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AMENDMENTS

1978—Pub. L. 95-454, title VII, §§701, 703(a)(2), Oct. 13, 1978, 92 Stat. 1191, 1217, in heading for Subpart F inserted "Labor-Management and" before "Employee", in heading for chapter 71 substituted "LABOR-MANAGEMENT RELATIONS" for "POLICIES", in heading for subchapter I substituted "GENERAL PROVISIONS" for "EMPLOYEE ORGANIZATIONS", in item 7101 substituted "Findings and purpose" for "Right to organize; postal employees", in item 7102 substituted "Employees' rights" for "Right to petition Congress; employees", added items 7103 to 7106, and added subchapter II and items 7111 to 7120, subchapter III and items 7121 to 7123, and subchapter IV and items 7131 to 7135. Former subchapter II heading "ANTIDISCRIMINATION IN EMPLOYMENT" and items 7151 to 7154, "Policy", "Marital status", "Physical handicap", and "Other prohibitions", respectively, were transferred to subchapter I of chapter 72 and renumbered and amended.

SUBCHAPTER I—GENERAL PROVISIONS

§ 7101. Findings and purpose

(a) The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the

continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

(Added Pub. L. 95-454, title VII, §701, Oct. 13, 1978, 92 Stat. 1192.)

PRIOR PROVISIONS

A prior section 7101, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 523; Pub. L. 91-375, §6(c)(19), Aug. 12, 1970, 84 Stat. 776, related to right of postal employees to organize, prior to the general amendment of this chapter by Pub. L. 94-454.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SHORT TITLE

This chapter is popularly known as the "Federal Service Labor-Management Relations Act".

EMPLOYEE SURVEYS

Pub. L. 108-136, div. A, title XI, §1128, Nov. 24, 2003, 117 Stat. 1641, provided that:

"(a) IN GENERAL.—Each agency shall conduct an annual survey of its employees (including survey questions unique to the agency and questions prescribed under subsection (b)) to assess—

"(1) leadership and management practices that contribute to agency performance; and

"(2) employee satisfaction with—

"(A) leadership policies and practices;

"(B) work environment;

"(C) rewards and recognition for professional accomplishment and personal contributions to achieving organizational mission;

"(D) opportunity for professional development and growth; and

"(E) opportunity to contribute to achieving organizational mission.

"(b) REGULATIONS.—The Office of Personnel Management shall issue regulations prescribing survey questions that should appear on all agency surveys under subsection (a) in order to allow a comparison across agencies.

"(c) AVAILABILITY OF RESULTS.—The results of the agency surveys under subsection (a) shall be made available to the public and posted on the website of the agency involved, unless the head of such agency determines that doing so would jeopardize or negatively impact national security.

"(d) AGENCY DEFINED.—For purposes of this section, the term 'agency' means an Executive agency (as defined by section 105 of title 5, United States Code)."

EXECUTIVE ORDER No. 10988

Ex. Ord. No. 10988, Jan. 17, 1962, 27 F.R. 551, which related to employee-management cooperation in the Federal service, was revoked by Ex. Ord. No. 11491, Oct. 29, 1969, 34 F.R. 17605, set out below.

EX. ORD. NO. 11491. LABOR-MANAGEMENT RELATIONS IN
THE FEDERAL SERVICE

Ex. Ord. No. 11491, Oct. 29, 1969, 34 F.R. 17605, as amended by Ex. Ord. No. 11616, Aug. 26, 1971, 36 F.R. 17319; Ex. Ord. No. 11636, Dec. 17, 1971, 36 F.R. 24901; Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743; Ex. Ord. No. 11901, Jan. 30, 1976, 41 F.R. 4807; Ex. Ord. No. 12027, Dec. 5, 1977, 42 F.R. 61851; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

WHEREAS the public interest requires high standards of employee performance and the continual development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency; and

WHEREAS the well-being of employees and efficient administration of the Government are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment; and

WHEREAS the participation of employees should be improved through the maintenance of constructive and cooperative relationships between labor organizations and management officials; and

WHEREAS subject to law and the paramount requirements of public service, effective labor-management relations within the Federal service require a clear statement of the respective rights and obligations of labor organizations and agency management:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including sections 3301 and 7301 of title 5 of the United States Code and as President of the United States, I hereby direct that the following policies shall govern officers and agencies of the executive branch of the Government in all dealings with Federal employees and organizations representing such employees.

GENERAL PROVISIONS

SECTION 1. *Policy.* (a) Each employee of the executive branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in this Order, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress, or other appropriate authority. The head of each agency shall take the action required to assure that employees in the agency are apprised of their rights under this section and that no interference, restraint, coercion, or discrimination is practiced within his agency to encourage or discourage membership in a labor organization.

(b) Paragraph (a) of this section does not authorize participation in the management of a labor organization or acting as a representative of such an organization by a supervisor, except as provided in section 24 of this Order, or by an employee when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

SEC. 2. *Definitions.* When used in this Order, the term—

(a) "Agency" means an executive department, a Government corporation, and an independent establishment as defined in section 104 of title 5, United States Code, except the General Accounting Office [now Government Accountability Office];

(b) "Employee" means an employee of an agency and an employee of a nonappropriated fund instrumentality of the United States but does not include, for the purpose of exclusive recognition or national consultation rights, a supervisor, except as provided in section 24 of this Order;

(c) "Supervisor" means an employee having authority, in the interest of an agency, to hire, transfer, sus-

pend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(d) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(e) "Labor organization" means a lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees; but does not include an organization which—

(1) consists of management officials or supervisors, except as provided in section 24 of this Order;

(2) assists or participates in a strike against the Government of the United States or any agency thereof, or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(3) advocates the overthrow of the constitutional form of government in the United States; or

(4) discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin;

(f) "Agency management" means the agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under this Order;

(g) "Authority" means the Federal Labor Relations Authority;

(h) "Panel" means the Federal Service Impasses Panel;

(i) "Assistant Secretary" means the Assistant Secretary of Labor for Labor Management Relations; and

(j) "General Counsel" means the General Counsel of the Authority.

