



## DoD INSTRUCTION 1400.25, VOLUME 711

# DoD CIVILIAN PERSONNEL MANAGEMENT SYSTEM: LABOR-MANAGEMENT RELATIONS

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<b>Originating Component:</b>	Office of the Under Secretary of Defense for Personnel and Readiness
<b>Effective:</b>	February 26, 2020
<b>Change 1 Effective:</b>	August 27, 2021
<b>Releasability:</b>	Cleared for public release. Available on the Directives Division Website at <a href="https://www.esd.whs.mil/DD/">https://www.esd.whs.mil/DD/</a> .
<b>Reissues and Cancels:</b>	DoD 1400.25-M, Subchapter 711, "DoD Civilian Personnel Management System: Labor-Management Relations," December 1, 1996
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**Purpose:** This instruction is composed of several volumes, each containing its own purpose. In accordance with the authority in DoD Directives 5124.02 and 1400.25:

- This instruction establishes and implements policy, establishes procedures, provides guidelines and model programs, delegates authority, and assigns responsibilities regarding civilian personnel management within the DoD.
- This volume:
  - Implements requirements of Chapter 71 of Title 5, United States Code (U.S.C.).
  - Assigns responsibilities, establishes procedures, and delegates authority for the Federal Labor-Management Relations Program within the DoD.

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## **SECTION 1: GENERAL ISSUANCE INFORMATION**

### **1.1. APPLICABILITY.**

This volume:

a. Applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

b. Does not apply to:

(1) The Office of Inspector General of the Department of Defense.

(2) The National Security Agency, in accordance with Section 7103(a)(3)(D) of Chapter 71 of Title 5, U.S.C.

(3) DoD functional or organizational entities that the President has excluded from coverage in Executive Order (E.O.) 12171, as amended by E.O. 13760, issued pursuant to Section 7103(b)(1) of Chapter 71 of Title 5, U.S.C.

(4) Non-U.S. citizen personnel employed by DoD. Relationships with unions representing such non-U.S. citizens will be consistent with pertinent intergovernmental agreements, local practices, customs, and Volume 1231 of this instruction.

(5) DoD Components located outside of the United States as defined in Section 7103(a)(18) of Chapter 71 of Title 5, U.S.C., where the President, pursuant to Section 7103(b)(2), suspended the provisions of Chapter 71 of Title 5, U.S.C., in E.O. 12391.

### **1.2. POLICY.**

The DoD:

a. Adheres to Chapter 71 of Title 5, U.S.C., to resolve disputes that may arise in labor-management relationships. Labor-management relationships:

(1) Support and enhance the DoD’s national security mission by creating and maintaining a high-performance workplace that delivers the highest quality products and services to the warfighter.

(2) Pursue solutions that promote increased quality and productivity, customer service, mission accomplishment, efficiency, quality of work life, employee empowerment, organizational performance, and military readiness.

b. Engages unions to:

(1) Identify negotiable problems and provide an avenue for management and labor (referred to in this volume as “parties”) to discuss, propose, and develop solutions to accomplish DoD missions, as appropriate, pursuant to Chapter 71 of Title 5, U.S.C.

(2) Improve and promote effective labor-management relations.

### **1.3. SUMMARY OF CHANGE 1.**

The changes to this volume are administrative and:

- a. Make procedural language in Paragraph 3.8.a. compliant with E.O.14003.
- b. Update references for accuracy.

## **SECTION 2: RESPONSIBILITIES**

### **2.1. ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER AND RESERVE AFFAIRS.**

Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), the Assistant Secretary of Defense for Manpower and Reserve Affairs has overall responsibility for the development of civilian personnel policy covered by this volume.

### **2.2. DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR CIVILIAN PERSONNEL POLICY (DASD(CPP)).**

a. Under the authority, direction, and control of the Assistant Secretary of Defense for Manpower and Reserve Affairs, the DASD(CPP) supports the development of civilian personnel policy covered by this volume and monitors its execution by DoD Components, ensuring consistent implementation and continuous application throughout the DoD.

b. In carrying out its responsibilities under this volume, in matters that raise a question of law, the DASD(CPP) or its designee will coordinate with the Office of the Deputy General Counsel, Personnel and Health Policy (ODGC(P&HP)).

### **2.3. DIRECTOR, DEPARTMENT OF DEFENSE HUMAN RESOURCES ACTIVITY.**

Under the authority, direction, and control of the USD(P&R), and in addition to the responsibilities in Paragraph 2.4., the Director, Department of Defense Human Resources Activity, provides support to the DASD(CPP), as appropriate, in the execution of the duties and responsibilities of this volume.

