

LABOR-MANAGEMENT RELATIONS

1. **REASON FOR ISSUE:** This amends Part II of VA Handbook 5023, Labor Management Relations -Title 38 by adding an additional paragraph.
2. **SUMMARY OF CONTENTS/MAJOR CHANGES:** The following language should be inserted to become paragraph 5(b) of Part II of VA Handbook 5023, Labor Management Relations -Title 38. “b. Notwithstanding the procedures described in paragraph 5(a), the Secretary has the authority to decide whether a matter or question concerns or arises out of professional conduct or competence, peer review, or the establishment, determination, or adjustment of employee compensation within the meaning of 38 U.S.C. §7422.”
3. **RESPONSIBLE OFFICE:** Office of Labor Management Relations. Questions concerning this policy amendment may be directed to the Office of Labor Management Relations at (202) 461-4122.
4. **RELATED DIRECTIVE:** VA Directive 5023, “Labor-Management Relations.”
5. **RESCISSION:** VA Handbook 5023 dated April 15, 2002.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
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LABOR-MANAGEMENT RELATIONS

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PART I. LABOR RELATIONS

CHAPTER 1. EMPLOYEE PARTICIPATION IN ORGANIZATION ACTIVITIES

1. RIGHT TO ORGANIZE AND JOIN

- a. 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 by appropriate law or regulation, 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 provisions of the statute.
- b. VA shall not interfere with, restrain, or coerce any employee in the exercise of any right under the statute or encourage or discourage membership in any labor organization. VA management will maintain a posture of strict neutrality with respect to employees joining or not joining any labor organization.

(2) CONFLICT OF INTEREST

- a. Employees and supervisors may not participate in the management of, or represent, or assist a labor organization 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.
- b. VA management, including supervisors, and employees directly engaged in human resources work in other than a clerical capacity may not participate in the management of, or represent or assist, any labor organization.
- c. Employees whose assigned duties require that they represent the interests of management in consultations or negotiations with representatives of labor organizations are excluded from participating in the management of, assisting or representing a labor organization.
- d. Field facility directors may determine that a conflict or apparent conflict of interest exists with respect to additional individual positions or categories of positions and limit employees in these positions from representing, participating in the management of, or assisting a labor organization.

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- e. Occasionally, an employee who is representing, participating in the management of, or otherwise assisting a labor organization will come into a conflict of interest situation as the result of a promotion or other personnel action, to a position as noted above. Under such circumstances the employee and the labor organization shall be promptly advised of the need to arrange for a replacement. Employees may be permitted to remain in such positions during the period of any appropriate appeals.

- (3) **RESERVED EMPLOYEE RIGHTS.** Recognition of a labor organization does not preclude an employee from being represented by an attorney or other representative of the employee's choice, other than the exclusive representative, in any grievance or appeal action, except when a grievance or appeal is processed under a negotiated grievance procedure. In such a case, the only representative an employee can have is the exclusive representative or a representative approved by the union.
- (4) **SOCIAL, FRATERNAL AND OTHER ASSOCIATIONS.** VA is not precluded 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 shall be so limited that they do not assume the character of negotiations or discussion on matters of human resources policy or practice or other general conditions of employment covering employees in the 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. For further information concerning associations see VA Directive and Handbook 5025, Legal.
- (5) **RIGHTS OF VETERANS ORGANIZATIONS.** VA is not precluded or restricted in consultations and dealings with a veterans organization on matters of particular interest to employees with veterans preference.

CHAPTER 2. NATIONAL CONSULTATION RIGHTS

1. **ACCORDING NATIONAL CONSULTATION RIGHTS.** A labor organization which is the exclusive representative of a substantial number of the employees of VA, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by VA. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

2. **RELATIONSHIPS WITH MANAGEMENT UNDER NATIONAL CONSULTATION RIGHTS.** Any labor organization having national consultation rights shall be informed of any substantive change in conditions of employment proposed by VA and be permitted reasonable time to present its views and recommendations regarding the changes. If any views or recommendations are presented, VA shall consider the views or recommendations before taking final action on any matters with respect to which the views and recommendations are presented, and VA shall provide the labor organization a written statement of the reasons for taking the final action. Nothing in this chapter shall be construed to limit the right of VA or any exclusive representative to engage in collective bargaining.

