted by law, rule or regulation.

20.2. Labor Organization Information. The Labor Organization agrees to provide the Employer with any pertinent labor/management relations publications and directives that they receive.

20.3. Bargaining Unit Member Information. The Employer agrees to supply the Labor Organization with a current list of names, place of work, work phone numbers, and e-mail addresses for all Bargaining Unit members. Such lists will be updated on an annual basis. Mass communications will reference ACT 71 in the subject line.

ARTICLE 21 MISCELLANEOUS

21.1. Technology.

- a. Cell phones - Cell phone use will be permitted in the workplace provided that it does not interfere with the Performance of duties or create a safety hazard. Management may identify areas where cell phone use is banned based on safety (fuel points, heavy traffic areas, etc.) Abuse of cell phones will be dealt with on an individual basis.
- b. The employer agrees to allow the listening of music with discretion as long as they are used in a manner as to not disturb others, disrupt the workplace, or create a safety hazard.
- c. Headphone wear to include earbuds will be IAW applicable base policies and Air Force Instructions.

21.2. Break Rooms. The Employer recognizes the benefits to employee's morale and productivity that break rooms provide. Within funding and space constraints, the Employer agrees to make reasonable efforts to provide clean and accessible break rooms to all employees on an equitable basis.

ARTICLE 22 IMPACT AND IMPLEMENTATION BARGAINING

22.1. Impact and Implementation Bargaining. Except as provided in Section 22.3, Employer change of a condition of employment is subject to impact and implementation (I&I) bargaining to the extent required by 5 U.S.C. § 7106(b)(2) and (b)(3), and any change thereto, if the change is (1) an exercise of a § 7106 management right; or (2) required by the Constitution of the United States, a federal statute, a government-wide regulation, or an agency regulation for which a compelling need exists.

22.2. Substantive Bargaining. Except as provided in Section 22.3, Employer change of a condition of employment is subject to substantive bargaining—including bargaining over whether the change will occur at all—if the change is (a) not an exercise of a management right; and (b) not required by the Constitution of the United States, a federal statute, a government-wide regulation, or an agency regulation for which a compelling need exists.

22.3. Change Precluded by 5 U.S.C. § 7116(a)(7) or this Agreement.

- a. As of the execution of this agreement, 5 U.S.C. § 7116(a)(7) provides that no government-wide or agency rule or regulation (other than a rule or regulation implementing 5 U.S.C. § 2302) may be enforced if (1) the rule or regulation is in conflict with this agreement and (2) this agreement was in effect before the date the rule or regulation was prescribed. In such cases, absent union consent, the rule or regulation may not be enforced at all during the time this agreement is in effect.
- b. Employer change of a condition of employment by means other than rule or regulation also is precluded if the change conflicts with this agreement, unless the change is required to end an unlawful practice, or occurs through mid-point bargaining authorized by this agreement, or bargaining by consent.

22.4. Notice of Proposed Change and Preservation of the Status Quo Pending Completion of Bargaining. Employer change of a condition of employment shall be held in abeyance pending completion of appropriate bargaining, including resolution of any impasse by the Federal Service Impasses Panel, unless: (a) the Employer provides the Union written notice of the change and the Union fails to inform the Employer within ten (10) working days of receipt of the notice that the Labor Organization demands bargaining; or (b) the necessary functioning of the agency or need to end an unlawful practice requires that implementation occur before completion of bargaining. In the latter situation, the Employer shall provide the Labor Organization written notice of the change and—unless the Union fails to inform the Employer within ten (10) working days of receipt of the notice that the Union demands bargaining—bargain over the impact and implementation of the change, without holding the change in abeyance.

22.5. Written Statements. The Employer will provide the Labor Organization a written statement of the facts and reasons upon which the Employer bases an assertion that (a) Employer change in a condition of employment is subject only to I&I bargaining, not substantive bargaining; (b) the necessary functioning of the agency or need to end an unlawful practice requires implementation of a change before completion of bargaining; or (c) a compelling need exists for an agency regulation.

**ARTICLE 23
REDUCTION IN FORCE**

23.1. General. The Adjutant General or designee is responsible for implementing a reduction in force. Any reductions in force will be governed by applicable law, rules, regulations, and instructions.

23.2. RIF Procedures. Applicable law, rules, regulations, instructions, and this article will govern procedures relating to a reduction in force. The Employer agrees to negotiate Impact and Implementation (I & I) bargaining procedures and appropriate arrangements.

**ARTICLE 24
DRESS CODE**

24.1. Military Uniform. Excepted employees, as supplied by Employer and in accordance with applicable law, rules, regulations, and instructions, Office of Personnel Management rules on appearance, and 32 USC 709(b)(4), will wear the military uniform.

- a. Bargaining Unit members (technicians) are authorized Fair Wear & Tear (FWT) replacements for ill-fitting or unserviceable OCPs or Blues.
- b. Bargaining Unit Members (technicians) that require steel toe boots for their full time duty position will have them provided.
- c. Bargaining unit members requiring maternity uniforms will have them provided.

24.2. Appropriate Professional Attire for Title 5 Civilian Employees. Civilian employees will dress in a professional manner, appropriate for the work setting in the performance of their normal civilian duties. The following attire is considered inappropriate for the workplace: halter tops, tops where the midriff is exposed, T-shirts, swim wear, cut-offs or shorts, sweat pants or other athletic apparel, shower- type sandals or slippers (flip-flops), and ripped, torn or frayed clothing. These restrictions on workplace attire also apply to any "casual day" that the Employer may have in effect.

- a. The employer, at no cost to employees, will replace items referenced in 24.1 if the items become unsatisfactory due to deterioration, damage, soiling or contamination that cannot be removed by cleaning, employee change in size, or other causes. Each replacement item will be the proper size and ready to wear, with all appropriate rank insignia, patches and any other required or permissible cloth attachments properly sewn on.

**ARTICLE 25
WAGE BOARD REPRESENTATION**

25.1. Labor Organization Participation. When the wage survey lead agency requests the Employer to participate in a wage survey, the Employer will notify the Labor Organization who will nominate bargaining unit members for appointment to the wage survey data collection team. The number of personnel to be appointed to the data collection team will be determined by the lead agency.

**ARTICLE 26
MERIT PROMOTION AND INTERNAL PLACEMENT**

26.1. Purpose. To provide procedures to ensure each employee receives full consideration for all position vacancies and to provide the opportunity for current fulltime employees of the AZNG to compete for advancement in a fair manner and the best-qualified applicants to be selected.

26.2. Grievances of Restricted Practices. Restrictive practices are defined in paragraph 6-4 of the Employer's Merit Placement Plan. In addition to violations of this article, any restrictive practice that is demonstrated to have occurred is grievable and may result in the suspension of the placement action. If it is demonstrated within five (5) working days of notification to non-selected candidates, that a violation of the merit placement plan would have affected the standing of the candidates, the placement action will be temporarily suspended until HRO reviews the selection. HRO will review the placement folder in conjunction with the Labor Organization. HRO will take appropriate action if deemed necessary. An employee grievance based solely on non-selection from a properly developed roster of qualified candidates will not be accepted.