SEC. 3. *Application.* (a) This Order applies to all employees and agencies in the executive branch, except as provided in paragraphs (b), (c) and (d) of this section.

(b) This Order (except section 22) does not apply to—

(1) the Federal Bureau of Investigation;

(2) the Central Intelligence Agency;

(3) any other agency, or office, bureau, or entity within an agency, which has as a primary function intelligence, investigative, or security work, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with national security requirements and considerations; or

(4) any office, bureau or entity, within an agency which has as a primary function investigation or audit of the conduct or work of officials or employees of the agency for the purpose of ensuring honesty and integrity in the discharge of their official duties, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with the internal security of the agency.

(5) The Foreign Service of the United States; Department of State, United States Information Agency and Agency for International Development and its successor agency or agencies.

(6) The Tennessee Valley Authority; or

(7) Personnel of the Federal Labor Relations Authority (including the Office of the General Counsel and the Federal Service Impasses Panel).

(c) The head of an agency may, in his sole judgment, suspend any provision of this Order (except section 22) with respect to any agency installation or activity located outside the United States, when he determines that this is necessary in the national interest, subject to the conditions he prescribes.

(d) Employees engaged in administering a labor-management relations law or this Order who are otherwise authorized by this Order to be represented by a labor organization shall not be represented by a labor organi-

zation which also represents other groups of employees under the law or this Order, or which is affiliated directly or indirectly with an organization which represents such a group of employees.

ADMINISTRATION

SEC. 4. Powers and Duties of the Federal Labor Relations Authority.

(a) [Revoked].

(b) The Authority shall administer and interpret this Order, decide major policy issues, and prescribe regulations.

(c) The Authority shall, subject to its regulations:

(1) decide questions as to the appropriate unit for the purpose of exclusive recognition and related issues submitted for its considerations;

(2) supervise elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit as their exclusive representative, and certify the results;

(3) decide questions as to the eligibility of labor organizations for national consultation rights;

(4) decide unfair labor practice complaints; and

(5) decide questions as to whether a grievance is subject to a negotiated grievance procedure or subject to arbitration under an agreement as provided in Section 13(d) of this Order.

(d) The Authority may consider, subject to its regulations:

(1) appeals on negotiability issues as provided in Section 11(c) of this Order;

(2) exceptions to arbitration awards;

(3) appeals from decisions of the Assistant Secretary of Labor for Labor-Management Relations issued pursuant to Section 6(b) of this Order; and

(4) other matters it deems appropriate to assure the effectuation of the purposes of this Order.

(e) In any matters arising under subsection (c) and (d)(3) of this Section, the Authority may require an agency or a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as the Authority considers appropriate to effectuate the policies of this Order.

(f) In performing the duties imposed on it by this Section, the Authority may request and use the services and assistance of employees of other agencies in accordance with Section 1 of the Act of March 4, 1915 (38 Stat. 1084, as amended; 31 U.S.C. 686) [31 U.S.C. 1535].

SEC. 5. Powers and Duties of the Federal Service Impasses Panel. (a) There is hereby established the Federal Service Impasses Panel as a distinct organizational entity within the Authority. The Panel consists of at least three members appointed by the President, one of whom he designates as chairman. The Authority shall provide the services and staff assistance needed by the Panel.

(b) The Panel may consider negotiation impasses as provided in section 17 of this Order and may take any action it considers necessary to settle an impasse.

(c) The Panel shall prescribe regulations needed to administer its function under this Order.

SEC. 6. Powers and Duties of the Office of the General Counsel and the Assistant Secretary of Labor for Labor-Management Relations.

(a) The General Counsel is authorized, upon direction by the Authority, to:

(1) investigate complaints of violations of Section 19 of this Order;

(2) make final decisions as to whether to issue unfair labor practice complaints and prosecute such complaints before the Authority;

(3) direct and supervise all employees in the Office of General Counsel, including employees of the General Counsel in the regional office of the Authority;

(4) perform such other duties as the Authority may prescribe; and

(5) prescribe regulations needed to administer his functions under this Order.

(b) The Assistant Secretary shall:

(1) decide alleged violations of the standards of conduct for labor organizations, established in Section 18 of this Order; and

(2) prescribe regulations needed to administer his functions under this Order.

(c) In any matter arising under paragraph (b) of this Section, the Assistant Secretary may require a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as he considers appropriate to effectuate the policies of this Order.

(d) In performing the duties imposed on them by this Section, the General Counsel and the Assistant Secretary may request and use the services and assistance of employees of other agencies in accordance with Section 1 of the Act of March 4, 1915 (38 Stat. 1084, as amended; 31 U.S.C. 686) [31 U.S.C. 1535].

RECOGNITION

SEC. 7. Recognition in general. (a) An agency shall accord exclusive recognition or national consultation rights at the request of a labor organization which meets the requirements for the recognition or consultation rights under this Order.

(b) A labor organization seeking recognition shall submit to the agency a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives.

(c) When recognition of a labor organization has been accorded, the recognition continues as long as the organization continues to meet the requirements of this Order applicable to that recognition, except that this section does not require an election to determine whether an organization should become, or continue to be recognized as, exclusive representative of the employees in any unit or subdivision thereof within 12 months after a prior valid election with respect to such unit.

(d) Recognition of a labor organization does not—

(1) preclude an employee, regardless of whether he is in a unit of exclusive recognition, from exercising grievance or appellate rights established by law or regulation, or from choosing his own representative in a grievance or appellate action, except when the grievance is covered under a negotiated procedure as provided in section 13;

(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude an agency from consulting or dealing with a religious, social, fraternal, professional or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members. Consultations and dealings under subparagraph (3) of this paragraph shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy covering employees in that unit or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.