CHAPTER 3. EXCLUSIVE RECOGNITION

1. **RECOGNITION AS THE EXCLUSIVE REPRESENTATIVE.** VA shall recognize labor organizations as the exclusive representative of an appropriate bargaining unit when they have been certified in accordance with the rules and regulations of the Authority.
2. **REQUIRED INFORMATION.** An organization seeking exclusive recognition is required to file a petition with the appropriate Authority office and submit the following to VA:
 - a. A roster of its officers and representatives;
 - c. A copy of its constitution and bylaws; and
 - d. A statement of its objectives.
3. **POSTING NOTICES**
 - a. Upon the request of the Authority, after the filing of a petition, the field facility shall post copies of a notice to all employees in places where notices are normally posted affecting the employees in the unit involved in the proceeding.
 - b. The notice shall remain posted for a period of 10 days. It shall be posted conspicuously and shall not be covered by other material, altered or defaced.
4. **FURNISHING INFORMATION TO THE FEDERAL LABOR RELATIONS AUTHORITY.** Upon receipt of a request, the field facility shall promptly furnish the Authority with the names, addresses and telephone numbers of all labor organizations known to represent any of the employees in the claimed unit and other required information.
5. **CHALLENGING THE SHOWING OF INTEREST OR THE STATUS OF A LABOR ORGANIZATION**
 - a. The field facility Director may, where appropriate, enter a challenge to the organization's showing of interest or status as a labor organization by filing with the Authority. Such a challenge, supported by evidence, must be filed with the Authority within 10 days of the posting of notice as provided in paragraph 3 of this chapter.
 - b. If no challenge is filed or if a challenge is dismissed, local management shall promptly take steps to arrange a meeting with the parties to attempt to reach an agreement on the appropriate unit.
6. **DETERMINATION OF APPROPRIATE UNITS FOR EXCLUSIVE RECOGNITION**
 - a. Appropriate units may be established on any basis which will ensure a clear and identifiable community of interest among the employees concerned and will promote effective labor-management dealings and efficiency of VA operations.

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- c. An appropriate unit is based on a factual situation; what is appropriate must be decided on a case-by-case basis. Field facility directors in responding to petitions shall consider such factors as:
 - (1) The extent to which the management official who is responsible for the activities of the unit has authority to make administrative decisions on negotiable human resources matters;
 - (2) Whether the unit will promote effective labor organization-management dealings and efficiency of agency operations;
 - (3) Whether the employees have similar duties, working conditions, skills, place of work, organizational structure and are subject to the same human resources policies and management;
 - (4) Whether all field facility employees with similar interests are included in the unit;
 - (5) The past history of dealings between management and employees in the unit.
- d. No unit shall be established for purposes of exclusive recognition solely on the basis of the extent to which employees in the proposed unit have organized.
- e. A labor organization may seek consolidation of existing exclusively recognized units in accordance with rules and regulations of the Authority. Facilities will not petition for any consolidation of units without prior approval of VA Central Office.

7. RESPONSE TO THE AUTHORITY

- a. Within 10 days after the date of posting the notice of petition, the field facility shall file a response with the Authority. In this response, the field facility may raise any matter relevant to the petition. A copy of this response shall be furnished to all labor organizations involved.
- b. If there is agreement between the field facility and the labor organization(s) involved regarding the appropriate unit and other relevant issues, the field facility shall in its response stipulate its agreement for a consent election subject to approval of the Authority.
- c. If there is no agreement on the appropriate unit or other relevant issues, the field facility shall in its response give in full its reasons for objecting to the unit or its position on the matter.

8. ELECTIONS

- a. Once the appropriate official of the Authority determines that a secret ballot election is to be conducted, management shall promptly meet with the labor organization(s) involved to arrange election details. A stipulation should be made as to the eligibility period for participation in the election, the dates, hours, and place(s) of the election, the designations on the ballot and other related election details.

- b. In the event the parties cannot agree on the election details contained in paragraph a, the Authority will decide these matters.
- c. Elections shall be governed by the rules and regulations of the Authority.