26.3. Changes in the Merit Placement Plan. The Employer agrees not to make changes in the Merit Placement Plan unless negotiated with the Labor Organization. Nothing in this article should be considered to be a waiver of the Labor Organization's right to bargain any change in merit promotion and internal placement proceedings.

ARTICLE 27 EFFECTIVE DATE, DURATION AND MODIFICATIONS

DURATION; MID-POINT AND MID-TERM BARGAINING

27.1. Effective Date. The effective date of this CBA shall be after execution by the parties and approval by the Defense Civilian Personnel Advisory Service (DCPAS). The date of this CBA, the DCPAS approval letter, and the MOA dated **13 October 2016**, will be made part of this CBA prior to its distribution and listed on the cover page of this CBA.

27.2. DCPAS Approval.

- a. The DCPAS shall approve the CBA within 30 days from the date the CBA is executed by the parties, if the CBA is IAW the provisions of applicable law, rule, or regulation.
- b. If DCPAS does not approve or disapproves any portion of this CBA within the 30-day period, the CBA shall take effect and be binding on the agency and the union subject to the provisions of applicable law, rule, and regulation.
- c. In the event portions of the CBA are not approved by DCPAS negotiations will resume IAW the MOA dated **13 October 2016** incorporated herein.
- d. Upon approval, this collective bargaining CBA takes precedent over any conflicting provisions in Agency regulations that predate, this CBA, unless doing so would cause a violation of Federal, State or local law.

27.3. CBA Duration.

- a. This CBA shall expire **three** years after the approval date of DCPAS. Further, the CBA will be terminated by TAG upon certification by proper authority that the Labor Organization no longer represents the employees in the bargaining unit.
- b. The terms of this CBA may be extended beyond the expiration date:
 - (1) In one year increments based on mutual agreement of the parties.
 - (2) During a period of declared National or State emergency by the mutual consent of the parties.

- c. The provisions of this CBA will remain in effect until a subsequent CBA between the parties is negotiated and approved by the DCPAS, provided those portions of the CBA which have not been settled have been submitted for third party decision

27.4. CBA Amendment.

- a. The CBA may be subject to modification as a result of a change in, or issuance of, an appropriate new law, rule, or regulation by proper authority at the DCPAS or higher level.
- b. By mutual consent of the parties.
- c. A request for an amendment or modification of this CBA by either party shall be in writing setting forth the need or reason for the proposed changes and a summary of the changes.
- d. Either party may serve notice to the other party, no later than sixty (60) days prior to the midpoint of this CBA, requesting negotiations. Upon mutual agreement, the parties may commence negotiations, as needed, at the mid-point of this CBA.
- e. Representatives of the Employer and the Labor Organization will meet within 30 days of the mid-point to commence negotiating the proposed amendment or modification, unless a later date is mutually agreed upon. No changes other than those specified in the summary will be considered.
- f. Approval of an amendment or modification to the CBA will be accomplished in the same manner as provided for in paragraph 27.2, above.

27.5. Negotiating a New CBA.

- a. Thirty calendar days prior to the planned start of negotiations of a new CBA, representatives of the Employer and representatives of the Labor Organization will meet to initiate an MOA establishing the ground rules for the conduct of negotiations.
- b. Negotiation for a new CBA will commence no earlier than 180 calendar days nor later than 90 calendar days prior to the expiration date of this CBA. In the event either party fails to request negotiation of a new CBA within the established time frame, this CBA will automatically extend for a period of one year.

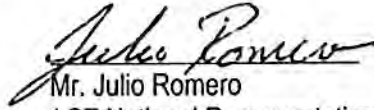
IN WITNESS WHEREOF, the parties have hereto entered into this agreement on this 19 day of MAY 2021 2021.

FOR THE EMPLOYER

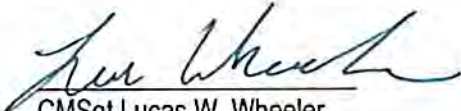
FOR THE LABOR ORGANIZATION



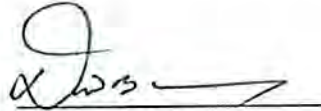
Lt. Col. Craig Alann
161st Maintenance Squadron Commander,
Chief Negotiator



Mr. Julio Romero
ACT National Representative, Chief Negotiator



CMSgt Lucas W. Wheeler
Member



Mr. David Dees
AZ ACT Chapter 71, President



Ms. Stacey Mitchell
HRO-Labor Relations

APPROVED:



KERRY L. MUEHLENBECK, BG, AZ ANG
The Adjutant General

APPROVED:

This Agreement was approved on the 16th day of June, 2021, by the Department of Defense, DCPAS, Chief, Field Advisory Services Division

Appendix 1

INSTRUCTIONS FOR COMPLETING STARC AZ Form 690-1 GRIEVANCE FORM

General. The grievant, and/or the union representative, should complete blocks 1 through 18. If there isn't enough room in any block, make a note in the block that there are additional pages attached. Ensure that any additional pages are titled appropriately. After completion, at least two copies of the grievance should be presented to the HRO POC designated by the employer to accept grievances (normally the Labor Relations Specialist).

Block 1. Today's date

Block 2. Enter the grievant's first name, middle initial, and last name.

Block 3. Grievant's current job title, series, and grade (if known).

Block 4. Shop or office where grievant normally works.

Block 5. Grievant's normal work phone number and FAX number.

Block 6. Check the appropriate block as to whether or not grievant requests union representation.

Block 7. If block 6 is checked "YES" (union representation is requested), enter the name of the representative requested (normally this will be the steward assigned to the grievant's work area.) If "NO" is checked in box 6, leave this block blank.

Block 8. The phone and FAX numbers of the union representative named in the previous block.

Block 9. Enter the name of the grievant's immediate supervisor or the management official who is most familiar with the grievance.

Block 10. The phone and FAX numbers for the management official cited in block 9, if known.

Block 11. Enter the specific section, article, or part of the law, rule, regulation, or Labor/ Management Agreement article (union contract) that was allegedly violated by the incident, event, or action detailed in block 12.

Block 12. State in detail the incident, event, or action on which this grievance is based. Include names, dates, and locations as appropriate. If there are witnesses, name them and include their phone/FAX numbers if known. Attach copies of any documentation that is relevant (keep the originals).

Block 13. Enter what relief and/or corrective action the grievant feels will resolve the matter.

Block 14, 15, 16, 17. The grievant and union representative (if applicable) sign and date in the respective blocks.