(e) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(f) Informal recognition or formal recognition shall not be accorded.

SEC. 8. [Revoked by Ex. Ord. No. 11616, Aug. 26, 1971, 36 F.R. 17319.]

SEC. 9. National consultation rights. (a) An agency shall accord national consultation rights to a labor organization which qualifies under criteria established by the Federal Labor Relations Authority as the representative of a substantial number of employees of the agency. National consultation rights shall not be accorded for any unit where a labor organization already holds exclusive recognition at the national level for that unit. The granting of national consultation rights does not preclude an agency from appropriate dealings at the national level with other organizations on matters affecting their members. An agency shall terminate national consultation rights when the labor organization ceases to qualify under the established criteria.

(b) When a labor organization has been accorded national consultation rights, the agency, through appropriate officials, shall notify representatives of the organization of proposed substantive changes in personnel policies that affect employees it represents and provide an opportunity for the organization to comment on the proposed changes. The labor organization may suggest changes in the agency's personnel policies and have its views carefully considered. It may consult in person at reasonable times, on request, with appropriate officials on personnel policy matters, and at all times present its views thereon in writing. An agency is not required to consult with a labor organization on any matter on which it would not be required to meet and confer if the organization were entitled to exclusive recognition.

(c) Questions as to the eligibility of labor organizations for national consultation rights may be referred to the Authority for decision.

SEC. 10. *Exclusive recognition.* (a) An agency shall accord exclusive recognition to a labor organization when the organization has been selected, in a secret ballot election, by a majority of the employees in an appropriate unit as their representative; provided that this section shall not preclude an agency from according exclusive recognition to a labor organization, without an election, where the appropriate unit is established through the consolidation of existing exclusively recognized units represented by that organization.

(b) A unit may be established on a plant or installation, craft, functional, or other basis which will ensure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations. A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be established if it includes—

(1) any management official or supervisor, except as provided in section 24;

(2) an employee engaged in Federal personnel work in other than a purely clerical capacity; or

(3) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(4) both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. Questions as to the appropriate unit and related issues may be referred to the Authority for decision.

(c) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(d) All elections shall be conducted under the supervision of the Authority, or persons designated by it, and shall be by secret ballot. Each employee eligible to vote shall be provided the opportunity to choose the labor organization he wishes to represent him, from among those on the ballot, or "no union", except as provided in subparagraph (4) of this paragraph. Elections may be held to determine whether—

(1) a labor organization should be recognized as the exclusive representative of employees in a unit;

(2) a labor organization should replace another labor organization as the exclusive representative;

(3) a labor organization should cease to be the exclusive representative; or

(4) a labor organization should be recognized as the exclusive representative of employees in a unit composed of employees in units currently represented by that labor organization or continue to be recognized in the existing separate units.

(e) When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and to negotiate agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership. The labor organization shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.

AGREEMENTS

SEC. 11. *Negotiation of agreements.* (a) An agency and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable laws and regulations, including policies set forth in the Federal Personnel Manual; published agency policies and regulations for which a compelling need exists under criteria established by the Federal Labor Relations Authority and which are issued at the agency headquarters level or at the level of a primary national subdivision; a national or other controlling agreement at a higher level in the agency; and this order. They may negotiate an agreement, or any question arising thereunder; determine appropriate techniques, consistent with section 17 of this order, to assist in such negotiation; and execute a written agreement or memorandum of understanding.

(b) In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall have due regard for the obligation imposed by paragraph (a) of this section. However, the obligation to meet and confer does not include matters with respect to the mission of an agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

(c) If, in connection with negotiations, an issue develops as to whether a proposal is contrary to law, regulation, controlling agreement, or this order and therefore not negotiable, it shall be resolved as follows:

(1) An issue which involves interpretation of a controlling agreement at a higher agency level is resolved under the procedures of the controlling agreement, or, if none, under agency regulations;

(2) An issue other than as described in subparagraph (1) of this paragraph which arises at a local level may be referred by either party to the head of the agency for determination;

(3) An agency head's determination as to the interpretation of the agency's regulations with respect to a proposal is final;

(4) A labor organization may appeal to the Authority for a decision when—

(i) it disagrees with an agency head's determination that a proposal would violate applicable law, regulation of appropriate authority outside the agency, or this order, or

(ii) it believes that an agency's regulations, as interpreted by the agency head, violate applicable law, regulation of appropriate authority outside the agency, or this order, or are not otherwise applicable to bar negotiations under paragraph (a) of this section.

(d) [Revoked by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055.]

SEC. 12. *Basic provisions of agreements.* Each agreement between an agency and a labor organization is subject to the following requirements—

(a) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level;

(b) management officials of the agency retain the right, in accordance with applicable laws and regulations—

(1) to direct employees of the agency;

(2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;

(3) to relieve employees from duties because of lack of work or for other legitimate reasons;

(4) to maintain the efficiency of the Government operations entrusted to them;

(5) to determine the methods, means, and personnel by which such operations are to be conducted; and

(6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency; and

(c) nothing in the agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary written authorization by a member for the payment of dues through payroll deductions. The requirements of this section shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization.

SEC. 13. *Grievance and arbitration procedures.* (a) An agreement between an agency and a labor organization shall provide a procedure, applicable only to the unit, for the consideration of grievances. The coverage and scope of the procedure shall be negotiated by the parties to the agreement with the exception that it may not cover matters for which a statutory appeal procedure exists and so long as it does not otherwise conflict with statute or this order. It shall be the exclusive procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage. However, any employee or group of employees in the unit may present such grievances to the agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given opportunity to be present at the adjustment.

