

CHAPTER 27

LABOR MANAGEMENT RELATIONS

Section I - General

1-1. **Purpose.** This Chapter establishes managerial guidance in effecting policies and procedures applicable to the Alabama National Guard military technician labor-management relations (LMR) program. It is intended for the promotion of effective and equitable implementation of policies, rights and responsibilities established by the Federal Labor Relations Statute, 5 USC 71, hereinafter referred to as the Statute.

1-2. **Scope.** The Federal labor-management relations program is applicable to military technicians when in a military technician status, which is employment pursuant to 32 USC 709. In the event of conflict between the provisions of this chapter and a negotiated labor agreement, the latter shall prevail.

1-3. **Objectives.** The LMR program is designed to enhance efficiency of Government operations and the well-being of Federal employees by:

a. Encouraging the achievement of high standards of employee performance and the continual development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency.

b. Providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting conditions of employment.

c. Improving employee participation through the maintenance of constructive and cooperative relations between labor organizations and management officials.

d. Promoting effective labor-management relations through a clear statement of the respective rights and obligations of labor organizations and agency management.

e. Establishing policies to govern agency management in all dealings with Federal employees and organizations representing them.

1-4. **Basic Policies & Principles.** LMR in the Alabama National Guard military technician program shall be governed by the following basic policies and principles:

a. The Adjutant General of Alabama is responsible for establishing and maintaining effective labor-management relations.

b. Effective labor-management relations is a basic part of the responsibility of management officials (down to and including first-level supervisors) at all levels.

c. There is a mutual obligation shared by management and labor to deal with each other constructively, to uphold the integrity and efficiency of the public service, and to honor the rights of individual technicians.

d. The Adjutant General has designated the Human Resources Office (HRO) with the Labor Relations Specialist as the principle contact point on LMR matters.

e. Labor organizations certified as the exclusive representative of technicians have a legitimate interest in matters concerning grievances, technician personnel policies and practices, or other matters affecting working conditions of technicians within the unit of recognition. Care shall be taken to insure that information concerning such matters is shared with appropriate representatives of the labor organization by the following means:

(1) Statewide application. The Labor Relations Specialist in the Human Resources Office (HRO) will normally present matters or changes of Statewide interest and application to the appropriate labor organization official.

(2) Local application. The appropriate unit/facility supervisor will normally present matters or changes of local or unit/facility interest or application to the appropriate union official as may be prescribed by Agreement, which normally should be the designated area steward.

f. The achievement of modern and efficient work practices and a commitment to high standards of performance are essential elements to the LMR program. Managers must retain the ability and authority to determine work methods, assign work, and make other decisions that are basic to the efficient and effective management of the public enterprise and the accomplishment of the National and State missions of the Alabama National Guard.

g. Nothing in this chapter or in any agreement entered into shall restrict the Alabama National Guard in the taking of actions necessary to carry out its mission during emergency situations.

h. Supervisory or management officials shall not interfere with the free choice of technicians in representational matters. Managers will take actions to establish positive and constructive relationships with the labor organization chosen as the exclusive representative of the employees in the bargaining unit. Management officials and supervisors shall:

(1) Remain neutral in matters concerning labor organization membership and representation to the extent required by law.

NOTE:

Under no circumstances will management officials or supervisors initiate, circulate, or provide assistance in connection with the circulation of a decertification petition for signature by employees, or poll individual employees as to their membership in or desire to be represented by a labor organization.

(2) Represent management in administering the negotiated agreement and express management's viewpoints in the day-to-day work relationships with local union officials.

(3) Deal with labor organization representatives on appropriate matters. If the matter is outside the jurisdiction of a management official or supervisor, the issue will be referred to the Labor Relations Specialist in the HRO.

(4) Participate in contract negotiations with labor organization representatives when so designated by The Adjutant General.

(5) Keep records of significant dealings with union representatives including records showing problems, grievances, misunderstandings and complaints experienced in administering the agreement, the agreement clause concerned, and the solution of the matter. Remain alert to the administration of the agreement in terms of its effect on economic factors relating to the operation and maintenance of the installation.

(6) Participate in third party administrative proceedings as required.

Section II - Subjects Appropriate for Negotiation and Rights

2-1. **Subjects Appropriate for Negotiation.** Subjects appropriate for negotiation with labor organizations holding exclusive recognition include conditions of employment of unit employees as defined in 5 USC 7103(a)(14), which fall within the authority of The Adjutant General. Also subject to negotiation, insofar as their application to the unit at the level of bargaining is concerned, are matters of personnel policy and practice set forth in (a) regulations issued below the primary National subdivision level (NGB), and (b) regulations issued at the NGB or primary National subdivision level for which a specific exception has been granted by the issuing authority or with respect to which the Federal Labor Relations Authority (FLRA) has determined that no compelling need exists.