Block 18. At each step of the grievance, two copies of the grievance will be presented to an employer designated POC in HRO (normally the Labor Relations Specialist). The designated POC will sign and date both copies acknowledging receipt. One copy will be retained by the designated POC for processing. One will be returned after signature to the grievant or the union representative.

**Association of Civilian Technicians (ACT)
Arizona Army Chapter 71
Official Time Form**

REPRESENTATIVE'S NAME: <small>(Type or print)</small>		ORGANIZATION / PHONE NO.	
DATE AND TIME OF BUSINESS:		DESTINATION:	ESTIMATED TIME:
REPRESENTATIVE'S SIGNATURE:		DATE:	TIME:
<input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED (See comments below)			
COMMENTS:			
SUPERVISOR'S SIGNATURE:		DATE:	TIME:
SECTION II. PURPOSE FOR WHICH OFFICIAL TIME WAS USED <small>(Indicate hours or fraction thereof used by category)</small>			
HOURS USED		_____ BA: Term Negotiations _____ BB: Mid-Term Negotiations _____ BK: Dispute Resolution _____ BD: General Labor-Management Relations	
_____ ACTUAL TIME LEFT		_____ ACTUAL TIME RETURN	
REPRESENTATIVE'S SIGNATURE:		DATE:	TIME:
SUPERVISOR'S SIGNATURE:		DATE:	TIME:
DISTRIBUTION WHEN COMPLETED: ORIGINAL TO SUPERVISOR FOR FILE COPY TO ACT CHAPTER #61 SECRETARY COPY TO ACT CHAPTER #61 PRESIDENT			

GLOSSARY OF TERMS

ADMONITION. To advise to do or against doing something; warn; caution to reprove firmly but not harshly

ADVERSE ACTION. An official personnel action, usually taken for disciplinary reasons, which adversely affects an employee and is of a severity such as suspension for more than 14 days, reduction in grade or status, or removal. For most Federal employees, an appeal system established by statute exists. The employee may choose to use the statutory or, if covered under the contract permits, the negotiated grievance procedure, but not both.

APPLICABLE LAWS. The Authority has said that "applicable laws" within the meaning of title 5, United States Code, section 7106(a)(2), include statutes, the Constitution, judicial decisions, certain Presidential executive orders, and regulations "having the force and effect of law"--i.e., regulations that (1) affect individual rights and obligations, (2) are promulgated pursuant to an explicit or implicit delegation of legislative authority by Congress, and (3) satisfy certain procedural requirements, such as those of the Administrative Procedures Act.

APPROPRIATE ARRANGEMENT. One of three exceptions to management's rights. Under title 5, United States Code, section 7106(b)(3), a proposal that interferes with management's rights can nonetheless be negotiable if the proposal constitutes an "arrangement" for employees adversely affected by the exercise of a management right and if the interference with the management right isn't "excessive" (as determined by an "excessive interference" balancing test). Also defined as arrangements for employees adversely (detrimentally) affected by the exercise of a management right or rights contained in 5 USC 71*(a) and (b)(1). The purposes of such are to address or compensate for the "actual or anticipated" adverse effects caused by the exercise of a management right or rights. To be appropriate, an arrangement proposed must concern affected conditions of employment resulting from the exercise of those rights, cannot conflict with law, government-wide rules or regulations, excessively interfere with the exercising of a management right or rights or concern matters within the employee(s)' control.

ARBITRATION. See **ARBITRATOR.**

ARBITRATOR. An impartial third party to whom the parties to an agreement refer their disputes for resolution and decision (award). An *ad hoc arbitrator* is one selected to act in a specific case or a limited group of cases. A *permanent arbitrator* is one selected to serve for the life of the agreement or a stipulated term, hearing all disputes that arise during this period.

- **Grievance arbitration.** When the arbitrator interprets and applies the terms of the collective bargaining agreement--and/or, in the Federal sector, laws and regulations determining conditions of employment.
- **Interest arbitration.** When the arbitrator resolves bargaining impasses by dictating some of the terms of the collective bargaining agreement.

ARBITRABILITY. Refers to whether a given issue is subject to arbitration under the negotiated agreement. If the parties disagree whether a matter is arbitrable or not, the arbitrator must resolve this threshold issue before reviewing the merits of the dispute.

ASSIGN EMPLOYEES. A management right relating to the assignment of employees to positions, shifts, and locations. This right includes discretion to determine "the personnel requirements of the work of the position, i.e., the qualifications and skills needed to do the work, as well as such job-related individual characteristics as judgment and reliability." It also includes discretion to determine the duration of the assignment.

ASSIGN WORK. A management right relating to the assignment of work to employees or positions. The right to assign work includes discretion to determine who is to perform the work; the kind; the amount of work to be performed; the manner in which it is to be performed, as well as when it is to be performed. It also includes "the right to determine the particular qualifications and skills needed to perform the work and to make judgments as to whether a particular employee meets those qualifications."

AUTHORITY. See **FEDERAL LABOR RELATIONS AUTHORITY.**

AWARD. In labor-management arbitration, the final decision of an arbitrator, final and binding on both parties. In very limited circumstances, either party may appeal the arbitrator's decision to the Federal Labor Relations Authority (e.g. award is contrary to law).

BARGAINING (NEGOTIATING). A ubiquitous process--sometimes informal and spontaneous, sometimes formal and deliberate--of offer and counteroffer whereby parties to the bargaining process try to reach agreement on the terms of exchange. Formal bargaining processes with associated rituals and bargaining routines vary, depending on their political, economic, and social context. Also defined as the performance of the mutual obligation of the representatives of the agency and union to meet at reasonable times, consult and bargain in a good faith effort to reach agreement with respect to the conditions of employment affecting bargaining unit employees and, upon request, to execute a written document. (Does not compel either party to agree to a proposal or make a concession)

BARGAINING UNIT. A grouping of employees that a union represents or seeks to represent and that the FLRA finds appropriate for **collective bargaining** purposes.

BINDING ARBITRATION. The law requires that collective bargaining agreements contain a negotiated grievance procedure that terminates in binding arbitration of unresolved grievances.

BUDGET. A right reserved to management. The Authority has fashioned a two-prong test that it uses to determine whether a proposal interferes with an agency's right to determine its budget: namely, the proposal either has to prescribe particular programs, operations or amounts to be included in an agency's budget, or the agency can substantially demonstrate that the proposal would result in significant and unavoidable cost increases that are not offset by compensating benefits.

CERTIFICATION. The FLRA's determination of the results of an election or the status of a union as the **exclusive representative** of all the employees in an appropriate unit.

CHIEF STEWARD. A union official who assists and guides shop stewards. The roles he or she plays within the union are determined by the union. The roles he or she plays in administering the contract are determined by the contract. For example, the **negotiated grievance procedure** may provide that the chief steward becomes the union representative if the grievance reaches a certain step in the grievance procedure.