9. OBJECTIONS TO AN ELECTION

- a. Upon the conclusion of an election, the Authority will furnish the field facility and other parties with a tally of ballots. Within 5 days after the tally of ballots has been furnished, the field facility may file with the Authority an original and two copies of objections to the conduct of the election or conduct which may have improperly affected the results of the election. Objections must be supported by a short statement of the reasons for the objections. Copies of the objections shall be served simultaneously on the other parties and a statement of service shall be made.
- b. The Authority, at its discretion, may set aside the election, schedule a hearing or issue a Certification of Results of Election.

10. NOTIFICATION TO CENTRAL OFFICE

- a. Field facilities shall promptly furnish the Office of Labor-Management Relations (LMR), through appropriate channels, a copy of the following documents as each is received:
 - (1) Petition for an election to determine if a labor organization should be recognized as the exclusive representative of employees in a unit;
 - (2) Petition to consolidate existing exclusively recognized units;
 - (3) Petition for an election to determine if a labor organization should replace another labor organization as the exclusive representative of employees in a unit;
 - (4) Petition for an election to determine if a labor organization should cease to be the exclusive representative of employees in a unit;
 - (5) Petition to clarify an existing unit or amend a certification;
 - (6) Certification of results of election;
 - (7) Notice of hearing;
 - (8) Decisions issued after hearings.
 - (9) Certification of Representative. When furnishing Central Office a copy of the Certification of Representative, field facilities will include a breakdown on the number of each of the following types of employees in the unit: wage system; nonprofessional General Schedule;

professional General Schedule; professional (title 38 U.S.C.); Veterans Canteen Service (specify the number of "retail clerical and administrative" positions and "craft and trade" positions).

- (10) A copy of any appeals or petitions for review to the Authority.
- b. Field facilities shall notify the Office of Labor-Management Relations (LMR), through appropriate channels, prior to:
 - (1) Filing a petition with the Authority for an election to determine if a labor organization should cease to be the exclusive representative of employees in a unit ("RA" petition).
 - (2) Filing a petition with the Authority to clarify an existing unit ("CU" petition) or amend a certification ("AC" petition).

CHAPTER 4. RELATIONSHIPS UNDER EXCLUSIVE RECOGNITION

1. GENERAL

- a. When a labor organization has been accorded exclusive recognition, it is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. It is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.
- c. VA management has an obligation to negotiate seriously, diligently and in good faith. Management shall seek mutually acceptable provisions which enhance VA's mission with full regard to the interests of employees concerned.

2. REPRESENTING EMPLOYEES

- a. An exclusive representative shall be given the opportunity to be represented at any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment.
- b. An exclusive representative shall be given the opportunity to be represented at any examination of an employee in the unit by a representative of the agency in connection with an investigation if:
 - (1) The employee reasonably believes that the examination may result in disciplinary action against the employee; and
 - (2) The employee requests representation (commonly referred to as “Weingarten Rights”). Employees in exclusive bargaining units shall be notified of this right annually.

CHAPTER 5. NEGOTIATING AGREEMENTS

1. NEGOTIATIONS

- a. **General.** VA and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall meet and negotiate in good faith for the purpose of arriving at a collective bargaining agreement with respect to human resources policies, practices and matters affecting working conditions.
- b. **Mandatory Provisions.** Each agreement entered into with a labor organization shall contain as a minimum:
 - (1) A statement identifying the parties to the agreement and covering their mutual rights and obligations under its terms;
 - (2) A specific definition of the unit covered by the agreement; and
 - (3) A statement designating the duration of the agreement.
 - (a) Agreements shall be for a minimum period of 1 year, but shall not exceed 3 years duration. Agreements which include automatic renewal clauses must state that the renewal will be for 1, 2 or 3-year periods as desired and that each new 1, 2 or 3-year period will be a new duration period with a new effective date. The above does not apply to local supplements to master agreements. The duration and renewal of local supplements are controlled by the provisions of the appropriate master agreement.
 - (b) Agreements that contain automatic renewal clauses must also include a statement that either party may terminate the agreement at the end of any duration period by notifying the other at least 60 but not more than 105 days in advance of the date the agreement would be renewed.
 - (4) Provision that final authority for approval of agreements, amendments and modifications rests with the appropriate officials in VA Central Office.