2-2. **Management Rights.** In dealings with labor organizations, management representatives shall insure that management rights as set forth in 5 USC 7106(a) are protected and retained.

a. The Statute permits negotiations, at the election of the activity, of such topics as (1) the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, and (2) the technology, methods and means of performing work (5 USC 7106(b)(1)).

2-3. **Conflict of Interest.** In order to avoid actual or apparent conflicts of interest between the activities of technician personnel and their official responsibilities, it is the policy of the Alabama National Guard that:

a. Although the following individuals may join any labor organization, they may not act as a representative of, participate in the management of, or be represented by any such organization which is subject to the Federal LMR Statute:

- (1) Management officials and supervisors.
- (2) Employees engaged in personnel work in other than a purely clerical capacity; and
- (3) Confidential employees.

b. No employee shall carry on any activities, as an officer or agent for a labor organization, which conflict or give the appearance of conflicting with the proper exercise of, or are incompatible with, his or her official duties or responsibilities. In the event such a conflict or incompatibility arises, the individual concerned will be given a reasonable opportunity to correct the condition causing it. Should an apparent conflict or incompatibility arise with reference to an employee in an exclusive unit, consideration shall be given to the filing of a unit clarification petition under procedures set forth in the rules and regulations of the FLRA to obtain a determination as to whether the employee is properly included in the unit.

2-4. **Employee Rights.** Each employee has 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 shall be protected in the exercise of such right, which includes:

a. The right 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 the head of the agency and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

b. To engage in collective bargaining with respect to conditions of employment through their chosen exclusive representative labor organization.

2-5. **Dealings With Organizations Holding Exclusive Recognition.**

a. **Rights and Obligations.**

(1) Labor organizations holding exclusive recognition in an appropriate unit shall have the rights and responsibilities conferred upon them by the Federal LMR Statute, subject to explication through decisions of the FLRA and of the Courts.

(2) Under the Statute, management and labor have a mutual obligation through appro-

appropriate representatives to meet at reasonable times and bargain in good faith on negotiable matters. Such obligation does not, however, compel either party to agree to any specific proposal advanced, or require the making of a concession on any specific matter.

(3) The Statute places a mutual obligation and shared responsibility on the parties concerned to assure that personnel policies and practices facilitate and improve employee performance and the effective and efficient accomplishment of the work of the organization.

b. Negotiation of Agreements.

(1) The Adjutant General will arrange for authority on negotiable matters to be exercised by those persons designated as the principal management representatives in negotiations with labor organizations holding exclusive recognition.

(2) Negotiation of agreements will take place at such times and places as are mutually agreeable to the parties.

(3) Terms and provisions of agreements will apply within the unit for which negotiated and will not be contrary to any published policy or regulation of the National Guard Bureau in effect as of the effective date of the agreement, except a published policy or regulation for which the FLRA has determined that no compelling need exists.

(4) Substantive Government-wide regulations as well as regulations which are issued within NGB, and which do not merely transmit requirements imposed by law, do not override any provisions of a negotiated agreement during the term of that agreement. However, each agreement must be brought into conformance with applicable published policies and regulations of the primary national subdivision at the time it is renegotiated, or when it is renewed or extended and such renewal or extension will result in its being in effect for more than 3 years and 90 days since it was last brought into conformance with applicable laws and regulations. The agreement/contract must be approved by DoD Field Advisory Services on behalf of NGB.

(5) An agreement negotiated with a labor organization will contain a procedure, applicable only to the unit, for the consideration of grievances. As provided in 5 USC 7121, such a procedure (a) may exclude from its coverage such matters as the parties mutually decide, (b) those matters excluded by proper authority, and (c) for covered grievances not satisfactorily settled, must terminate in binding arbitration.

(6) No agreement will exceed 3 years in duration from its effective date. An agreement may be renewed or extended for a specific period (not to exceed 3 years for each renewal or extension) where the parties so agree, subject to approval of DoD Field Advisory Services.

(7) It is recognized that deadlocks in negotiations may develop on some issues despite good faith bargaining by both parties. Every effort must be made to avoid or resolve apparent deadlocks and to achieve agreement without unduly protracted negotiations. Where a negotia-

tion deadlock cannot be resolved by the parties, its resolution shall be pursued in accordance with FLRA rules.