COLLECTIVE BARGAINING. Literally, bargaining between and/or among representatives of collectivities (thus involving internal as well as external bargaining); but by custom the expression refers to bargaining between labor organizations and employers. **CIVIL SERVICE REFORM ACT OF 1978 (CSRA).** Legislation enacted in October 1978 for the purpose of improving the civil service. It includes the **Federal Service Labor-Management Relations Statute (FSLMRS)**, Chapter 71 of title 5 of the United States Code. Also known as Public Law 95-454 passed by the 95th Congress on October 13, 1978, which became effective on January 11, 1979. Title VII of the Act concerns Federal Service Labor-Management Relations and supersedes Executive Order 11491 as amended. This provided Federal employees a legal, statutory basis for their right to organize, bargain collectively, and participate through labor unions in decisions, which affect their working conditions. Title VII is codified at 5 U.S.C. Chapter 71.

COLLECTIVE BARGAINING OR NEGOTIATIONS. The performance of the mutual obligation of the employer and the exclusive representative to meet at reasonable times, to consult and bargain in good faith, and upon request by either party to execute a written agreement with respect to terms and conditions of employment. This obligation does not compel either party to agree to proposals or make concessions.

COLLECTIVE BARGAINING AGREEMENT (CBA). A collective bargaining agreement between the employer and the exclusive representative. A collective bargaining agreement must contain a negotiated grievance procedure. Also defined as a written agreement between an employer and a labor organization, usually for a definite term, defining conditions of employment, rights of employees and labor organizations, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement. [Also known as Agreement, CBA, Contract, Labor-Management Agreement or Negotiated Agreement.]

COMPELLING NEED. Test used to determine whether a discretionary agency regulation that doesn't involve the exercise of management's is a valid limitation on the **scope of bargaining**. 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 other authority (e.g., a regulation) in an essentially non-discretionary manner.

CONCILIATION. See **MEDIATION**.

CONDITIONS OF EMPLOYMENT (COE). Under title 5, United States Code, section 7103(a)(14), conditions of employment "means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise [e.g., by custom or practice], affecting working conditions, except that such term does not include policies, practices, and matters – (A) relating to political activities prohibited under subchapter III of chapter 73 of this title; (B) relating to the classification of any positions; or (C) to the extent such matters are *specifically provided for by Federal statute*." (Emphasis added). It does not include policies, practices and matters relating to prohibited political activities, to the classification of any position, or to the extent the matters are specifically provided for by statute.

CONSULTATION. To be distinguished from **negotiation**. The FSLMRS provides for two types of consultation: between qualifying unions and agencies concerning agency-wide regulations and qualifying unions and those agencies issuing Government-wide regulations.

CONTRACTING OUT. A right reserved to management that includes the right to determine what criteria management will use to determine whether or not to contract out agency work.

DISCIPLINE. A right reserved to management that the FLRA has said includes the right "to investigate to determine whether discipline is justified," it also "encompasses the use of the evidence obtained during the investigation."

DUES ALLOTMENT (WITHHOLDING). Dues withholding services provided by the agency to unions that win exclusive recognition or dues withholding recognition. If the former, the services must be provided without charge to the union. Employee dues assignments must be voluntary (no union or agency shop arrangements permitted under the **Federal Service Labor-Management Relations Statute**) and may not be revoked except at yearly intervals or if a member becomes ineligible (i.e. promotion to supervisor, etc.), but must be terminated when the agreement ceases to be applicable to the employee or when the employee is expelled from membership in the union.

DUES WITHHOLDING RECOGNITION. A very limited form of recognition, under which a union that can show that it has 10 per cent of employees in a bargaining unit as members can qualify for the right only to negotiate a dues deduction arrangement. Such recognition becomes null and void as soon as a union is certified as the **exclusive representative** of the unit.

EMPLOYEE. The term "employee" includes an individual "employed in an agency" or "whose employment in an agency has ceased because of any unfair labor practice," but does not include supervisors and management officials or anyone who participates in a strike or members of the uniformed services or employees in the Foreign Service or aliens occupying positions outside the United States.

EXCEPTIONS TO ARBITRATION AWARDS. A claim that an arbitration award is deficient "on...grounds similar to those applied by Federal courts in private sector labor-management relations," or because it violates law, rule or regulation. Some of the "grounds similar to those applied by Federal courts" are: the award doesn't draw its essence from the agreement, the award is based on a non-fact, the arbitrator didn't conduct a fair hearing, or the arbitrator exceeded his/her authority. Under 5 U.S.C. 7122, either party to arbitration may file with the Federal Labor Relations Authority an exception (appeal) to an arbitrator's award because the award is 1) contrary to any law, rule or regulation; or 2) on other grounds similar to those applied by Federal courts in private sector labor-management relations (e.g., award does not draw its essence from the agreement; resolving issues not submitted to arbitration; granting remedy that exceeds claimed violation). The Authority will not consider an exception with respect to an award relating to actions taken in accordance with 5 U.S.C. 4303 and 5 U.S.C. 7512. See also 5 CFR Part 2425.

EXCESSIVE INTERFERENCE. A balancing test that the FLRA applies to proposals that are arrangements for employees adversely affected by the exercise of management's rights in order to determine whether they are negotiable **appropriate arrangements**. The test involves balancing the extent to which the proposal ameliorates anticipated adverse effects against the extent to which it places restrictions on the exercise of management's rights.

EXCLUSIVE RECOGNITION. Under the **Federal Service Labor-Management Relations Statute**, exclusive recognition is normally obtained by a union as a result of receiving a majority of votes cast in a representational election. The rights a union is accorded as a result of being certified as the **exclusive representative** of the employees in a bargaining unit include, among other things, the right to *negotiate* bargainable aspects of the conditions of employment of bargaining unit employees, to be afforded an opportunity to be present at *formal discussions*, to free *check-off* arrangements and, at the request of the employee, to be present at *Weingarten* examinations.

EXCLUSIVE REPRESENTATIVE. The union that is 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 CSRA. See **EXCLUSIVE RECOGNITION**. A union holding exclusive recognition is sometimes referred to as the exclusive bargaining agent of the unit.