(b) A negotiated procedure may provide for arbitration of grievances. Arbitration may be invoked only by the agency or the exclusive representative. Either party may file exceptions to an arbitrator's award with the Authority, under regulations prescribed by the Authority.

(c) [Revoked.]

(d) Questions that cannot be resolved by the parties as to whether or not a grievance is on a matter for which a statutory appeal procedure exists, shall be referred to the Authority for decision. Other questions as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, may by agreement of the parties be submitted to arbitration or may be referred to the Authority for decision.

(e) [Revoked.]

SEC. 14. [Revoked by Ex. Ord. No. 11616, Aug. 26, 1971, 36 F.R. 17319.]

SEC. 15. *Approval of agreements.* An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or an official designated by him. An agreement shall be approved within forty-five days from the date of its execution if it conforms to applicable laws, the order, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation) and regulations of other appropriate authorities. An agreement which has not been approved or disapproved within forty-five days from the date of its execution shall go into effect without the required approval of the agency head and shall be binding on the parties subject to the provisions of law, the order and the regulations of appropriate authorities outside the agency. A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement, or, if none, under agency regulations.

NEGOTIATION DISPUTES AND IMPASSES

SEC. 16. *Negotiation disputes.* The Federal Mediation and Conciliation Service shall provide services and assistance to Federal agencies and labor organizations in the resolution of negotiation disputes. The Service shall determine under what circumstances and in what manner it shall proffer its services.

SEC. 17. *Negotiation impasses.* When voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third-party mediation, fail to resolve a negotiation impasse, either party may request the Federal Service Impasses Panel to consider the matter. The Panel, in its discretion and under the regulations it prescribes, may consider the matter and may recommend procedures to the parties for the resolution of the impasse or may settle the impasse by appropriate action. Arbitration or third-party fact finding with recommendations to assist in the resolution of an impasse may be used by the parties only when authorized or directed by the Panel.

CONDUCT OF LABOR ORGANIZATIONS AND MANAGEMENT

SEC. 18. *Standards of conduct for labor organizations.*

(a) An agency shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in paragraph (b) of this section, an organization is not required to prove that it has the required freedom when it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participation in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in paragraph (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles when there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from or is subject to other sanction by a parent labor organization or federation of organizations with which it had been affiliated because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by paragraph (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this Order.

(c) A labor organization which has or seeks recognition as a representative of employees under this Order shall file financial and other reports, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe the regulations needed to effectuate this section. These regulations shall conform generally to the principles applied

to unions in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary.

SEC. 19. *Unfair labor practices.* (a) Agency management shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Order;

(2) encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment;

(3) sponsor, control, or otherwise assist a labor organization, except that an agency may furnish customary and routine services and facilities under section 23 of this Order when consistent with the best interests of the agency, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

(4) discipline or otherwise discriminate against an employee because he has filed a complaint or given testimony under this Order;

(5) refuse to accord appropriate recognition to a labor organization qualified for such recognition; or

(6) refuse to consult, confer, or negotiate with a labor organization as required by this Order.

(b) A labor organization shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of his rights assured by this Order;

(2) attempt to induce agency management to coerce an employee in the exercise of his rights under this Order;

(3) coerce, attempt to coerce, or discipline, fine, or take other economic sanction against a member of the organization as punishment or reprisal for, or for the purpose of hindering or impeding his work performance, his productivity, or the discharge of his duties owed as an officer or employee of the United States;

(4) call or engage in a strike, work stoppage, or slowdown; picket an agency in a labor-management dispute; or condone any such activity by failing to take affirmative action to prevent or stop it;

(5) discriminate against an employee with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin; or

(6) refuse to consult, confer, or negotiate with an agency as required by this Order.

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

(d) Issues which can properly be raised under an appeals procedure may not be raised under this section. Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures. Appeals or grievance decisions shall not be construed as unfair labor practice decisions under this Order nor as precedent for such decisions. All complaints under this section that cannot be resolved by the parties shall be filed with the Authority.

MISCELLANEOUS PROVISIONS

SEC. 20. *Use of official time.* Solicitation of membership or dues, and other internal business of a labor organization, shall be conducted during the non-duty hours of the employees concerned. Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management, except to the extent that the negotiating parties agree to other arrangements which may provide that the agency will either authorize official time for up to 40 hours or authorize up to one-half the

time spent in negotiations during regular working hours, for a reasonable number of employees, which number normally shall not exceed the number of management representatives.

SEC. 21. *Allotment of dues.* (a) When a labor organization holds formal or exclusive recognition, and the agency and the organization agree in writing to this course of action, an agency may deduct the regular and periodic dues of the organization from the pay of members of the organization in the unit of recognition who make a voluntary allotment for that purpose, and shall recover the costs of making the deductions. Such an allotment is subject to the regulations of the Office of Personnel Management, which shall include provision for the employee to revoke his authorization at stated six-month intervals. Such an allotment terminates when—

(1) the dues withholding agreement between the agency and the labor organization is terminated or ceases to be applicable to the employee; or

(2) the employee has been suspended or expelled from the labor organization.

(b) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

SEC. 22. *Adverse action appeals.* The head of each agency, in accordance with the provisions of this Order and regulations prescribed by the Office of Personnel Management, shall extend to all employees in the competitive civil service rights identical in adverse action cases to those provided preference eligibles under sections 7511–7512 of title 5 of the United States Code. Each employee in the competitive service shall have the right to appeal to the Merit Systems Protection Board from an adverse decision of the administrative officer so acting, such appeal to be processed in an identical manner to that provided for appeals under section 7701 of title 5 of the United States Code. Any recommendation by the Merit Systems Protection Board submitted to the head of an agency on the basis of an appeal by an employee in the competitive service shall be complied with by the head of the agency.