2. NEGOTIATED GRIEVANCE PROCEDURE. (For title 38 exceptions, see part II of this handbook.)

- a. Collective bargaining agreements shall provide procedures for the settlement of grievances, including questions of arbitrability. Negotiated grievance procedures shall:
 - (1) Be fair and simple;
 - (2) Provide for expeditious processing; and
 - (3) Include procedures that:

- (a) Ensure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;
 - (b) Ensure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and
 - (c) Provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or VA. (Title 5 only and those matters not excluded under title 38.)
- b. The coverage of the procedure shall be negotiated by the parties to the agreement; however, in accordance with the statute, it shall not cover any grievance concerning:
- (1) Prohibited political activities;
 - (2) Retirement, life insurance, or health insurance;
 - (3) Suspension or removal for reasons of national security;
 - (4) Any examination, certification or appointment; or
 - (5) The classification of any position which does not result in the reduction in grade or pay of an employee.
- NOTE:** *Under title 5 section 5366, employees who are entitled to grade and pay retention may not grieve the classification action upon which it is based.*
- c. The following are instances when an employee must choose between negotiated and/or statutory procedures.
- (1) Negotiated grievance procedures must be the exclusive procedures for employees in the unit for all matters within its scope. In those cases where adverse actions and discrimination complaints are included under the scope of the negotiated procedure, unit employees may use either the negotiated or statutory procedure, but not both. The employee will be deemed to have made his/her election of procedure when he/she timely files a grievance under the negotiated procedure or a timely appeal under the applicable appellate procedure, whichever takes place first. Exceptions to arbitrators' awards may be filed with the Authority in accordance with the provisions of the statute and the rules of the Authority.
 - (2) In discrimination cases (title 5 only), selection of the negotiated procedure does not preclude an aggrieved employee from requesting Merit Systems Protection Board review of the final decision in the case of any personnel action that could have been appealed to the Board, or,

where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

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CHAPTER 5****3. IMPASSE IN NEGOTIATIONS**

- a. Every effort will be made to resolve all issues at the lowest possible level, including use of the Federal Mediation and Conciliation Service (FMCS) or other appropriate techniques as the parties may negotiate.
- b. The FMCS provides services and assistance to Federal agencies and labor organizations in the resolution of negotiation disputes. The FMCS determines under what circumstances and in what manner it shall proffer its services.
- c. VA field facilities shall participate fully and promptly in any meetings called by the FMCS.
- d. When voluntary arrangements fail to resolve a negotiation impasse, either party may request the Federal Service Impasses Panel (FSIP) to consider the matter. The FSIP, in its discretion and under the regulations it has prescribed, 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 FSIP.
- e. Field facilities shall promptly notify the Office of Labor-Management Relations (LMR), through appropriate channels, when the services of the FMCS are requested by a labor organization or prior to field facilities initiating such a request. Field facilities shall also promptly notify the Office of Labor-Management Relations (LMR), through appropriate channels, when a labor organization refers an impasse to the FSIP and prior to field facilities initiating such a request.

4. NEGOTIABILITY ISSUES. (For title 38 exceptions, see part II of this handbook.)

- a. If, in connection with negotiations, a proposal is made which management alleges is contrary to law, rule, regulation or agency policy, and therefore not negotiable, the labor organization may petition the Authority for review when it disagrees with the management position.
- b. The labor organization shall first request in writing a statement of the non-negotiable position by management. The time limit for the labor organization to file a petition for review with the Authority is 15 days after receipt of management's written position. However, if management has not furnished the labor organization a written position within 10 days after their request, the labor organization may then file its petition. A copy of the labor organization's petition to the Authority must be served on the agency head or designee and the principal agency bargaining representatives at the negotiations.
- c. Within 30 days after the date of receipt by the agency head, VA must provide the Authority with a statement of position. A copy must be served on the labor organization. The labor organization must, within 15 days after date of receipt, file a full and detailed response to the Authority. A copy of the response of the exclusive representative shall be served on the agency head and on the agency's representative of record in the proceeding before the Authority.

5. **UNILATERAL TERMINATION.** Unilateral termination clauses shall ordinarily not be included in agreements negotiated in VA. No new agreements with such clauses shall be negotiated. Such clauses are defined as provisions in an agreement through which one of the parties may terminate an agreement on other than its termination date without mutual consent.