FEDERAL LABOR RELATIONS AUTHORITY (FLRA, AUTHORITY). The independent agency responsible for administering the **Federal Service Labor-Management Relations Statute (FSLMRS)**. As such, it decides, among other things, representation issues (e.g., the bargaining unit status of certain employees), **unfair labor practices** (violations of any of the provisions of the FSLMRS), **negotiability disputes** (i.e., **scope of bargaining issues**), **exceptions to arbitration awards**, as well as resolve disputes over consultation rights regarding agency-wide and Government-wide regulations. The FLRA maintains nine regional offices. Also see the FLRA web page at <http://www.flra.gov/>

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS). An independent agency that provides mediators to assist the parties in negotiations. Although the bulk of its work is in the private sector, it also provides its services to the Federal sector. FMCS also maintains a roster of qualified private arbitrators, panels of which are referred to the parties upon joint request. See **MEDIATION**. Also see the FMCS webpage at <http://www.flra.gov/>

FEDERAL SERVICE IMPASSES PANEL (FSIP or Panel). An entity within the FLRA that resolves bargaining impasses, chiefly by ordering the parties to adopt certain contractual provisions relating to the conditions of employment of unit employees. The Panel uses many procedures for resolving impasses, including fact-finding, med-arb, final-offer interest arbitration, either by the Panel, individual members of the Panel, the Panel's staff, or by ordering the parties to refer their impasse to an agreed-upon private arbitrator who is to provide services. The Panel is empowered to "take whatever action

is necessary and not inconsistent with [the Federal Service Labor-Management Relations Statute] to resolve the impasse." For more information on FSIP, see <http://www.flra.gov/>

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE (FSLMRS). Title 5, United States Code, sections 7101 - 7135.

FINAL-OFFER INTEREST ARBITRATION. A technique for resolving bargaining impasses in which the arbitrator is forced to choose among the final positions of the parties--rather than order adoption of some intermediate position (i.e., "split the difference"). It can apply to individual items or "packages" of items. The theory is that each party, expecting that the interest arbitrator will pick the most reasonable of the two final offers, will have an incentive to move closer to the position of the other party in order to increase the odds that the arbitrator will select its final offer as the more reasonable of the two. This in turn narrows the gap between the parties. If the gap is narrow enough, it can be bridged by the parties themselves (by, e.g., splitting the difference).

FORMAL DISCUSSION. Under title 5, United States Code, section 7114(a)(2)(A), the **exclusive representative** must be given an opportunity to be represented at "any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any *grievance* or any personnel policy or practices or other *general condition of employment*." (Italics added.) Under 5 U.S.C. 7114(a)(2)(A), a discussion between an agency representative(s) and a bargaining unit employee(s) concerning any grievance or any personnel policy or practice or other condition of employment which affects bargaining unit employees. The exclusive representative must be given the opportunity to be represented at these meetings.

GENERAL COUNSEL. The General Counsel of the **Federal Labor Relations Authority** investigates **unfair labor practice (ULP) charges** and files and prosecutes **ULP complaints**. He/she also supervises the Authority's Regional Directors who, in turn, have been delegated authority by the FLRA to process representation petitioners.

GRIEVANCE. Under title 5, United States Code, section 7103(a)(9), a grievance "means any complaint – (A) by an employee concerning any matter relating to the employment of the employee; (B) by any labor organization concerning any matter relating to the employment of any employee; or (C) by 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."

GRIEVANCE ARBITRATION. See **ARBITRATOR**.

GRIEVANCE PROCEDURE. A systematic procedure, devised by the parties to the agreement, by which a grievance moves from one level of authority to the next higher level until it is settled, withdrawn, or referred to arbitration. Under title 5, United States Code, section 7121, a collective bargaining agreement must contain a grievance procedure terminating in final and binding arbitration. Apart from matters that must by statute be excluded (such as grievances relating to retirement, health and life insurance and the classification of positions), the scope of the grievance procedure is to be negotiated by deciding what matters are to be excluded from an otherwise "full scope" procedure--i.e., a procedure that covers all the matters mentioned in the statutory definition of "grievance." See **NEGOTIATED GRIEVANCE PROCEDURE**.

HIRE EMPLOYEES. A right reserved to management. The Authority has said that "the probationary period, including summary termination, constitutes an essential element of an agency's right to hire under [title 5, United States Code,] section 7106(a)(2)(A)." See **SELECTION** for a discussion of the much more frequently utilized right of management, in filling positions, to make selections for appointments from any appropriate source. The relationship between the right to hire and the right to select is still unclear.

IMPASSE. When the parties have reached a deadlock in negotiations they are said to have reached an impasse. The statute provides for assistance by **Federal Mediation and Conciliation Service** mediators and the **Federal Service Impasses Panel** to help the parties settle impasses.

I&I (IMPACT AND IMPLEMENTATION) BARGAINING. Even where the decision to change conditions of employment of unit employees is protected by management's rights, there is a duty to notify the union and, upon request, bargain on **procedures** that management will follow in implementing its protected decision as well as on **appropriate arrangements** for employees expected to be adversely affected by the decision. Such bargaining is commonly referred to as "impact and implementation," or "I&I" bargaining, which is the commonest variety of **midterm bargaining**.

INFORMATION. The union, to the extent not prohibited by law (e.g., the Privacy Act), is entitled, under certain circumstances (see **PARTICULARIZED NEED**, below), to data "for full and proper discussion, understanding, and negotiation of subjects within the **scope of bargaining**." The agency must provide that information free of charge.

INTEREST. The concerns, needs, or desires behind an issue: *why* the issue is being raised.

INTEREST ARBITRATION. The arbitrator, instead of interpreting and applying the terms of an agreement to decide a grievance, determines what provisions the parties are to have in their collective bargaining agreement. Also see **ARBITRATION**.

INTERNAL SECURITY PRACTICES. A right reserved to management by title 5, United States Code, section 7106(a)(1). The right to determine the internal security practices of an agency isn't limited to establishing "those policies and actions which are part of the Agency's plan to secure or safeguard its physical property against internal and external risks, to prevent improper or unauthorized disclosure of information, or to prevent the disruption of the Agency's activities." It also extends to safeguarding the agency's personnel.

INVESTIGATORY EXAMINATION. See **WEINGARTEN RIGHT**.

LABOR MANAGEMENT AGREEMENT (Collective bargaining agreement, Contract, Agreement). A written agreement between the Employer and the organization, usually for a definite term, defining conditions of employment, rights of Employees and labor organizations, procedures to be followed in settling disputes or handling issues that arise during the life of the agreement.

LABOR ORGANIZATION. A union--i.e., 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.

LAYOFF EMPLOYEES. Right reserved to management by title 5, United States Code, section 7106(a)(2)(A).

LUNCH PERIODS (Duty Free). Uninterrupted lunch period, where no work of any kind may be scheduled, unless mission requirements make an early recall to work necessary.

MANAGEMENT OFFICIAL. An individual who formulates, determines, or influences the policies of the agency. Such individuals are excluded from **bargaining units**.

MANAGEMENT RIGHTS. Refers to types of discretion reserved to management officials by statute.

- **Core rights.** Consists of the rights "to determine the mission, budget, organization, number of employees, and internal security practices of the agency."
- **Operational rights.** Consists of the rights to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees; to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations

shall be conducted; with respect to filling positions, to make selections for appointments from-- among properly ranked and certified candidates for promotion; or any other appropriate source; and to take whatever actions may be necessary to carry out the agency mission during emergencies.

