



## REFERENCE GUIDE

### MANAGEMENT CONDUCT DURING UNION REPRESENTATION PROCEEDINGS

#### PURPOSE

The purpose of this reference guide is to provide a basis for management conduct during the period in which the union is engaged in representation proceedings. It provides some key points to consider regarding management's interaction with employees and union officials, along with some "do's" and "don'ts".

#### BACKGROUND

There are many cases that address the propriety of agency conduct during union representation proceedings and elections. The basic premise at the core of these cases concerning management's behavior before and during the process is quite simple: remain neutral.

Remaining neutral seems like a simple enough proposition, however, the reality is that it can be a difficult situation.

#### *Remain Neutral*

The Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5, U.S. Code (5 U.S.C. 71), commonly referred to as the "Statute", provides the legal framework for labor relations within the Federal service. The Statute at 5 U.S.C. § 7116(a)(1), (2), and (3) prescribes a neutral agency posture regarding its relationship with a union. It infers an "arms length" relationship with the union during representation proceedings and limits the involvement of management during elections. Failure to do so could result in an unfair labor practice (ULP) against your activity's senior manager or Commander.

Some key points to keep in mind regarding management-employee relations:

- Remain completely neutral,



- Maintain the existing conditions of employment to the maximum extent possible, with the exception of:
  - changes that are necessary for the functioning of the agency,
  - implementation of management's rights,
  - or where there is no incumbent union
- Do not coerce or otherwise influence employees to vote, think, or act in a particular way,
- Do not take actions against employees that could be viewed as reprisal for their union organizing activities,
- Do not engage in conversations with employees expressing whether a union would or would not be beneficial,
- Do not answer employees' questions about the benefits of either joining or not joining a union,
- Do not provide benefits or promise benefits to any employee based on a desired behavior during the election (e.g., promotions, QSI's, etc.),
- Do not interfere with employees during the election,
- Do not influence an employee's choice during the election.

Additionally, management should adhere to the following when dealing with union officials:

- Do not prohibit or impede employees from meeting with union representatives during non-work hours in non-work areas
- Do not interfere with posting of union notices and literature where there is an agreement or established practice permitting the posting of employee notices and material
- Do not unilaterally change any agreement or practice concerning access to facilities and premises, or union use of agency services and facilities

### **What Can A Manager Do?**

What *can* you do as a management representative? Managers and supervisors *can* do the following without running afoul of the law:

- Inform employees that the election will be conducted,
- Encourage employees to vote,
- Rebut any false or misleading statements or facts,
- Enforce all workplace rules,

- Prohibit organizing activity in areas during work hours; however, solicitation may occur in work areas during non-duty time if there is no disruption of work,
- Administer the provisions of existing collective bargaining agreements, if applicable,
- Refer employees with union-related questions to the servicing Human Resources Office, the Federal Labor Relations Authority, or the union. (Managers should not attempt to answer questions regarding union organizing or the representation process),

Defer action or final decision on union requests pending advice from the labor relations specialist.

If you have any questions concerning your obligations under the Statute, contact your servicing labor relations specialist. He or she will guide you through the proper analysis.

### **Questions and Answers**

#### ***What is the Federal Labor Relations Authority (FLRA) and what role do they play in union organizing?***

The FLRA is the Federal agency that administers the law governing labor-management relations. When a representation petition is filed by a union, the FLRA Regional Director's office handles all representation matters from the initial filing of the representation petition to the final decision, which could result in the certification of the union as the exclusive representative of the employees.

#### ***May employees meet during work time to discuss union organizing activity? What about during lunch periods on the work site?***

Employees may not meet during work hours to discuss union activities. Employees must be in a non-duty status or leave status when meeting to discuss any union activity that concerns internal union business. This includes union organizing campaigns.

With regard to lunch periods, the FLRA has held that employees have the right to engage in solicitation on behalf of a labor union in non-work areas during non-work time. Furthermore, this right extends to solicitation in work areas during employees' non-work time, such as lunch, absent any disruption of the agency's operations or other unusual circumstances.

#### ***May DoD employees distribute union organizing literature at the work site?***

DoD employees normally may distribute union literature in non-work areas (e.g., dining facilities, or break rooms) during non-work times, subject to local security policies. An employee may distribute union material in a work area where the employees being solicited are also in a non-duty status, absent any disruption of the agency's operations or other unusual circumstances. Generally, there is no right to distribute literature in work areas during business hours.

***May DoD employees post union information on agency bulletin boards?***

Employees may post union information on a bulletin board if the local practice is to allow employees to use bulletin boards for personal items and messages or if other non-DoD organizations are permitted to post on bulletin boards.

***What access must we provide to non-employee union organizers during an organizing drive?***

Non-employee union organizers have the right to reasonable access to DoD employees during an organizing drive, subject to local security policies. As a general rule, DoD meets this obligation by providing non-employee union organizers with the same access provided to other third parties.