### **2.4. DOD COMPONENT HEADS.**

The DoD Component heads:

a. Implement labor-management relations programs in their respective Components, consistent with this volume.

b. Cultivate and promote cooperative and productive labor-management relations.

c. Ensure proper coordination within their own headquarters (HQ), or legal counsel as appropriate, when local labor issues arise.

d. Provide the Defense Civilian Personnel Advisory Service (DCPAS) with copies of all filings or formal submissions to the Federal Labor Relations Authority (FLRA), judicial proceedings or reviews, and union- or management-initiated court actions or reviews when a

labor relations issue or matter has DoD-wide, component-wide, or other significant implications at least 7 business days in advance of the due date for filing.

## **SECTION 3: OBLIGATIONS AND REQUIREMENTS**

### **3.1. OBLIGATIONS UNDER THE FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE.**

#### **a. Document Submission.**

The DCPAS serves as the primary point of contact on behalf of the DASD(CPP) with the FLRA. The DCPAS will authorize the submission of documents to the FLRA, as described in Paragraph 2.4.d.

#### **b. Dues Withholding.**

DoD Components will withhold union dues by allotment consistent with the requirements of Section 7115 of Chapter 71 of Title 5, U.S.C., and Volume 8 of DoD 7000.14-R.

#### **c. Right of Representation.**

As required by Section 7114(a)(3) of Chapter 71 of Title 5, U.S.C., DoD Components will inform bargaining unit employees annually of their right to union representation, pursuant to Section 7114(a)(2)(B) of Chapter 71 of Title 5, U.S.C.

### **3.2. AGENCY HEAD REVIEW (AHR) REQUIREMENTS.**

#### **a. Description.**

On behalf of the DoD, the DCPAS conducts AHR for all DoD-negotiated agreements in accordance with Section 7114(c)(1) of Chapter 71 of Title 5, U.S.C., which requires negotiated agreements to be reviewed and approved or disapproved within 30 calendar days from the date the agreement is fully executed and dated.

#### **b. Types of Agreements.**

The types of agreements subject to AHR include:

- (1) Collective bargaining agreements (CBAs), including:
  - (a) Term and mid-term agreements.
  - (b) CBAs that have automatic rollover provisions following the expiration of the time to request to renegotiate and before the automatic rollover.
- (2) Memoranda of agreement or understanding.
- (3) Ground rules for negotiating agreements.



(4) Local agreements that are not subject to review procedures at a higher organizational level, pursuant to a national or other controlling agreement.

(5) Decisions and orders imposed by the Federal Service Impasses Panel.

**c. AHR Submission.**

On the date a negotiated agreement is executed, or becomes final (such as established in a rollover provision contained within the CBAs), and is eligible for AHR, DoD Components will forward the following documents to the DCPAS at [dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil](mailto:dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil) to begin the AHR process:

(1) The executed agreement in editable electronic format.

(2) A scanned copy of the completed signature page with date of execution and all signatures required to finalize the agreement.

(3) DoD Component contact information, including name, title, official mailing address (or an alternate address if the official mailing address is a post office box), e-mail address, and phone numbers for the following individuals:

(a) Commanders or organizational management heads at the level of exclusive recognition.

(b) Primary point of contact.

(c) Union president or other union representative point of contact.

(4) A copy of the certification of representative for the bargaining unit.

(5) The bargaining unit status code.

**d. Approved Agreements.**

After the DCPAS approves an agreement, DoD Components will submit an electronic copy of final approved agreement or supplements to agreements (such as memorandum of agreement or understanding) that is in a format that conforms with Section 508 of the Rehabilitation Act of 1973 (Section 794d of Title 29, U.S.C.), with a completed Office of Personnel Management (OPM) Form 913B, “Recognitions and Agreements Change Form” (found at [http://archive.opm.gov/forms/pdf\\_fill/OPM913.pdf](http://archive.opm.gov/forms/pdf_fill/OPM913.pdf)) to OPM. The material must be sent to OPM at [lrg@opm.gov](mailto:lrg@opm.gov), with copies sent to the DCPAS at [dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil](mailto:dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil) and to the appropriate DoD Component HQ.

**e. Agreement Expiration Changes.**

The DoD Components will send the DCPAS an electronic copy of OPM Form 913B concerning changes in agreement expiration dates. This form must be sent to the DCPAS at

dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil and to the appropriate DoD Component HQ.