(8) The effective date of an agreement, supplement, or amendment will be (a) the date of its approval by the head of the National Guard Bureau or (b) any other date upon which the parties may have agreed which is subsequent to the date of NGB approval, provided such effective date is clearly described in the agreement, supplement, or amendment, or (c) the 31st day following the date of execution of the agreement if approval/disapproval action has not been taken before then. Approval action should not be taken until the review discussed in subparagraph (9) below has been completed; approval of an agreement which is subsequently found to contain provisions that conflict with published policies or regulations of the NGB constitutes, in effect, waiver of the conflicting regulatory requirements. Agreements and supplements or amendments thereto shall be approved if they conform to applicable laws, regulations or appropriate authorities, and published policies and regulations of the NGB.

(9) All negotiated agreements, and any supplements or amendments thereto, upon execution (including insertion of the date of execution) by the negotiating parties, will be immediately forwarded to DoD FAS for review. This review should be completed and both parties notified of the results as soon as possible. Should one or more provisions be determined to conflict with applicable laws, published policies, or regulations, the parties shall be provided with information clearly identifying each conflict so that they may take appropriate action. Any notice of disapproval of portions of an agreement based on conflict with law, published policy or regulation must be served in written form on the union's designated representative; i.e., mailed by certified mail or delivered in person - within 30 days from the date of execution of the agreement.

c. Changes Initiated by Management.

(1) Except with respect to matters covered in an existing agreement, when management at the level of exclusive recognition contemplates taking action which will impact on conditions of employment of unit personnel, the exclusive representative will be notified sufficiently in advance to provide a reasonable opportunity to request bargaining on the proposed change or on its impact and implementation within the unit, as appropriate.

(2) Upon receipt of a new or revised regulation dealing with personnel policies or practices or matters affecting working conditions of technician employees, management at the level of implementation shall promptly provide a copy to any labor organization holding exclusive recognition as representative of employees affected by the regulation. Except where the parties have agreed otherwise, management shall, upon request, enter into discussions with the labor organization with the objective of reaching a mutual understanding as to how the regulation is to be implemented locally (to the extent local management has discretion in its implementation) and its impact on unit employees. The foregoing does not apply in the case of regulation provisions which conflict with the provisions of an existing agreement.

d. **Grievances and Arbitration**

(1) Except in the case of matters set forth in 5 USC 7121(d) and (e), the negotiated grievance procedure is the sole procedure available to the parties and to employees in the unit for resolving grievances which fall within its coverage.

(2) An employee or group of employees in the unit, in filing a grievance under the negotiated procedure, may be represented only by the exclusive union or by a person selected in accordance with the agreement. An employee or group of employees in the unit wishing to present such a grievance without representation may do so; however, any adjustment of such grievance must not be inconsistent with the terms of the agreement, and the exclusive union must be given the opportunity to be present during the grievance proceedings.

(3) Arbitrators' services may be obtained and paid for as agreed by the parties.

e. **Payroll Withholding of Labor Organization Dues.** Arrangements for the voluntary payroll withholding of dues of members in the unit shall conform with applicable requirements of 5 USC 7115 and OPM Regulations.

f. **Right of Representation.** Employees in established bargaining units shall be informed annually of their right to union representation set forth in 5 USC 7114(a)(2)(B). The inclusion of appropriate notice in HRO Bulletins will normally meet this notice requirement.

g. **Change in Unit or in Status of Exclusive Union.** Where functional transfers or changes in organizational structure result in changes in the composition of a unit which give rise to questions as to its continued appropriateness or the validity of its existing designation, or when a question arises as to whether certain positions or employees are or should be included in an existing unit, an appropriate petition may be filed in accordance with the regulations of the Federal Labor Relations Authority.

(1) Until such questions have been resolved through appropriate procedures, personnel policies, practices, and matters affecting working conditions which have been applicable to the employees involved, including dues withholding, will be maintained to the maximum extent practicable.

(2) The activity shall petition for an election to determine whether employees in an exclusive unit should cease to be represented by a labor organization only on the basis of a good faith doubt that the organization enjoys the support of a majority of the employees in the unit, and shall then do so only after consultation with the head of the NGB.

(3) Under no circumstances will supervisors or management officials initiate, circulate, or provide assistance in connection with the circulation of a decertification petition for sig-

nature by employees, or poll individual employees as to their membership in or desire to continue to be represented by an exclusively recognized labor organization. Petitions for decertification elections may be circulated only during nonwork time.

(4) Exclusive recognition accorded a labor organization shall not be terminated except upon receipt of a certification from the Federal Labor Relations Authority that the organization does not represent the employees in the unit, or in compliance with a requirement issued by the Authority.