SEC. 23. *Agency implementation.* No later than April 1, 1970, each agency shall issue appropriate policies and regulations consistent with this Order for its implementation. This includes but is not limited to a clear statement of the rights of its employees under this Order; procedures with respect to recognition of labor organizations, determination of appropriate units, consultation and negotiation with labor organizations, approval of agreements, mediation, and impasse resolution; policies with respect to the use of agency facilities by labor organizations; and policies and practices regarding consultation with other organizations and associations and individual employees. Insofar as practicable, agencies shall consult with representatives of labor organizations in the formulation of these policies and regulations.

SEC. 24. *Savings clauses.* (a) This Order does not preclude—

(1) the renewal or continuation of a lawful agreement between an agency and a representative of its employees entered into before the effective date of Executive Order No. 10988 (January 17, 1962); or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent the management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the date of this Order.

(b) All grants of informal recognition under Executive Order No. 10988 terminate on July 1, 1970.

(c) All grants of formal recognition under Executive Order No. 10988 terminate under regulations which the Federal Labor Relations Council shall issue before October 1, 1970.

(d) By not later than December 31, 1970, all supervisors shall be excluded from units of formal and exclusive recognition and from coverage by negotiated agreements, except as provided in paragraph (a) of this section.

SEC. 25. *Guidance, training, review and information.* (a) The Office of Personnel Management, in conjunction with the Director of the Office of Management and Budget, shall establish and maintain a program for the policy guidance of agencies on labor-management relations in the Federal service and shall periodically review the implementation of these policies. The Office of Personnel Management shall be responsible for the day-to-day policy guidance under that program. The Office of Personnel Management also shall continuously review the operation of the Federal labor-management relations program to assist in assuring adherence to its provisions and merit system requirements; implement technical advice and information programs for the agencies; assist in the development of programs for training agency personnel and management officials in labor-management relations; and, from time to time, report to the Authority on the state of the program with any recommendations for its improvement.

(b) The Office of Personnel Management shall develop programs for the collection and dissemination of information appropriate to the needs of agencies, organizations and the public.

SEC. 26. *Effective date.* This Order is effective on January 1, 1970, except sections 7(f) and 8 which are effective immediately. Effective January 1, 1970, Executive Order No. 10988 and the President's Memorandum of May 21, 1963, entitled Standards of Conduct for Employee Organizations and Code of Fair Labor Practices, are revoked.

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]

EXECUTIVE ORDER NO. 12871

Ex. Ord. No. 12871, Oct. 1, 1993, 58 F.R. 52201, as amended by Ex. Ord. No. 12983, Dec. 21, 1995, 60 F.R. 66855; Ex. Ord. No. 13156, §1, May 17, 2000, 65 F.R. 31785, which established the National Partnership Council and required the head of certain Government agencies to implement labor-management partnerships to help reform Government, was revoked by Ex. Ord. No. 13203, Feb. 17, 2001, 66 F.R. 11227.

EXECUTIVE ORDER NO. 13522

Ex. Ord. No. 13522, Dec. 9, 2009, 74 F.R. 66203, which related to the establishment of the National Council on Federal Labor-Management Relations and implementation of labor-management forums, was revoked by Ex. Ord. No. 13812, Sept. 29, 2017, 82 F.R. 46367.

EXTENSION OF TERM OF NATIONAL COUNCIL ON FEDERAL LABOR-MANAGEMENT RELATIONS

Term of National Council on Federal Labor-Management Relations extended until Sept. 30, 2017, by Ex. Ord. No. 13708, Sept. 30, 2015, 80 F.R. 60271, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Previous extensions of term of National Council on Federal Labor-Management Relations were contained in the following prior Executive Orders:

Ex. Ord. No. 13652, Sept. 30, 2013, 78 F.R. 61817, extended term until Sept. 30, 2015.

Ex. Ord. No. 13591, Nov. 23, 2011, 76 F.R. 74623, extended term until Sept. 30, 2013.

EXTENSION OF TERM OF U.S. GENERAL SERVICES ADMINISTRATION LABOR-MANAGEMENT RELATIONS COUNCIL

Term of U.S. General Services Administration Labor-Management Relations Council extended until Sept. 30, 2017, by Ex. Ord. No. 13708, Sept. 30, 2015, 80 F.R. 60271, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

EX. ORD. NO. 13836. DEVELOPING EFFICIENT, EFFECTIVE, AND COST-REDUCING APPROACHES TO FEDERAL SECTOR COLLECTIVE BARGAINING

Ex. Ord. No. 13836, May 25, 2018, 83 F.R. 25329, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to assist executive departments and agencies (agencies) in developing efficient, effective, and cost-reducing collective bargaining agreements (CBAs), as described in chapter 71 of title 5, United States Code [5 U.S.C. 7101 et seq.], it is hereby ordered as follows:

SECTION 1. *Policy.* (a) Section 7101(b) of title 5, United States Code, requires the Federal Service Labor-Management Relations Statute (the Statute) [see 5 U.S.C. 7101 et seq.] to be interpreted in a manner consistent with the requirement of an effective and efficient Government. Unfortunately, implementation of the Statute has fallen short of these goals. CBAs, and other agency agreements with collective bargaining representatives, often make it harder for agencies to reward high performers, hold low-performers accountable, or flexibly respond to operational needs. Many agencies and collective bargaining representatives spend years renegotiating CBAs, with taxpayers paying for both sides' negotiators. Agencies must also engage in prolonged negotiations before making even minor operational changes, like relocating office space.

(b) The Federal Government must do more to apply the Statute in a manner consistent with effective and efficient Government. To fulfill this obligation, agencies should secure CBAs that: promote an effective and efficient means of accomplishing agency missions; encourage the highest levels of employee performance and ethical conduct; ensure employees are accountable for their conduct and performance on the job; expand agency flexibility to address operational needs; reduce the cost of agency operations, including with respect to the use of taxpayer-funded union time; are consistent with applicable laws, rules, and regulations; do not cover matters that are not, by law, subject to bargaining; and preserve management rights under section 7106(a) of title 5, United States Code (management rights). Further, agencies that form part of an effective and efficient Government should not take more than a year to renegotiate CBAs.