### **3.3. PRESIDENTIAL EXCLUSIONS FROM APPLYING THE FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE.**

#### **a. Statutory Exclusions.**

The President, in accordance with Section 7103(b)(1) of Chapter 71 of Title 5, U.S.C., may issue an E.O. to exclude a DoD Component from this Chapter when both:

(1) The DoD Component has as a primary function of intelligence, counterintelligence, investigative, or national security work.

(2) The provisions of Chapter 71 of Title 5, U.S.C., cannot be applied to that component in a manner consistent with national security requirements and considerations.

#### **b. Requests for Exclusions.**

The DCPAS will issue an annual data call with those DoD Components not already excluded by E.O. in order to remain current with respect to all national security functions meeting the criteria in Section 7103(b)(1) of Chapter 71 of Title 5, U.S.C. The DCPAS will provide specific details regarding the data call on an annual basis. DoD Components may submit requests for exclusions, with fully developed rationale and documented evidence, through appropriate organizational levels to the DASD(CPP) and the DCPAS. The DCPAS will ensure the request complies with the requirements of Section 7103(b)(1) and forward it to the DASD(CPP). The DASD(CPP), in coordination with the ODGC(P&HP), will make a recommendation to the USD(P&R) regarding whether to seek an exclusion from the President. DoD Components submitting a request for exclusion should coordinate with the DCPAS in advance of submission. Requests will include:

(1) Name of the DoD Component and the name of the subdivision sought for exclusion.

(2) Mission (unless classified).

(3) Reason for the exclusion.

(4) Primary function of the DoD Component and the primary function of the employees involved, pursuant to Section 7103(b)(1)(A), of Chapter 71 of Title 5, U.S.C.

(5) An explanation of why the Federal Service Labor-Management Relations Statute cannot be applied in a manner consistent with national security requirements and considerations, pursuant to Section 7103(b)(1)(B) of Chapter 71 of Title 5, U.S.C.

(6) Number of employees involved. Include the total number of employees and annotate the number of employees currently represented and the name of the exclusive representative; the

number of employees eligible for representation but are unrepresented (coded 7777); and, the number of employees ineligible for representation (coded 8888).

(7) Name(s) of current exclusive representative(s) that represent employees and the number of employees represented by each union, if applicable.

(8) Bargaining unit status code and copies of the certification of representative, if applicable.

### **3.4. PARTIAL SUSPENSION OF THE FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE.**

#### **a. Suspension of Statutory Provisions.**

The President may issue an E.O. suspending any provision of Chapter 71 of Title 5, U.S.C., with respect to any DoD Component located outside of the 50 States and the District of Columbia, if the President determines the suspension is necessary in the interest of national security.

#### **b. Current Suspensions.**

E.O. 12391 suspended certain statutory provisions for DoD employed U.S. citizens working outside the United States, as defined by Section 7103(a)(18) of Chapter 71 of Title 5, U.S.C., with the exception of those employed in the Republic of Panama, on labor relations matters with respect to any matter which would substantially impair the implementation by the Military Services of any treaty or agreement between the United States and the government of the host nation.

#### **c. Requests for Resolution of Disputes.**

Disputes where a particular matter is covered by a suspension pursuant to E.O. 12391 will be referred by the DCPAS for review and coordination with the ODGC(P&HP).

(1) Each request for resolution of a dispute will fully document:

(a) The collective bargaining issue(s) or dispute involved.

(b) The identity of the bargaining unit, including the certification of representative issued by the FLRA, and any other documents establishing proof that an exclusive bargaining relationship exists.

(c) How the labor relations matter would substantially impair implementation of a treaty or agreement between the United States and the government of the host nation.

(2) DoD Component heads, on behalf of the affected component, installation, or activity, will sign requests from their organizations and include a recommendation to resolve the dispute.

#### **d. Endorsement.**

All recommendations for resolving the dispute will be endorsed as follows:

(1) The DCPAS, after obtaining appropriate concurrence with the ODGC(P&HP), will refer the recommendation and package to the USD(P&R) with a statement endorsing or opposing the recommendation.

(2) After consultation with the Secretary of State, the USD(P&R), in coordination with the Under Secretary of Defense for Policy, will make the final decision on the dispute.