6. **APPROVAL OF AGREEMENTS**

- a. **Supplemental Agreements.** For local agreements or amendments that are subject to a controlling higher level agreement (“supplemental agreements”), the field facility will forward for approval the original agreement or amendment, with four copies, to the Office of Labor-Management Relations (LMR). Administration Heads or other appropriate officials must review and approve/disapprove the agreement or amendment. Approval or disapproval will be in accordance with 5 U.S.C. 7114(c)(4) which provides that a local agreement subject to a national controlling agreement shall be approved under the procedures of the controlling agreement.
- b. **Other Agreements.** Agreements or amendments that are not subject to a controlling higher-level agreement shall be forwarded to LMR for review and approval immediately upon execution by the parties, by fax, overnight mail, or similar means. Under 5 U.S.C. 7114(c)(3), if the head of the agency (or other appropriate official) does not disapprove such an agreement within 30 days of its execution, the agreement goes into effect. Such agreements must be approved if they comply with all applicable laws, rules and regulations. These agreements are effective upon approval from the date signed by the approving official.
- c. **Renewals and Extensions.** Where the parties wish to renew or extend agreements, including those with automatic self-renewing clauses, the agreements should first be brought into conformance with current law, appropriate regulations and agency policy.

**CHAPTER 6. USE OF AGENCY FACILITIES AND INTERNAL BUSINESS OF
LABOR ORGANIZATIONS**

1. BULLETIN BOARDS AND DISTRIBUTION OF MATERIALS

- a. Space on bulletin boards may be provided for the posting of notices and literature of labor organizations.
- b. Distribution of appropriate literature by field facility employees and nonemployee representatives of labor organizations may be permitted under the following conditions:
 - (1) **Employees.** The distribution may be permitted provided it takes place outside the duty hours of the employees distributing and receiving the literature. Under these conditions, permission may also be granted for the placement of literature on desks or at other work locations provided the placement is compatible with safety and security requirements. Authorization for the distribution of literature shall not include direct patient care and treatment areas.
 - (2) **Nonemployee representatives.** The distribution of literature is subject to the same restrictions as for employees. Where there is an incumbent exclusive representative, distribution privileges may not be granted to an outside labor organization, unless the outside organization has achieved equivalent status with the recognized labor organization by having filed a petition or intervened in a representation proceeding. All nonemployee representatives of labor organizations are required to secure prior approval of local management before entering VA premises for the purpose of distributing literature or posting notices of labor organization business.
- c. VA management officials may negotiate or reach an understanding with representatives of the labor organizations as to the content and size of material and will place responsibility for adherence to such understanding upon the labor organizations. This could include provision for prior approval by management of material proposed for posting or distribution on VA premises. The following standards will be observed:
 - (1) Notices or literature must be properly identified as material of the labor organization. It must be clearly understood that such material is not official VA material or endorsed by VA, and the material must not contain anything which would identify it as such.
 - (3) The material may not contain attacks upon any person, group, or organization.
- d. If the material posted or distributed is found to be objectionable, the appropriate management official will so inform the representatives, explaining the basis for the objection. In the case of posted material, steps will be taken by management to have the objectionable material removed from the bulletin boards.

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- e. Repeated nonconformance to VA standards governing the posting or distribution of labor organization material may be cause for revocation of the privilege to post or distribute materials.
- f. The posting of material on bulletin boards and its removal therefrom will be governed by agency policy covering the maintenance of bulletin boards and such other instructions as may be negotiated locally. Management officials will advise the labor organization representative of the proper procedure to follow.

2. INTERNAL BUSINESS OF LABOR ORGANIZATIONS

- a. Solicitation of membership or dues, and other internal business of a labor organization, shall be conducted during the nonwork hours of the employees concerned. Employees may solicit membership or collect membership dues on VA premises provided such activities do not interfere with VA operations and are not conducted during official working hours of the employee soliciting membership or the employees contacted. Nonemployee representatives of labor organizations, with the prior approval of management, may hold organization meetings or solicit membership on VA premises subject to these same restrictions. Official working hours for these purposes do not include a luncheon period.
- b. Subject to safety and security regulations and availability of facilities for holding meetings on VA premises, labor organizations may be granted permission to use such facilities for business and membership meetings outside the regularly scheduled working hours of the employees involved, provided such action will not interfere with proper functioning of VA activities. Such meetings may be attended and conducted by nonemployees.

