



REFERENCE GUIDE

ASSIGNMENT OF WORK PROVISIONS IN NEGOTIATED AGREEMENTS

DISCUSSION

The assignment of work is a right reserved to management by 5 USC 7106(a)(2)(B), as follows (relevant text highlighted):

7106. Management Rights

(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;

Federal Labor Relations Authority Decision

In *National Federation of Federal Employees, Local 405 and U.S. Army Aviation Systems Command and U.S. Army Troop Support Command, 33 FLRA No. 77, Provision 3*, the FLRA ruled that provisions that assign functions to specific individuals violate management's right to assign work. This decision was based on the statutory wording cited above discussion:





One of the most common problem situations the Field Advisory Services Division encounters in reviewing negotiated agreements is provisions that assign functions to certain individuals. Such provisions are a problem because they conflict with the statute cited above.

Assignment of work is one of the most well known of the management rights spelled out in 5 USC 7106(a). One impact of that management right is that agreements cannot specify who will perform a particular function.

An example of this which is sometimes overlooked when parties negotiate an agreement is wording that specifies that "the immediate supervisor" will perform a certain function, such as approving leave, changing work schedules, or counseling employees on work-related problems. This may seem harmless enough, since the normal procedure is that the immediate supervisor should do such things. However, since management has the statutory right to assign work, those functions cannot be specifically assigned to the immediate supervisor in the agreement, even though the immediate supervisor may in fact perform those functions.

Provisions that assign work to the immediate supervisor (or to another specific individual such as the Commander or the Labor Relations Specialist) cannot be approved by Field Advisory Services when the agreement is reviewed, because of the conflict with management's right to assign work.

When we find such provisions in agreements, we will notify the local labor relations specialist that the provisions are nonnegotiable and must be changed for the agreement to be approved. This means the parties have to get back together to make changes to the agreement. Sometimes, this can become contentious, as the union negotiators may be irritated at having to change what they thought was a finished agreement. Thus, by avoiding nonnegotiable language you can also be avoiding potential conflict.

To avoid having to go back and make changes to an agreement after negotiations are completed, negotiators should avoid language that assigns functions to one or more specific individuals. For example, instead of specifying that the immediate supervisor will perform a function, the agreement could state more generic language, such as "the Employer" will do this or do that.

If the parties believe they need to refer to the supervisory chain directly, it may be OK to say "the supervisor" will perform a certain function, as long as the wording is generic enough that anyone in the supervisory chain can take the action referred to, rather than





limiting it to specific individuals. In some other situations, the phrase "or designee" can be inserted after such words as "the Commander" or "the Civilian Personnel Officer", when identifying who will perform a certain function. Another approach would be to include a statement such as the following in the agreement:

Whenever language in this Agreement refers to specific duties or responsibilities of specific employees or management officials, it is intended only to provide a guide as to how a situation may be handled. It is agreed that the Employer retains the sole discretion to assign work and to determine who will perform the function discussed.

Any one of those methods can be used to avoid a conflict with management's right to assign work, while still addressing the specific function that the parties want to refer to in the agreement.

Approval or disapproval of agreement language by Field Advisory Services depends on the actual wording that is used, but the above provides some guidelines for local practitioners to use in framing language to avoid conflicts with management's right to assign work. By remembering this concept, negotiators can avoid a common pitfall and help speed their new agreements through the agency head review process more easily.

If you have any questions, please contact the Labor Relations Team, at (703) 696-6301 or DSN 426-6301, press menu selection number 3.

REFERENCE

- 5 USC 7106(a)(2)(B)
- Federal Labor Relations Authority Decisions