Section III - Other General Provisions

3-1. Solicitation of Membership and Support.

a. Activity employees may not be prohibited from soliciting membership or support on behalf of or in opposition to a labor organization on activity premises during the nonwork time of the employees involved (that is, both those engaged in solicitation and those being solicited), provided there is no interference with the work of the installation.

b. Activity employees may not be prohibited from distributing literature on behalf of or in opposition to a labor organization on activity premises in nonwork areas and during the nonwork time of the employees involved (that is, both those engaged in distribution and those receiving literature), provided there is no interference with the work of the activity.

(1) Literature posted or distributed within an activity must not violate any law, applicable regulations, provisions of a negotiated agreement, or the security of the activity, or contain libelous material.

(2) Labor organizations will be considered responsible for the content of literature distributed by their representatives.

c. Subject to normal security regulations and reasonable restrictions with regard to the frequency, duration, location(s), and number of persons involved in such activities, labor organization representatives who are not employees of the activity may be permitted, upon request, and at the discretion of the head of the activity, to distribute literature or to solicit membership or support on activity premises in nonwork areas and during the nonwork time of the employees involved.

(1) Permission may be withdrawn with respect to any such activities which interfere with the work of the installation, or with respect to any representative who has engaged in conduct prejudicial to good order or discipline on activity premises.

(2) Where the employees involved are covered by exclusive recognition, permission will not be granted on-station organizing or campaigning activities by nonemployee representatives of Labor organizations other than the incumbent exclusive union except where:

(a) A valid question concerning representation has been raised with respect to the employees involved, or

(b) The employees involved are inaccessible to reasonable attempts by a labor organization other than the incumbent to communicate with them outside the activity's premises.

3-2. **Use of Facilities.** Activity facilities may be made available for the use of labor organizations where practicable, upon request, on an impartial and equitable basis, for membership meetings outside regular working hours.

3-3. **Use of Official Time.**

a. In the interests of efficient conduct of Government business and the economical use of Government time, and in order to draw a reasonable distinction between official and nonofficial activities, those activities concerned with organizing efforts and the internal management of labor organizations may be conducted only while the employees involved are in a nonduty status.

(1) Such activities include but are not limited to the solicitation of memberships, collection of dues or other assessments, circulation of authorization cards or petitions, solicitation of signatures on dues withholding authorizations, campaigning for labor organization office, and distribution of literature.

(2) Similarly, when labor organizations schedule membership meetings, internal elections, workshops on negotiating skills or techniques, local, State, or National conventions or similar events wholly or partially within the scheduled work hours of employees, any employees attending or participating in such events shall do so in an annual leave or leave without pay status.

b. Employees who represent a labor organization shall be on official time when participating in the negotiation of a labor-management agreement within the limitations set forth in 5 USC 7131.

c. An employee who is an official or representative of a labor organization holding exclusive recognition may be excused without charge to leave in conjunction with attendance at a training session sponsored by that organization, provided the subject matter of such training is of mutual concern to the Alabama National Guard Technician program and the employee in his/her capacity as an organization representative and the program's interest will be served by the employee's attendance. Subject to the same criteria and limitations, an employee who is a rep-

representative of a labor organization with responsibilities under the Federal Wage System (FWS) also may be excused for the purpose of attending a training session sponsored by the labor organization concerning FWS policies and operations.

d. A system for the recording and maintenance of data on the amount of official time expending in representational functions has been established in accordance with requirements issued by the Office of Personnel Management. See Chapter 7, Section II, paragraph 2-5 of this manual for recording and coding of official time

3-4. **Furnishing of Information.** Lists of names, position titles, grades, salaries, and/or duty stations of activity or unit employees may be furnished to labor organizations.

3-5. **Standards of Conduct for Labor Organizations.** In any case in which a labor organization requests or holds exclusive recognition and a question arises as to whether the organization is in compliance with the Standards of Conduct set forth in 5 USC 7120, the activity concerned shall promptly furnish all available information concerning the matter to the head of the primary national subdivision, or designee. Where the information available raises a substantial question as to compliance with the Standards of Conduct on the part of a labor organization seeking or holding exclusive recognition or national consultation rights, the head of the primary national subdivision may refer the matter to the appropriate office of the Federal Labor Relations Authority or the DoD Field Advisory Services.

3-6. **Threatened or Actual Strike, Work Stoppage, Slowdown or Prohibited Picketing.** Action to be taken in the event of a threatened or actual strike, work stoppage, slowdown or disruptive picketing of the activity in a labor-management dispute engaged in by employees is set forth in Chapter 32 of this Manual. Such actions are expressly prohibited by Federal Employees.