3. ORGANIZING ACTIVITIES

- a. Employees have the right to campaign on VA premises for or against any labor organization on their nonduty time and in nonduty areas subject to field facility safety and security requirements. Such activities, however, may not interfere with agency operations.
- b. When organizational activities are permitted on VA premises, all labor organizations which seek to organize the same employees and which have equivalent status must be accorded equivalent treatment.
- c. Nonemployee representatives of labor organizations are subject to the following:
 - (1) Where there is an incumbent exclusive representative, nonemployee representatives of outside labor organizations may not be granted the use of VA facilities unless the outside organization has achieved equivalent status with the recognized labor organization by having filed a petition or intervened in a representation proceeding.
 - (2) Where there is no incumbent exclusive representative, nonemployee representatives may be permitted to engage in such reasonable organizational activities on VA premises as will facilitate communication with employees and will not interfere with VA operations.

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- d. Questions regarding organizing activities should be directed to the Office of Labor-Management Relations, through appropriate channels.

CHAPTER 7. UNFAIR LABOR PRACTICES

1. PROHIBITED PRACTICES

a. VA Management shall not:

- (1) Interfere with, restrain, or coerce any employee in the exercise by the employee of any right under the statute;
- (2) Encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
- (3) Sponsor, control, or otherwise assist any labor organization other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;
- (4) Discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit or petition, or has given any information or testimony under the statute;
- (5) Refuse to consult or negotiate in good faith with a labor organization as required by the statute;
- (6) Fail or refuse to cooperate in impasse procedures and impasse decisions as required by the statute;
- (7) Enforce any rule or regulation (other than a rule or regulation pertaining to prohibited personnel practices under 5 U.S.C. 2302) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or
- (8) Otherwise fail or refuse to comply with any provision of the statute;

b. A labor organization shall not:

- (1) Interfere with, restrain, or coerce any employee in the exercise by an employee of any right under the statute;
- (2) Cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under the statute;
- (3) Coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

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- (4) Discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;
- (5) Refuse to consult or negotiate in good faith with an agency as required by the statute;
- (6) Fail or refuse to cooperate in impasse procedures and impasse decisions as required by the statute;
- (7) Call, or participate in, a strike, work stoppage or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or
- (8) Condone any activity described in (7) above by failing to take action to prevent or stop such activity; or
- (9) Otherwise fail or refuse to comply with any provision of the statute;

- 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 the statute.
- d. Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices under the procedures of the statute. Except for matters wherein, under 5 U.S.C. 7121(e) and (f), an employee has an option of using the negotiated grievance procedure or an appeals procedure. Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this chapter, but not under both procedures.

2. **ATTEMPT AT RESOLUTION.** It is the policy of VA to encourage all parties to an unfair labor practice allegation to attempt resolution prior to filing charges with the Authority.
3. **FILING OF CHARGES.** Should the parties be unable to resolve their dispute, an original and four copies of the charge, along with any supporting evidence, should be filed on the proper Authority form with the Regional Director of the authority in which the alleged unfair labor practice occurred. A copy of the charge must also be served on the party against whom the charge is made. The charge shall contain the names, addresses and telephone numbers of the party making the charge and the party against whom the charge is made. It should include a clear and concise statement of the facts and a reference to the section of the statute allegedly violated.

4. RESPONDING TO CHARGES

- a. Although many of the Authority's Regional Offices do not require formal management responses to charges prior to investigation, it is VA policy in all but unusual cases to file a formal, timely response. Responses to charges may be prepared by the field installation, the Regional Counsel's Office or VA Central Office, Office of Labor-Management Relations staff. However, in all instances, coordination between the respective offices is mandatory so that consistency in agency policy may be maintained.
- b. In each instance, the response to the charge will name an attorney from either the General Counsel or the Regional Counsel to represent the field facility during the investigation phase of the proceeding and the complaint stage, and to answer the complaint, should one be issued. During the course of an investigation by the Authority, the General Counsel's or Regional Counsel's staff are expected to provide VA management officials with legal representation. Management officials are entitled to representation while being questioned during the investigation of an unfair labor practice charge and are encouraged to request representation from their respective Regional Counsel's office for this purpose.