- **Three exceptions.** The three title 5, United States Code, section 7106(b) exceptions to the above involve (1) **title 5, United States Code, section 7106(b)(1) permissive subjects** of bargaining (e.g., staffing patterns, technology) on which, under the statute, agencies can elect to bargain, (2) **procedures** management will follow in exercising its reserved rights, and (C) **appropriate arrangements** for employees adversely affected by the exercise of management rights.
 - (1) **"Permissive" subjects exception.** This exemption to management's rights "staffing patterns" – i.e., with "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty" and with "the technology, methods, and means of performing work." Under the statute such matters are, moreover, negotiable "at the election of the agency" even if the proposal also directly interferes with the exercise of a title 5, United States Code, section 7106(a) right.
 - (2) **Procedural "exception."** Title 5, United States Code, section 7106(b)(2), dealing with procedures, really isn't an exception to management's rights as the Authority has held that a proposed "procedure" that "directly interferes" with a management right is not a procedure within the meaning of title 5, United States Code, section 7106(b)(2).
 - (3) **Appropriate arrangement exception.** Title 5, United States Code, section 7106(b)(3) applies only if the proposal is intended to ameliorate the adverse effects of the exercise of a management right. Where such is the intent of the proposal, the Authority applies a balancing test in which it weighs the extent to which the proposal ameliorates the expected adverse effects against the extent to which it interferes with the management right and determines whether or not the specific proposal "excessively" interferes with management rights. If the interference is "excessive," the proposal isn't an "appropriate arrangement" and therefore is nonnegotiable. If otherwise, the proposal is a negotiable appropriate arrangement, even though it interferes with management's rights. To qualify as an "arrangement" to which it would be proper to apply the excessive interference balancing test, the proposal has to be "tailored" so that it applies only to those employees who would be adversely affected by the proposed management decision.

MEDIATION. Use of a third party, usually a neutral without authority to impose a settlement, to assist the parties to reach agreement. Mediation techniques vary, but one common practice is for the labor mediator to separate the parties (in order to control communications) and meet with them separately and, in effect, engage in interest-based bargaining with them. Because the mediator usually is a neutral who cannot impose a settlement and because he or she is expected to keep confidences, each party is more willing to be open with the mediator than with the other party (or with an interest arbitrator). Because of this greater openness, the mediator often is able to see areas of possible agreement that the parties are unable to see in direct, unmediated, negotiations.

MED-ARB (mediation followed by interest arbitration). A process in which a neutral with authority to impose (or to recommend the imposition of) a settlement, first resorts to mediation techniques in an attempt to get the parties to voluntarily agree on unsettled matters, but who can later impose a settlement if mediation fails. The theory behind it is that the parties will be more receptive to the med-arb's suggestions for settlement if they know that the med-arb has authority to impose a settlement.

MIDTERM BARGAINING / NEGOTIATIONS. Literally, all bargaining that takes place during the life of the contract. Usually contrasted with term bargaining – i.e., with the renegotiation of an expired (or expiring) contract. Midterm bargaining includes **I&I bargaining, union-initiated midterm bargaining on new matters**; and bargaining pursuant to a **reopener clause**. It excludes matters that are already "**covered by**" the term agreement.

MISSION OF THE AGENCY. A right reserved to management by title 5, United States Code, section 7106(a)(1). Although illustrative case law on this particular right is meager, it is generally recognized that the right encompasses the determination of the products and services of an agency.

NEGOTIABILITY. Refers to whether a given topic is subject to bargaining between an agency and the union. The Federal Labor Relations Authority makes the final decision whether a subject is negotiable or nonnegotiable.

NEGOTIABILITY APPEAL (PETITION FOR REVIEW). If an agency believes that a union proposal is contrary to law or applicable regulation, or is otherwise nonnegotiable under the statute, it may inform the union of its refusal to negotiate. 5 U.S.C. 7117 provides a right to appeal the agency's determination of non-negotiability to the FLRA.

NEGOTIABILITY DETERMINATION. A decision reached by the Federal Labor Relations Authority on a request for expedited review of negotiability issues. Unions in disputes with agencies concerning what matters may be collectively bargained may file negotiability appeals, technically called petitions for review. A negotiability determination may be rendered when an agency claims a matter is non-negotiable or there is no duty to bargain. Matters that involve such allegations that do not involve the actual or contemplated changes in working conditions can only be filed under the negotiability appeal procedure.

NEGOTIABILITY DISPUTES. Disputes over whether a proposal is nonnegotiable because (a) it is inconsistent with laws, rules, and regulations establishing conditions of employment and/or (b) it interferes with the exercise of rights reserved to management. Negotiability disputes normally are processed under the FLRA's "no fault" negotiability procedures

NEGOTIATED GRIEVANCE PROCEDURE (NGP). A collective bargaining agreement (CBA) must contain a grievance procedure terminating in final and binding arbitration. The NGP, with a few exceptions involving statutory alternatives (e.g., adverse and performance-based actions), is the exclusive administrative procedure for grievances falling within its coverage. Apart from the matters excluded from the coverage of the NGP by statute – e.g., retirement, life and health insurance, classification of positions – the NGP covers those matters specified in the definition of grievance in title 5, United States Code, section 7103(a)(9) (see **GRIEVANCE**, above), minus any of those matters that the parties agree to exclude from the NGP. That is, under the FSLMRS program, the parties negotiate to determine what matters to *exclude* from the procedure rather than what matters it is to *include*—just the opposite from pre-FSLMRS and private sector practices. A systematic procedure agreed to by the negotiating parties for the resolution of grievances. The negotiated grievance procedure is applicable only to employees in the bargaining unit. The scope of the negotiated grievance procedure is negotiated by the parties and may include certain matters for which a statutory appeal procedure exists, unless the parties negotiate their exclusion. Several matters cannot be included under its scope: 1) actions taken for violations of the Hatch Act; 2) retirement, life insurance or health insurance; 3) a suspension or removal taken in the interest 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. 5 U.S.C. 7121 requires the inclusion of a negotiated grievance procedure in all agreements and requires binding arbitration as the final step of the negotiated grievance procedure.

NON-NEGOTIABLE. A term used to indicate the subject matter of a management change does not concern a condition of employment for affected employees, is a reserved management right or because the matter is permissively negotiable and the agency has elected not to bargain. Additionally, the term applies to a union proposal that does not concern a condition of employment for affected employees, is in conflict with law, Government-wide rule or regulation or excessively interferes with a reserved management right.

NUMBER OF EMPLOYEES OF AN AGENCY. A right reserved to management by title 5, United States Code, section 7106(a)(1). There have been no FLRA decisions in which a proposal has been found nonnegotiable because it interfered with this right.

OBLIGATION TO BARGAIN. The right to bargain is affirmative; if management does nothing, the union may require negotiations over working conditions. The right to bargain is also responsive; when management changes working conditions, the changes may lead to negotiations. That obligation is fulfilled through negotiations leading to a basic agreement, mid-term bargaining, and bargaining over impact and implementation decisions made within the ambit of management rights. In order to meet this obligation, management has the duty to give the exclusive bargaining representative advance notice of the proposed implementation of decisions and provide the union with an opportunity to participate in impact and implementation bargaining. The union must then act if it is to act at all.