SEC. 2. *Definitions.* For purposes of this order:

(a) The phrase "term CBA" means a CBA of a fixed or indefinite duration reached through substantive bargaining, as opposed to (i) agreements reached through impact and implementation bargaining pursuant to sections 7106(b)(2) and 7106(b)(3) of title 5, United States Code, or (ii) mid-term agreements, negotiated while the basic comprehensive labor contract is in effect, about subjects not included in such contract.

(b) The phrase "taxpayer-funded union time" means time granted to a Federal employee to perform non-agency business during duty hours pursuant to section 7131 of title 5, United States Code.

SEC. 3. *Interagency Labor Relations Working Group.* (a) There is hereby established an Interagency Labor Relations Working Group (Labor Relations Group).

(b) ORGANIZATION. The Labor Relations Group shall consist of the Director of the Office of Personnel Management (OPM Director), representatives of participating agencies determined by their agency head in consultation with the OPM Director, and OPM staff assigned by the OPM Director. The OPM Director shall chair the Labor Relations Group and, subject to the availability of appropriations and to the extent permitted by law, provide administrative support for the Labor Relations Group.

(c) AGENCIES. Agencies with at least 1,000 employees represented by a collective bargaining representative pursuant to chapter 71 of title 5, United States Code, shall participate in the Labor Relations Group. Agencies with a smaller number of employees represented by a collective bargaining representative may, at the

election of their agency head and with the concurrence of the OPM Director, participate in the Labor Relations Group. Agencies participating in the Labor Relations Group shall provide assistance helpful in carrying out the responsibilities outlined in subsection (d) of this section. Such assistance shall include designating an agency employee to serve as a point of contact with OPM responsible for providing the Labor Relations Group with sample language for proposals and counter-proposals on significant matters proposed for inclusion in term CBAs, as well as for analyzing and discussing with OPM and the Labor Relations Group the effects of significant CBA provisions on agency effectiveness and efficiency. Participating agencies should provide other assistance as necessary to support the Labor Relations Group in its mission.

(d) **RESPONSIBILITIES AND FUNCTIONS.** The Labor Relations Group shall assist the OPM Director on matters involving labor-management relations in the executive branch. To the extent permitted by law, its responsibilities shall include the following:

(i) Gathering information to support agency negotiating efforts, including the submissions required under section 8 of this order, and creating an inventory of language on significant subjects of bargaining that have relevance to more than one agency and that have been proposed for inclusion in at least one term CBA;

(ii) Developing model ground rules for negotiations that, if implemented, would minimize delay, set reasonable limits for good-faith negotiations, call for Federal Mediation and Conciliation Service (FMCS) to mediate disputed issues not resolved within a reasonable time, and, as appropriate, promptly bring remaining unresolved issues to the Federal Service Impasses Panel (the Panel) for resolution;

(iii) Analyzing provisions of term CBAs on subjects of bargaining that have relevance to more than one agency, particularly those that may infringe on, or otherwise affect, reserved management rights. Such analysis should include an assessment of term CBA provisions that cover comparable subjects, without infringing, or otherwise affecting, reserved management rights. The analysis should also assess the consequences of such CBA provisions on Federal effectiveness, efficiency, cost of operations, and employee accountability and performance. The analysis should take particular note of how certain provisions may impede the policies set forth in section 1 of this order or the orderly implementation of laws, rules, or regulations. The Labor Relations Group may examine general trends and commonalities across term CBAs, and their effects on bargaining-unit operations, but need not separately analyze every provision of each CBA in every Federal bargaining unit;

(iv) Sharing information and analysis, as appropriate and permitted by law, including significant proposals and counter-proposals offered in bargaining, in order to reduce duplication of efforts and encourage common approaches across agencies, as appropriate;

(v) Establishing ongoing communications among agencies engaging with the same labor organizations in order to facilitate common solutions to common bargaining initiatives; and

(vi) Assisting the OPM Director in developing, where appropriate, Government-wide approaches to bargaining issues that advance the policies set forth in section 1 of this order.

(e) Within 18 months of the first meeting of the Labor Relations Group, the OPM Director, as the Chair of the group, shall submit to the President, through the Office of Management and Budget (OMB), a report proposing recommendations for meeting the goals set forth in section 1 of this order and for improving the organization, structure, and functioning of labor relations programs across agencies.

SEC. 4. *Collective Bargaining Objectives.* (a) The head of each agency that engages in collective bargaining under chapter 71 of title 5, United States Code, shall direct appropriate officials within each agency to prepare a report on all operative term CBAs at least 1 year be-

fore their expiration or renewal date. The report shall recommend new or revised CBA language the agency could seek to include in a renegotiated agreement that would better support the objectives of section 1 of this order. The officials preparing the report shall consider the analysis and advice of the Labor Relations Group in making recommendations for revisions. To the extent permitted by law, these reports shall be deemed guidance and advice for agency management related to collective bargaining under section 7114(b)(4)(C) of title 5, United States Code, and thus not subject to disclosure to the exclusive representative or its authorized representative.

(b) Consistent with the requirements and provisions of chapter 71 of title 5, United States Code, and other applicable laws and regulations, an agency, when negotiating with a collective bargaining representative, shall:

(i) establish collective bargaining objectives that advance the policies of section 1 of this order, with such objectives informed, as appropriate, by the reports required by subsection (a) of this section;

(ii) consider the analysis and advice of the Labor Relations Group in establishing these collective bargaining objectives and when evaluating collective bargaining representative proposals;

(iii) make every effort to secure a CBA that meets these objectives; and

(iv) ensure management and supervisor participation in the negotiating team representing the agency.

