



Capabilities Overview:

FEDERAL LABOR MANAGEMENT SERVICES

Negotiating Term Collective Bargaining Agreements under the Federal Service Labor Management Relations Statute



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1. INTRODUCTION

Federal agencies have a legal duty, under 5 U.S.C. secs. 7101 et. seq. of the Federal Service Labor-Management Relations Statute (Statute), to negotiate term collective bargaining agreements with the union(s) that represent their employees. The Statute provides a complicated legal framework for determining which union proposals are within the scope of bargaining. Disputes arise when an agency claims that a union contract proposal made during bargaining is outside the scope of bargaining; for example, the proposal is non-negotiable under the Statute. Negotiability disputes also occur when an agency disapproves negotiated contract language on the grounds that it is non-negotiable under the Statute.

Unions also often seek to enhance their rights by negotiating additional protections beyond those provided in the Statute, as well as attempting to limit agencies' rights by proposing restrictions and conditions which narrow the scope and interpretation of rights granted to agencies by the Statute and Federal Labor Relations Authority (FLRA) case law.

Additionally, under the "covered by" doctrine, agencies may make changes to conditions of employment during the term of collective bargaining agreements if the subject matter has previously been negotiated in the contract. Unions oftentimes seek to limit the application of the "covered by" doctrine to management's disadvantage.

Any agency with a union, at one time or another will negotiate or renegotiate a term collective bargaining agreement. The Statute

is a complicated maze with three separate third parties, five avenues in which to seek redress, and 63 volumes of technical, legal decisions, some of which have been reviewed by the Federal Courts and the Supreme Court of the United States.

2. BUSINESS CHALLENGE

Most agencies lack the dedicated labor relations staff with the requisite experience and time to deal with all of the challenges and issues presented in term negotiations. Union representatives, on the other hand, constantly deal with labor-management issues and are extremely knowledgeable in contract law, management rights, collective bargaining agreements, and negotiation tactics. When dealing with the unions, at any time, it is imperative those agencies:

- be vigilant not to make non-negotiable proposals and not to agree at the bargaining table to non-negotiable union proposals,
- be careful not to inadvertently limit or condition any statutory rights,
- ensure they do not limit, but rather take advantage of, the application of the “covered by” doctrine, and
- have solid reasons to increase a union right beyond that granted by the Statute.

The challenge is to expeditiously negotiate a contract that provides the agency with the flexibility required to accomplish its mission in an effective and efficient manner.

3. Solution

FPMI Human Resource Services, Labor Relations Consulting Department, led by David L. Feder, provides expert labor relations consulting services to Federal departments and agencies. FPMI provides research and analysis, guidance, strategies, options, and

recommendations on a variety of issues including:

- Reviewing union and management proposals to ensure proposals are within the scope of bargaining
- Using criteria and standards to properly protect management rights
- Ensuring clauses will be interpreted and applied by arbitrators only in the manner intended
- Ensuring that the “covered-by” doctrine and other rights are not limited
- Fulfilling contract obligations consistent with management’s rights
- Training managers and supervisors on the new contract
- Providing expert advice on day-to-day labor relations issues, such as the duty to bargain midterm

4. SUMMARY

Any agency with a union, at one time or another will negotiate or re-negotiate a term collective bargaining agreement. FPMI’s 24 years of expertise in the Federal sector labor-management relations program, experience with the third party neutrals, and expert knowledge of the 63 volumes of FLRA case law allows FPMI to assist your agency in a timely fashion and to provide sound and supportable advice.

5. ABOUT FPMI

For more than two decades, FPMI has been working with Federal government leaders to overcome human capital challenges and address transformational goals and objectives. Over the years, we have worked with most Federal government agencies to ensure they have the talent they need to achieve their missions - economically, efficiently, and effectively.

FEDERAL LABOR MANAGEMENT SERVICES

FPMI Solutions, Inc., with principal offices in Alexandria, Virginia and Huntsville, Alabama is a leading provider of human capital solutions to the Federal government.

FPMI's Human Capital Solutions (HCS) increase the effectiveness and efficiency of our client organizations through FPMI's Human Capital LifeCycle (sm) which is built on outcome-based methodologies, ensuring our clients receive the services required to make critical decisions for their organizations.

Author Biography - DAVID L. FEDER. David L. Feder is a principal and senior consultant with FPMI Solutions, Inc., providing expert consulting services and training on Federal sector labor-management relations to a variety of Federal departments and agencies. Mr. Feder also has developed and presented customized training on labor relations matters to agency supervisors, labor relations specialists, and Office of the General Counsel attorneys.

Mr. Feder retired from Federal service in 2005, serving 23 of his 30 years as a member of the Senior Executive Service. His last appointment was as the Associate Commissioner for the Social Security Administration, Office of Labor-Management and Employee Relations. From 1979-2001 Mr. Feder served in several capacities with the Federal Labor Relations Authority (FLRA) - Acting General Counsel, Deputy General Counsel of the FLRA Office of the General

Counsel, Assistant General Counsel (AGC) for Legal Policy and Advice, and AGC for Field Management. Prior to that, he was an attorney-advisor with the Federal Labor Relations Council.

Mr. Feder received his Bachelor of Arts from the State University of New York at Binghamton, a Juris Doctor degree from Northeastern University School of Law in Boston, and a Master of Laws in Labor Law (with honors) from the New York University School of Law.

Mr. Feder has been a frequent speaker, lecturer, trainer and facilitator, has published several articles concerning Federal sector labor-management relations, and has received numerous awards and recognition throughout his 30-year government career.