OFFICE OF PERSONNEL MANAGEMENT (OPM). Issues **Government-wide regulations** on personnel matters that may have a substantial impact on the **scope of bargaining**; consults with labor organizations on those regulations; provides technical advice and assistance on labor-management relations matters to Federal agencies; also provides information on personnel matters to Federal agencies and the general public (e.g., this annotated glossary); exercises oversight with regard to statutory and regulatory requirements relating to personnel matters; and provides support services for the National Partnership Council.

OFFICIAL TIME. At one time treated as a term of art created by title 5, United States Code, section 7131, involving paid time for employees serving as union representatives. However, the Authority has said that section 7131(d) does not preclude parties to a collective bargaining agreement from agreeing to provide official time for other matters; that is, matters other than those relating to labor-management relations activities.

Union negotiators (no more than the number of management negotiators) who also are unit employees are statutorily entitled to official time to negotiate agreements. Official time may not, however, be used to perform internal union business. Title 5, United States Code, section 7131(d) allows the parties to negotiate the amount of official time that shall be granted to specified union representatives for the performance of specified representational functions.

ORGANIZATION. A right reserved to management. According to the FLRA, this right encompasses an agency's authority to determine its administrative and functional structure, including the relationship of personnel through lines of control and the distribution of responsibilities for delegated and assigned duties. That is, the right includes the authority to determine how the agency will structure itself to accomplish its mission and functions.

ORGANIZATION (Union). – Refers to Labor organization i.e., Association of Civilian Technicians, Inc., (ACT Arizona Air Chapter #71)

PARTICULARIZED NEED. The Authority's analytical approach in dealing with union requests for information under title 5, United States Code, section 7114(b)(4). Under this approach, the union must establish a "particularized need" for the information and the agency must assert any countervailing interests. The Authority then balances the one against the other to determine whether a refusal to provide information is an **unfair labor practice**.

PAST PRACTICE (ESTABLISHED PRACTICE). Existing practices sanctioned by use and acceptance, that are not specifically included in the collective bargaining agreement. Arbitrators use evidence of past practices to interpret ambiguous contract language. In addition, past practices can be enforced under the **negotiated grievance procedure** because they are considered part of the agreement. To qualify as an enforceable established practice, the practice has to be legal, in effect for a certain period, and known and sanctioned by management. Existing practices sanctioned by use and acceptance, which amount to terms and conditions of employment even though not specifically included in the collective bargaining agreement. In order to constitute a binding past practice, it must be established that (1) the practice must involve a condition of employment; and (2) the practice must be consistently exercised for an extended period of time and followed by both parties, or followed by one party and not challenged by the other over a substantially long duration. It should be noted that if a matter is not a condition of employment, it does not become a condition of employment either through practice or agreement.

PERFORMANCE STANDARDS. A description of the level of performance/achievement to achieve a fully acceptable performance of the duties and responsibilities of the position.

PERMISSIVE SUBJECTS OF BARGAINING. There are two types of proposals dealing with so-called "permissive subjects of bargaining": proposals dealing with (1) matters covered by title 5, United States Code, section 7106(b)(1) – i.e., with staffing patterns, technology, and methods and means of performing the agency's work, and (2) matters that are not conditions of employment of bargaining unit employees. Regarding the former, it should be noted that although an agency can "elect" not to bargain on a (b)(1) matter, the President has directed heads of agencies to instruct agency management to bargain on such matters in section 2(d) of Executive Order 12871 – This directive was rescinded by Executive Order 13203. Regarding the latter, it should be kept in mind that, apart from the statutory exclusions from the definition of **condition of employment** found in title 5, United States Code, section 7103(a)(14), a matter may be found not be a condition of employment because (1) it deals with the conditions of employment of *non-unit employees* (e.g., a proposed procedure for filling supervisory vacancies) or (2) there is no direct connection between the matter dealt with by the proposal and the work situation or employment relationship of bargaining unit employees (e.g., a proposal authorizing unit employees to hunt on a military base when off duty). Regardless of type, once agreement is reached on a permissive subject of bargaining, that agreement cannot be disapproved by the agency head, and is enforceable under the negotiated grievance procedure.

PERSONNEL BY WHICH AGENCY OPERATIONS ARE CONDUCTED. A right reserved to management by title 5, United States Code, section 7106(a)(2)(B).

PICKETING. Demonstrating, usually near the place of employment, to publicize the existence of a labor-management dispute. This is commonly called **Informational Picketing** and is directed toward advising the public about the issue in dispute. This is specifically protected by 5 U.S.C. 7116(b) so long as the picketing does not interfere with agency operations. This is not to be confused with a "strike" as Federal employees are not permitted to strike under Federal law. Informational picketing may only be conducted outside an employee's established duty hours or the employee must be in an approved leave status.

PROCEDURES. Under title 5, United States Code, section 7106(b)(2), the procedures observed by management in exercising its reserved rights are negotiable. To qualify as a negotiable (b)(2) procedure, the proposed "procedure" must not require the use of standards that, by themselves, directly interfere with management's reserved rights or otherwise have the effect of limiting management's reserved discretion.

PROHIBITED PERSONNEL PRACTICES. Prohibited personnel practices means actions that are taken for reasons forbidden under law. They include unlawful discrimination; improper personnel solicitations and recommendations; coercing political activity; improperly influencing employment decisions; granting improper preferences in personnel decisions; appointing relatives improperly; retaliation against whistleblowers; retaliation for the exercise of appeal or grievance rights; discrimination on the basis of conduct which is not job-related; and violations of the merit system principles. According to the nine merit systems principles outlined in 5 USC 2301(b), agencies must:

1. Recruit qualified individuals from all segments of society and select and advance employees on the basis of merit after fair and open competition.
2. Treat employees and applicants fairly and equitably, without regard to political affiliation, race, color, religion, national origin, sex, marital status, age or disability.
3. Provide equal pay for equal work and reward excellent performance.
4. Maintain high standards of integrity, conduct and concern for the public interest.

5. Manage employees efficiently and effectively.
6. Retain or separate employees on the basis of performance.
7. Educate and train employees when it will result in better organizational or individual performance.
8. Protect employees from improper political influence.
9. Protect employees against reprisal for the lawful disclosure of information in "whistleblower" situations when they disclose waste, fraud, abuse or illegal activities.

QUALIFIED APPLICANT. An applicant for a vacant/advertised position who, using established staffing procedures, is able to meet minimum qualification of the position.

REOPENER CLAUSE. Provisions in the CBA specifying the conditions under which one or either party can reopen for renegotiation the agreement or designated parts of the agreement. Although some agreements provide for mutual consent reopeners, such reopeners are unnecessary as the parties can of course agree to reopen and renegotiate their agreement at any time, notwithstanding the contents of the agreement. The purpose of a reopener is to enable one party to *compel* the other party to renegotiate the provisions covered by the reopener.