SEC. 5. *Collective Bargaining Procedures.* (a) To achieve the purposes of this order, agencies shall begin collective bargaining negotiations by making their best effort to negotiate ground rules that minimize delay, set reasonable time limits for good-faith negotiations, call for FMCS mediation of disputed issues not resolved within those time limits, and, as appropriate, promptly bring remaining unresolved issues to the Panel for resolution. For collective bargaining negotiations, a negotiating period of 6 weeks or less to achieve ground rules, and a negotiating period of between 4 and 6 months for a term CBA under those ground rules, should ordinarily be considered reasonable and to satisfy the "effective and efficient" goal set forth in section 1 of this order. Agencies shall commit the time and resources necessary to satisfy these temporal objectives and to fulfill their obligation to bargain in good faith. Any negotiations to establish ground rules that do not conclude after a reasonable period should, to the extent permitted by law, be expeditiously advanced to mediation and, as necessary, to the Panel.

(b) During any collective bargaining negotiations under chapter 71 of title 5, United States Code, and consistent with section 7114(b) of that chapter, the agency shall negotiate in good faith to reach agreement on a term CBA, memorandum of understanding (MOU), or any other type of binding agreement that promotes the policies outlined in section 1 of this order. If such negotiations last longer than the period established by the CBA ground rules -- or, absent a pre-set deadline, a reasonable time -- the agency shall consider whether requesting assistance from the FMCS and, as appropriate, the Panel, would better promote effective and efficient Government than would continuing negotiations. Such consideration should evaluate the likelihood that continuing negotiations without FMCS assistance or referral to the Panel would produce an agreement consistent with the goals of section 1 of this order, as well as the cost to the public of continuing to pay for both agency and collective bargaining representative negotiating teams. Upon the conclusion of the sixth month of any negotiation, the agency head shall receive notice from appropriate agency staff and shall receive monthly notifications thereafter regarding the status of negotiations until they are complete. The agency head shall notify the President through OPM of any negotiations that have lasted longer than 9 months, in which the assistance of the FMCS either has not been requested or, if requested, has not resulted in agreement or advancement to the Panel.

(c) If the commencement or any other stage of bargaining is delayed or impeded because of a collective bargaining representative's failure to comply with the duty to negotiate in good faith pursuant to section 7114(b) of title 5, United States Code, the agency shall, consistent with applicable law consider whether to:

(i) file an unfair labor practice (ULP) complaint under section 7118 of title 5, United States Code, after considering evidence of bad-faith negotiating, including refusal to meet to bargain, refusal to meet as frequently as necessary, refusal to submit proposals or counterproposals, undue delays in bargaining, undue delays in submission of proposals or counterproposals, inadequate preparation for bargaining, and other conduct that constitutes bad-faith negotiating; or

(ii) propose a new contract, memorandum, or other change in agency policy and implement that proposal if the collective bargaining representative does not offer counter-proposals in a timely manner.

(d) An agency's filing of a ULP complaint against a collective bargaining representative shall not further delay negotiations. Agencies shall negotiate in good faith or request assistance from the FMCS and, as appropriate, the Panel, while a ULP complaint is pending.

(e) In developing proposed ground rules, and during any negotiations, agency negotiators shall request the exchange of written proposals, so as to facilitate resolution of negotiability issues and assess the likely effect of specific proposals on agency operations and management rights. To the extent that an agency's CBAs, ground rules, or other agreements contain requirements for a bargaining approach other than the exchange of written proposals addressing specific issues, the agency should, at the soonest opportunity, take steps to eliminate them. If such requirements are based on now-revoked Executive Orders, including Executive Order 12871 of October 1, 1993 (Labor-Management Partnerships) [formerly set out above] and Executive Order 13522 of December 9, 2009 (Creating Labor-Management Forums to Improve Delivery of Government Services) [formerly set out above], agencies shall take action, consistent with applicable law, to rescind these requirements.

(f) Pursuant to section 7114(c)(2) of title 5, United States Code, the agency head shall review all binding agreements with collective bargaining representatives to ensure that all their provisions are consistent with all applicable laws, rules, and regulations. When conducting this review, the agency head shall ascertain whether the agreement contains any provisions concerning subjects that are non-negotiable, including provisions that violate Government-wide requirements set forth in any applicable Executive Order or any other applicable Presidential directive. If an agreement contains any such provisions, the agency head shall disapprove such provisions, consistent with applicable law. The agency head shall take all practicable steps to render the determinations required by this subsection within 30 days of the date the agreement is executed, in accordance with section 7114(c) of title 5, United States Code, so as not to permit any part of an agreement to become effective that is contrary to applicable law, rule, or regulation.

SEC. 6. *Permissive Bargaining.* The heads of agencies subject to the provisions of chapter 71 of title 5, United States Code, may not negotiate over the substance of the subjects set forth in section 7106(b)(1) of title 5, United States Code, and shall instruct subordinate officials that they may not negotiate over those same subjects.

SEC. 7. *Efficient Bargaining over Procedures and Appropriate Arrangements.* (a) Before beginning negotiations during a term CBA over matters addressed by sections 7106(b)(2) or 7106(b)(3) of title 5, United States Code, agencies shall evaluate whether or not such matters are already covered by the term CBA and therefore are not subject to the duty to bargain. If such matters are already covered by a term CBA, the agency shall not bargain over such matters.

(b) Consistent with section 1 of this order, agencies that engage in bargaining over procedures pursuant to

section 7106(b)(2) of title 5, United States Code, shall, consistent with their obligation to negotiate in good faith, bargain over only those items that constitute procedures associated with the exercise of management rights, which do not include measures that excessively interfere with the exercise of such rights. Likewise, consistent with section 1 of this order, agencies that engage in bargaining over appropriate arrangements pursuant to section 7106(b)(3) of title 5, United States Code, shall, consistent with their obligation to negotiate in good faith, bargain over only those items that constitute appropriate arrangements for employees adversely affected by the exercise of management rights. In such negotiations, agencies shall ensure that a resulting appropriate arrangement does not excessively interfere with the exercise of management rights.