5. **INVESTIGATION OF CHARGES.** The FLRA Regional Director shall conduct such investigation of the charge as is deemed necessary. During the course of the investigation, all parties involved will have an opportunity to present their evidence and views.
6. **ACTION BY THE REGIONAL DIRECTOR AFTER INVESTIGATION.** The FLRA Regional Director may (a) approve a request to withdraw the charge; (b) approve a written settlement; (c) refuse to issue a complaint by dismissing the charge; (d) or issue a complaint. The Regional Director will issue a formal complaint if it finds that a reasonable basis for the charge exists. In such cases, the General Counsel of the Authority will prosecute on behalf of the charging party at a hearing before an Administrative Law Judge. If no exceptions to the decision are filed, the decision of the Administrative Law Judge is final and binding. If, however, either party files an exception to the decision, the Authority, after considering the Administrative Law Judge's decision, will affirm or reverse the decision. If there has been a violation, the Authority shall issue an appropriate order or, upon finding no violation, shall dismiss the complaint.
7. **NOTIFICATION TO CENTRAL OFFICE.** Field facilities shall notify the Office of Labor-Management Relations and Regional Counsel immediately of any job actions that occur such as slowdowns, sick-outs, work stoppages or picketing.

LABOR-MANAGEMENT RELATIONS

PART II. LABOR-MANAGEMENT RELATIONS - TITLE 38

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PART II. LABOR-MANAGEMENT RELATIONS - TITLE 38

1. **INTRODUCTION.** This part applies to physicians, dentists, podiatrists, optometrists, registered nurses, physician assistants, [] expanded-function dental auxiliaries [,] [and chiropractors (collectively referred to as “title 38 employees”)] represented by labor organizations holding exclusive recognition in the Department of Veterans Affairs (VA). This part establishes the procedures for handling negotiability and grievability questions when there is an assertion by management that the issue concerns or arises out of professional conduct or competence, peer review, or the establishment, determination, or adjustment of employee compensation.
2. **REFERENCES**
 - a. Section 202 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 Public Law (Pub. L.) 102-40
 - b. [5 U.S.C., chapter 71].
 - c. [38 U.S.C., chapter 74].
3. **POLICY**
 - a. VA recognizes the right of covered employees to engage in collective bargaining with respect to conditions of employment through representatives chosen by them as established in Pub. L. 102-40.
 - b. Collective bargaining shall be limited to the extent authorized in section 202 of Pub. L. 102-40. Working conditions of title 38 employees generally are subject to collective bargaining under 5 U.S.C., chapter 71. However, under section 202, such collective bargaining and any grievance procedure provided under a collective bargaining agreement for covered employees may not cover, or have any applicability to, any matter or question concerning or arising out of professional conduct or competence, peer review, or the establishment, determination, or adjustment of employee compensation.
 - c. Covered employees are subject to part I of this handbook involving labor relations except for matters addressed in this part.
4. **DELEGATION OF AUTHORITY.** The Under Secretary for Health or designee, after consultation with appropriate officials in the Office of Labor-Management Relations and/or the Office of the General Counsel, as appropriate, will decide whether a matter or question concerns or arises out of professional conduct or competence, peer review, or the establishment, determination or adjustment of employee compensation.
5. **PROCEDURES.** [A facility director or other appropriate official may request a decision by the Under Secretary for Health that a matter or question involved in a pending grievance arbitration or proceeding before the Federal Labor Relations Authority (FLRA) or the Federal Service Impasses Panel (FSIP) concerns or arises out of professional conduct or competence, peer review, or the

establishment, determination or adjustment of employee compensation within the meaning of 38 U.S.C. § 7422. The request must be signed by the facility director and submitted to the Under Secretary for Health through the Office of Labor-Management Relations. The facility director should advise the local union that the request has been submitted and invite the union to provide input on the issue to the Under Secretary for Health, through the Office of Labor-Management Relations, within ten working days. Once the Under Secretary for Health has determined that an issue is subject to one of the 38 U.S.C. § 7422 exemptions, that decision divests the FLRA, FSIP, and/or arbitrator of jurisdiction to resolve the matter. More extensive detailed guidance on preparing and submitting a package for an Under Secretary for Health determination that a matter or question concerns or arises out of professional competence or conduct, peer review or employee compensation may be found on the VACO [Labor Management Relations Office Web site.](#)]

6. Notwithstanding the procedures described in Paragraph 5, the Secretary has the authority to decide whether a matter or question concerns or arises out of professional conduct or competence, peer review, or the establishment, determination, or adjustment of employee compensation within the meaning of 38 U.S.C. §7422.