REPRESENTATION ELECTION. Secret-ballot election to determine whether the employees in a bargaining unit shall have a union as their **EXCLUSIVE REPRESENTATIVE**.

REPRESENTATIONAL FUNCTIONS. Activities performed by union representatives on behalf of the employees for whom the union is the **exclusive representative** regarding their conditions of employment. It includes, among other things, negotiating and policing the terms of the agreement, attending partnership council meetings, being present at **formal discussions** and, upon employee request, **Weingarten examinations**.

REPRESENTATION ISSUES. Issues related to how a union gains or loses **exclusive recognition** for a bargaining unit, determining whether a proposed unit of employees is appropriate for the purposes of exclusive recognition, and determining the unit status of various employees.

RETAIN EMPLOYEES. A right reserved to management. Although the rights to layoff and retain appear to be opposite sides of the same coin, the FLRA rarely mentions the right to retain when invoking the right to layoff to find nonnegotiable proposals dealing with RIF's and furloughs.

SCOPE OF BARGAINING. Matters about which the parties can negotiate. See **NEGOTIABILITY DISPUTES**.

SELECTION (WITH RESPECT TO FILLING POSITIONS). The statute reserves to management the right to make selections for appointments from any appropriate source. The right to select includes discretion to determine what knowledge, skills and abilities are necessary for successful performance in the position to be filled, as well as to determine which candidates possess these qualifications.

STAFFING PATTERNS. A short-hand expression used to refer to title 5, United States Code, section 7106(b)(1)'s long-winded reference to "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty." Under the statute, agencies can elect not to bargain on such matters.

STEWARD (SHOP, UNION, AREA). Union representative in an organization to whom the union assigns various representational functions, such as investigating and processing grievances, representing employees, collecting dues, soliciting new members, etc. Stewards are usually fellow employees who are trained by the union to carry out these duties.

STRIKE (PROHIBITED BY STATUTE). A temporary stoppage of work by a group of employees in connection with a labor dispute. In the Federal sector, strikes are specifically prohibited by Federal law and constitute an unfair labor practice under Section 7116(b)(7) of the Federal Service Labor-Management Relations Statute. Slowdowns, sickouts and related tactics are also prohibited by the Statute.

SUPERVISOR. Under title 5, United States Code, section 7103(a)(10), a supervisor is "an individual employed by an agency having authority in the interest of the agency 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[.]" The individual need exercise only one of the indicia of supervisory authority, not a majority of them, to qualify as a supervisor for the purposes of the statute, provided it involves the consistent exercise of independent judgment.

UNFAIR LABOR PRACTICE (ULP). A violation of any of the provisions of the Federal Service Labor-Management Relations Statute. It is a term of art that is narrower in scope than the misleading adjective "unfair" suggests. ULP charges are filed with the Authority by an individual, a union, or an employer. They are investigated by the General Counsel who issues a ULP complaint if the General Counsel concludes the charge(s) have merit, and who prosecutes the matter before an Administrative Law Judge in a fact-finding hearing and before the Authority, which decides the matter. The most common agency ULPs are **duty-to-bargain** ULPs (usually a failure to give the union notice of proposed changes in conditions of employment and/or engage in impact and implementation bargaining), **formal discussion** ULPs, **Weingarten** ULPs, and **failure-to-provide-information** ULPs. The most common ULP committed by a union is a failure to fairly represent (see **fair representation**) all unit members without regard to union membership.

UNION. A labor 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..."
Association of Civilian Technicians, Inc., ACT Arizona AIR Chapter #71

UNION-INITIATED MIDTERM BARGAINING ON NEW MATTERS. Absent a bargaining waiver, the union has the right to initiate, during the life of the existing agreement, bargaining on matters not "covered by" the agreement. There is a split in the circuits, which the Supreme Court has agreed to resolve, regarding this statutory right, with the D.C. Circuit holding that the union has such a right (see *NTEU v. FLRA*, 810 F.2d 295 (D.C. Cir. 1987), and the Fourth Circuit holding that it does not (see *SSA v. FLRA*, 956 F.2d 1280 (4th Cir. 1992). Also see *Dept. of Energy v. FLRA*, Nos. 95-2949 and -3113 (4th Cir. Feb. 13, 1997), where the 4th Circuit went further and held that the FSLMRS prohibits such bargaining; consequently, such a right could not be established by collective bargaining agreement.

UNIT. See **BARGAINING UNIT**.

WEINGARTEN RIGHT / EXAMINATIONS. Under title 5, United States Code, section 7114(a)(2)(B), an employee being examined in an investigation (an investigatory examination or interview) 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 employees asks for representation.

Such examinations are called *Weingarten* examinations because Congress, in establishing this right, specifically referred to the private sector case establishing such a right. Each agency has the obligation to post Weingarten rights annually either through common bulletin boards or web posting through a commonly accessed employee web page.

Also defined as a *Weingarten Meeting* whereby an exclusive representative "shall be given the opportunity to be represented at any examination" of a unit employee by an agency representative in connection with an investigation if the employee reasonably believes that discipline may result from the examination and requests representation. An employee who is questioned during an investigatory examination that may result in discipline "may be too fearful or inarticulate to relate accurately the incident being investigated, or too ignorant to raise extenuating factors. Thus, the union representative must be free to help clarify the issues or facts, or to suggest other employees who may have knowledge of them.

WORK STOPPAGE CONTINGENCY PLAN. IAW 5 USC 7116(b)(7), it shall be an unfair labor practice for a labor organization to 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 to condone any activity by failing to take action to prevent or stop such activity. This statute prohibits Federal employees from striking against the Government of the United States. Employees can be disciplined for engaging in such action. Informational picketing, which does not disrupt Agency operations or prevent public access to a facility, is not prohibited. The agency headquarters shall be immediately notified when prohibited acts take place. All states should have a Work Stoppage Contingency Plan. This plan is for official use only and is available on a need-to-know basis to those individuals directly involved in developing or implementing it. Review and update the plan biennially and, following any concerted activity, revise as needed.

WORKING CONDITIONS. The existing environment in which employees perform their duties. This includes such things as access to and from the facility, beginning at the entrance to the grounds, the type of equipment used and surroundings they are accustomed to (e.g. ceilings, walls, paint, carpet, temperature, lighting, services such as coffee, popcorn, and snacks, rules, relations and procedures relating to any employee activity, rights or benefit (e.g. schedules, breaks, training, discipline, conduct and performance standard, attire, parking, entertainment), etc. Any action taken which changes a right, benefit, privilege, etc. currently enjoyed by employees is a change in working conditions. However, changes in working conditions may or may not be subject to negotiation. See Conditions or Employment.

Contacts

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