SEC. 8. *Public Accessibility.* (a) Each agency subject to chapter 71 of title 5, United States Code, that engages in any negotiation with a collective bargaining representative, as defined therein, shall submit to the OPM Director each term CBA currently in effect and its expiration date. Such agency shall also submit any new term CBA and its expiration date to the OPM Director within 30 days of its effective date, and submit new arbitral awards to the OPM Director within 10 business days of receipt. The OPM Director shall make each term CBA publicly accessible on the Internet as soon as practicable.

(b) Within 90 days of the date of this order [May 25, 2018], the OPM Director shall prescribe a reporting format for submissions required by subsection (a) of this section. Within 30 days of the OPM Director's having prescribed the reporting format, agencies shall use this reporting format and make the submissions required under subsection (a) of this section.

SEC. 9. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the OMB Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Nothing in this order shall abrogate any CBA in effect on the date of this order.

(d) The failure to produce a report for the agency head prior to the termination or renewal of a CBA under section 4(a) of this order shall not prevent an agency from opening a CBA for renegotiation.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

EXECUTIVE ORDERS 13836, 13837, AND 13839

Memorandum of President of the United States, Oct. 11, 2019, 84 F.R. 56095, provided:

Memorandum for the Heads of Executive Departments and Agencies

On May 25, 2018, I signed three Executive Orders requiring executive departments and agencies (agencies) to negotiate collective bargaining agreements that will reduce costs and promote government performance and accountability. These Executive Orders, Executive Order 13836 of May 25, 2018 (Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining) [set out above], Executive Order 13837 of May 25, 2018 (Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use) [5 U.S.C. 7131 note], and Executive Order 13839 of May 25, 2018 (Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles) [5 U.S.C. note prec. 7501], were partially enjoined by the United States District Court for the District of Columbia on August 25, 2018. The District Court's injunction barred enforcement of sections 5(a),

5(e), and 6 of Executive Order 13836, sections 3(a), 4(a), and 4(b) of Executive Order 13837, and sections 3, 4(a), and 4(c) of Executive Order 13839.

On July 16, 2019, the United States Court of Appeals for the District of Columbia Circuit held that the District Court lacked jurisdiction and vacated its judgment, and the Court of Appeals has now issued the mandate making its judgment effective.

Provisions of the Executive Orders that had been subject to the District Court's injunction set presumptively reasonable goals that agencies must pursue during bargaining; directed agencies to refuse to bargain over permissive subjects of negotiation; and established Government-wide rules that displace agencies' duty to bargain with unions over contrary matters, regardless of whether the Federal Service Labor-Management Relations Statute would otherwise require bargaining absent those rules. Sections 4(c)(ii) and 8(a) of Executive Order 13837 and section 8(b) of Executive Order 13839, however, recognized agencies' ability to comply with collective bargaining agreements containing prohibited terms so long as such agreements were effective on the date of the Executive Orders.

While the District Court's injunction remained in effect, agencies retained the ability to bargain over subjects covered by the enjoined provisions. The Executive Orders, however, did not address collective bargaining agreements entered into during this period. As a result, it is necessary to clarify agencies' obligations with respect to such collective bargaining agreements.

Agencies shall adhere to the terms of collective bargaining agreements executed while the injunction was in effect. Agencies that remain engaged in collective bargaining negotiations, to the extent consistent with law, shall comply with the terms of the Executive Orders. However, where, between the date of the Executive Orders and the date of the Court of Appeals's mandate, the parties to collective bargaining negotiations have executed an agreement to incorporate into a new collective bargaining agreement specific terms prohibited by the Executive Orders, an agency may execute the new collective bargaining agreement containing such terms, and terms ancillary to those specific terms, notwithstanding the Executive Orders.

To the extent it is necessary, this memorandum should be construed to amend Executive Orders 13836, 13837, and 13839.

The Director of the Office of Personnel Management is hereby authorized and directed to publish this memorandum in the Federal Register.

DONALD J. TRUMP.

§ 7102. Employees' rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

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

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

(Added Pub. L. 95-454, title VII, §701, Oct. 13, 1978, 92 Stat. 1192.)

PRIOR PROVISIONS

A prior section 7102, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 523, related to right of employees to petition Con-

gress, prior to the general amendment of this chapter by Pub. L. 95-454. See section 7211 of this title.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Par. (2) of this section suspended with respect to any matter proposed for bargaining which would substantially impair the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(b) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

§ 7103. Definitions; application

(a) For the purpose of this chapter—

(1) "person" means an individual, labor organization, or agency;

(2) "employee" means an individual—

(A) employed in an agency; or

(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

(i) an alien or noncitizen of the United States who occupies a position outside the United States;

(ii) a member of the uniformed services;

(iii) a supervisor or a management official;

(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the International Communication Agency, the Agency for International Development, the Department of Agriculture, or the Department of Commerce; or

(v) any person who participates in a strike in violation of section 7311 of this title;

(3) "agency" means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Department of Veterans Affairs), the Library of Congress, the Government Publishing Office, and the Smithsonian Institution¹ but does not include—

(A) the Government Accountability Office;

(B) the Federal Bureau of Investigation;

(C) the Central Intelligence Agency;

(D) the National Security Agency;

(E) the Tennessee Valley Authority;

(F) the Federal Labor Relations Authority;

(G) the Federal Service Impasses Panel; or

(H) the United States Secret Service and the United States Secret Service Uniformed Division.

(4) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and

¹ So in original. Probably should be followed by a comma.