

duty to bargain, as defined in §9701.518, and matters under §9701.521(f); and

(5) Review HSLRB decisions and issue final decisions pursuant to §9701.508(h).

(b) In any matter filed with the Authority, if the responding party believes that the Authority lacks jurisdiction, that party must timely raise the issue with the Authority and simultaneously file a copy of its response with the HSLRB in accordance with regulations established by the Authority. The Authority must promptly transfer the case to the HSLRB, which will determine whether the matter is within the HSLRB's jurisdiction. If the HSLRB determines that the matter is not within its jurisdiction, the HSLRB will return the matter to the Authority for appropriate action. The HSLRB's determination with regard to its jurisdiction in a particular matter is final and not subject to review by the Authority.

(c) Judicial review of any Authority decision is as prescribed in 5 U.S.C. 7123, which is not waived.

§9701.511 Management rights.

(a) Subject to paragraphs (b), (c), and (d) of this section, nothing in this subpart may affect the authority of any management official or supervisor of the Department—

(1) To determine the mission, budget, organization, number of employees, and internal security practices of the Department;

(2) To hire, assign, and direct employees in the Department; to assign work, make determinations with respect to contracting out, and to determine the personnel by which Departmental operations may be conducted; to determine the numbers, types, grades, or occupational clusters and bands of employees or positions assigned to any organizational subdivision, work project or tour of duty, and the technology, methods, and means of performing work; to assign and deploy employees to meet any operational demand; and to take whatever other actions may be necessary to carry out the Department's mission; and

(3) To lay off and retain employees, or to suspend, remove, reduce in grade, band, or pay, or take other disciplinary

action against such employees or, with respect to filling positions, to make selections for appointments from properly ranked and certified candidates for promotion or from any other appropriate source.

(b) Management is prohibited from bargaining over the exercise of any authority under paragraph (a) of this section or the procedures that it will observe in exercising the authorities set forth in paragraphs (a)(1) and (2) of this section.

(c) Notwithstanding paragraph (b) of this section, management will confer with an exclusive representative over the procedures it will observe in exercising the authorities set forth in paragraphs (a)(1) and (2) of this section, in accordance with the process set forth in §9701.512.

(d) If an obligation exists under §9701.518 to bargain, confer, or consult regarding the exercise of any authority under paragraph (a) of this section, management must provide notice to the exclusive representative concurrently with the exercise of that authority and an opportunity to present its views and recommendations regarding the exercise of such authority under paragraph (a) of this section. However, nothing in this section prevents management from exercising its discretion to provide notice as far in advance of the exercise of that authority as appropriate. Further, nothing in paragraph (d) of this section establishes an independent right to bargain, confer, or consult.

(e) To the extent otherwise required by §9701.518 and at the request of an exclusive representative, the parties will bargain at the level of recognition (unless otherwise delegated below that level, at their sole and exclusive discretion) over—

(1) Appropriate arrangements for employees adversely affected by the exercise of any authority under paragraph (a)(3) of this section and procedures which management officials and supervisors will observe in exercising any authority under paragraph (a)(3) of this section; and

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(2)(i) Appropriate arrangements for employees adversely affected by the exercise of any authority under paragraph (a)(1) or (2) of this section, provided that the effects of such exercise have a significant and substantial impact on the bargaining unit, or on those employees in that part of the bargaining unit affected by the action or event, and are expected to exceed or have exceeded 60 days. Appropriate arrangements within the duty to bargain include proposals on matters such as—

(A) Personal hardships and safety measures; and

(B) Reimbursement of out-of-pocket expenses incurred by employees as the direct result of the exercise of authorities under this section, to the extent such reimbursement is in accordance with applicable law and governing regulations.

(ii) Appropriate arrangements within the duty to bargain do not include proposals on matters such as—

(A) The routine assignment to specific duties, shifts, or work on a regular or overtime basis; and

(B) Compensation for expenses not actually incurred, or pay or credit for work not actually performed.

(f) Nothing in this section will delay or prevent the Department from exercising its authority. Any agreements reached with respect to paragraph (e)(2) of this section will not be precedential or binding on subsequent acts, or retroactively applied, except at the Department's sole, exclusive, and unreviewable discretion.

§9701.512 Conferring on procedures for the exercise of management rights.

(a) As provided by §9701.511(c), management, at the level of recognition, will confer with an appropriate exclusive representative to consider its views and recommendations with regard to procedures that management will observe in exercising its rights under §9701.511(a)(1) and (2). This process is not subject to the requirements established by §§9701.517(a)(5) (regarding enforcement of the duty to consult or negotiate), 9701.518 (regarding the duty to bargain and consult), and 9701.519 (regarding impasse procedures). Nothing in this section requires that

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the parties reach agreement on any covered matter. The parties may, upon mutual agreement, provide for the Federal Mediation and Conciliation Service or another third party to assist in this process. Neither the HSLRB nor the Authority may intervene in this process.

(b) The parties will meet at reasonable times and places but for no longer than 30 days, including any voluntary third party assistance, unless the parties mutually agree to extend this period.

(c) Nothing in the process established under this section will delay the exercise of a management right under §9701.511(a)(1) and (2).

(d) Management retains the sole, exclusive, and unreviewable discretion to determine the procedures that it will observe in exercising the authorities set forth in §9701.511(a)(1) and (2) and to deviate from such procedures, as necessary.

§9701.513 Exclusive recognition of labor organizations.

The Department must accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit as determined by the Authority, who cast valid ballots in the election.

§9701.514 Determination of appropriate units for labor organization representation.

(a) The Authority will determine the appropriateness of any unit. The Authority must determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this subpart, the appropriate unit should be established on a Department, plant, installation, functional, or other basis and will determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of the Department, consistent with the Department's mission and organizational structure.