### **3.5. PROCEEDINGS UNDER FLRA REGULATIONS.**

#### **a. Representation Cases.**

Exclusive recognition of labor organizations and clarification of questions relating to representation that arise under Sections 7111 or 7112 of Chapter 71 of Title 5, U.S.C., are within the exclusive jurisdiction of the FLRA. Only the FLRA may determine union certification and the appropriateness of any bargaining unit and any questions that arise relating to the continued appropriateness of the certified unit or the eligibility of employees in that unit. DoD Components will follow the procedures in Part 2422 of Title 5, Code of Federal Regulations (CFR) for governing representation proceedings.

##### **(1) Representation Case Responsibility.**

DoD Components will coordinate with the DCPAS and the appropriate DoD Component HQ on FLRA representation proceedings. The DCPAS will make a final policy determination on any Component-initiated petition filing or Component response to a union-initiated petition and may withdraw the Component's representation petition or response filing if there are DoD-wide or other significant implications.

##### **(2) Inappropriate Bargaining Units.**

DoD Components will consult with the DCPAS when a union files a representation petition involving any proposed bargaining unit that would be considered inappropriate, such as bargaining units that would:

- (a) Encompass employees in two or more DoD Components.
- (b) Encompass employees under different personnel systems (e.g., appropriated fund and non-appropriated fund employees).
- (c) Consist of employees that are statutorily barred pursuant to Section 7112(b) of Chapter 71 of Title 5, U.S.C. (e.g., confidential employees, personnelists).
- (d) Seek to include employees in a bargaining unit that should be or have been excluded from the bargaining unit based on intelligence, counterintelligence, investigative, or

national security work, pursuant to Section 7112(b)(6) of Chapter 71 of Title 5, U.S.C. DoD Components must follow the same procedures outlined at Paragraph 3.5.a.(4) when taking a position that an employee is ineligible for inclusion in a proposed bargaining unit based on Section 7112(b)(6) of Chapter 71 of Title 5, U.S.C.

(3) Reorganizations, Consolidations, and Realignment.

DoD Components will consult with the DCPAS before implementing a change that may affect more than one bargaining unit or DoD Component. Such reorganizations include:

- (a) Base realignment and closure.
- (b) Consolidating or realigning human resources servicing organizations.
- (c) Consolidating or realigning two or more DoD Components or commands.
- (d) Consolidating or realigning organizations that encompass two or more bargaining units.

(4) National Security Exclusions Pursuant to Section 7112(b)(6).

DoD Components seeking to exclude individual employees from a bargaining unit based on intelligence, counterintelligence, investigative, or national security work pursuant to Section 7112(b)(6) of Chapter 71 of Title 5, U.S.C., will seek approval from the DCPAS to file a petition for such exclusion. The DCPAS may withdraw the petition if it is unilaterally filed by a DoD Component. DoD Components will immediately notify the DCPAS when they receive a union petition that seeks to represent employees that the Component believes should be excluded from the bargaining unit pursuant to Section 7112(b)(6) of Chapter 71 of Title 5, U.S.C.

(a) When seeking to file a petition, the DoD Component will provide the DCPAS information in support of a national security exclusion prior to filing with the FLRA. When responding to a petition filed by a union, DoD Components will coordinate their response with the DCPAS upon receiving a copy of the union's petition that raises eligibility issues involving national security.

(b) DoD Components will provide the following supporting documentation to the DCPAS at [dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil](mailto:dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil):

1. The Component's mission statement and organizational chart.
2. Current employee position description(s).
3. A spreadsheet of all affected employees with the following information:
  - a. Name.
  - b. Position.
  - c. Grade.

- d. Series.
- e. Organization.
- f. Bargaining unit status code.
- g. Position description or number.

4. Any additional documents supporting the exclusion and those required by the DCPAS to justify the exclusion.

(c) DoD Components must provide written documentation justifying that the three-prong test for national security exclusions under Section 7112(b)(6) of Chapter 71 of Title 5, U.S.C., is met for the petition(s) at issue.

(d) The DCPAS will provide DoD Components with a written statement approving or disapproving the request for exclusion.

#### (5) Review of Regional Director's Decisions and Orders.

If a DoD Component seeks review of a regional director's decision and order for representation cases resulting in significant or DoD-wide impact, inappropriate bargaining units, or national security, the DoD Component will transmit a package of documents to the DCPAS and, when appropriate, the DoD Component HQ, for approval. The documents must be sent to the DCPAS at [dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil](mailto:dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil) at least 14 calendar days before the Component files the application for review or at least 3 calendar days before filing an opposition to a union-filed application for review with the FLRA. The documents in the package must include:

- (a) A copy of the original petition.
- (b) A copy of the management or union response to the petition, if applicable.
- (c) Copies of the management's supporting documentation, if applicable.
- (d) Copies of the union's supporting documentation, if applicable.
- (e) A copy of the FLRA regional director's decision and order.
- (f) A copy of the DoD Component's draft application for review of an FLRA Regional Director's decision and order.