APPENDIX A. RECORDING THE USE OF OFFICIAL TIME

1. **PURPOSE.** This appendix provides guidelines for the recording of official time and associated travel and per diem costs for representational functions, as defined herein. It is important to note that these recordkeeping requirements should not be read as a source of rights to official time or travel or per diem. The propriety of granting official time and payment of travel and per diem costs is based solely on statute, rule, regulation and negotiated agreement.

2. DEFINITIONS

a. **Representational Function.** Those authority activities undertaken by employees on behalf of other employees pursuant to such employees' rights to representation under statute, regulation, executive order, or the terms of a collective bargaining agreement. It includes activities undertaken by specific individual designation (such as the designation of a representative in a grievance action or an EEO complaint even where no labor organization is present) as well as those activities authorized by a general, collective designation (such as the designation of a labor organization recognized as exclusive representative under chapter 71 of title 5, U.S.C.).

b. Official Time

(1) All time granted an employee by the agency to perform representational functions as defined above when the employee would otherwise be in a duty status without charge to leave. Official time shall be considered hours of work. This includes time spent by an employee performing such functions during regular working hours (including regularly scheduled overtime hours) or during a period of irregular, unscheduled overtime work, provided an event arises incident to representational functions that must be dealt with during the irregular, unscheduled overtime period.

(2) Official time may be granted to union representatives under section 7131 of 5 U.S.C., chapter 71. Certain executive orders and Government-wide regulations also require the use of official time for representational functions: for example, in connection with certain health and safety matters, agency administrative grievance procedures, prevailing wage rate appeals, and EEO complaints. In addition, agency regulations and practice and collective bargaining agreements may provide official time for other representational functions.

3. POLICY

a. VA does not require facilities to maintain records of the amount of official time granted employees for representational functions. However, it is recommended that facilities maintain such records in the event of a third party proceeding, such as a request by the Federal Service Impasses Panel or to resolve a local dispute. A sample format is provided below.

(1) Category I

**PART II
APPENDIX A**

- (a) **Negotiations of Collective Bargaining Agreements.** This includes negotiation of a basic agreement, renegotiation of an existing agreement, and negotiation of amendments to an existing agreement under a reopener clause, and time spent with FMCS and the FSIP in connection with negotiations. Title 5 U.S.C. 7131(a) provides that official time is to be granted to employees representing an exclusive representative for negotiation of a collective bargaining agreement, when they would otherwise be in a duty status, with no limitation on time, except that the number of employees authorized such official time shall not exceed the number of designated management representatives.
 - (b) **Mid-term Bargaining.** Midterm bargaining refers to negotiations over management initiated changes in human resources policies, practices, and working conditions. This does not include contract bargaining as covered in paragraph (a) above.
 - (2) **Category II--Ongoing Labor-Management Relationship.** Official time granted for representational functions in connection with all labor-management committees (general and specific), consultation, walkaround time for Occupational Safety and Health Administration inspections, FLRA proceedings, labor relations training for union representatives, and formal and Weingarten-type meetings under 5 U.S.C. 7114(a)(2)(A) and (B).
 - (3) **Category III--Grievances and Appeals.** Official time granted for employee representational functions in connection with grievances, arbitrations, adverse actions, EEO complaints and other complaints and appellate processes.
 - (4) **Category IV--Travel and Per Diem.** All travel and per diem costs associated with employee representational functions reported above.
- b. Field facilities are encouraged to maintain records in such a manner as not to constitute a system of records within the meaning of the Privacy Act of 1974. However, individual field facilities may elect to include these records in an existing, approved system of records. The following is a sample format that is recommended to assist field facilities in recording official time:

DATE	NAME	TIME BY CATEGORY					TOTAL
		Ia	Ib	II	III	IV	

CATEGORY Ia –NEGOTIATION OF COLLECTIVE BARGAINING AGREEMENT
 CATEGORY Ib – MIDTERM BARGAINING
 CATEGORY II – ON-GOING LABOR-MANAGEMENT RELATIONSHIP
 CATEGORY III – GRIEVANCE AND APPEALS
 CATEGORY IV – TRAVEL AND PER DIEM