#### (6) New, Revised, or Terminated Bargaining Units.

DoD Components will use OPM Form 913B to provide information on new, revised, or terminated bargaining units. The form will be sent to their DoD Component HQ for filing with OPM at [plr@opm.gov](mailto:plr@opm.gov), with a copy sent to the DCPAS at [dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil](mailto:dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil).

## **b. Unfair Labor Practice (ULP) Proceedings.**

DoD Components will follow the procedures in Part 2423 of Title 5, CFR, when conducting ULP proceedings, including pursuing efforts to informally resolve ULP disputes.

### **(1) ULP Charge.**

A person as defined in Section 7103(a)(1) of Chapter 71 of Title 5, U.S.C., may file a ULP charge in accordance with Part 2423 of Title 5, CFR. DoD Components will participate in the investigation of a charge and continue attempts to resolve the issues.

### **(2) ULP Complaint.**

If a ULP charge is not dismissed, withdrawn, or settled through the FLRA investigation, the Regional Director may issue a complaint with the Office of Administrative Law Judges (ALJ). DoD Components will follow the procedures of Subpart B of Section 2423 of Title 5, CFR, after the complaint is issued. Actions include responding to the complaint, engaging in pretrial settlement discussions, and adhering to other provisions of Subpart B of Section 2423 of Title 5, CFR.

### **(3) Exceptions.**

Copies of exceptions to an ALJ's decision must be provided by the labor relations specialist or attorney to the DCPAS and the appropriate DoD Component. A DoD Component may consult with the DCPAS before filing an exception to an ALJ decision or an opposition to a union-filed exception. If the DoD Component seeks such assistance, after receipt of the ALJ decision or union-filed exception, the Component will provide the following documents to the DCPAS at [dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil](mailto:dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil):

- (a) A copy of the ALJ decision.
- (b) Copies of proposed draft exceptions or union-filed exceptions to the decision.
- (c) Copies of draft oppositions or subsequently-filed oppositions or cross-exceptions and reply briefs.

### **(4) Prohibited Acts.**

The DCPAS and DoD Component HQ must be contacted immediately by the Labor Relations Specialist whenever an employee engages in a prohibited act. Such acts include:

- (a) Engaging in activities described in Section 7311 of Chapter 73 of Title 5, U.S.C., and Section 1918 of Chapter 93 of Title 18, U.S.C., including, but not limited to:
  - 1. Advocating the overthrow of the U.S. constitutional form of government.
  - 2. Belonging to an organization that advocates the overthrow of a U.S. constitutional form of government.

3. Participating in a strike or asserting the right to strike against the U.S. Government.

(b) Strikes, work stoppages, slowdowns, and picketing by unions representing DoD employees that interfere with a Component's operations, pursuant to Section 7116(b)(7) of Chapter 71 of Title 5, U.S.C. Informational picketing that does not disrupt Component operations or prevent public access to a facility is an exception to a prohibited act.

### **c. Negotiability Proceedings.**

DoD Components will follow the procedures in Part 2424 of Title 5, CFR, regarding the processing of a petition for review of negotiability issues. Whenever a question of negotiability arises, the DoD Component will consult with the DCPAS and their appropriate DoD Component HQ.

#### **(1) Allegation of Non-negotiability.**

When the union requests, in writing, an allegation that a proposal is non-negotiable, the DoD Component is required to:

(a) Obtain approval from the DCPAS and the appropriate DoD Component representatives before providing a written response to the union.

(b) Provide copies of the union's proposal and the DoD Component's counter proposal (if appropriate) to the DCPAS with the rationale used to determine that the issue is non-negotiable, including supporting case law.

(c) Provide a written response to the union within 10 calendar days of the union's written request following DCPAS approval. The written response will provide management's rationale for declaring the union's proposal non-negotiable.

#### **(2) Negotiability Appeals.**

When the union files a petition for review with the FLRA within 15 calendar days of receipt of the written allegation of non-negotiability of a proposal or disapproval of a provision under AHR, the DoD Component will submit the following to the DCPAS at [dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil](mailto:dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil) and must select the e-mail settings that request both delivery and "read" receipts (to ensure delivery to the DCPAS):

(a) Supporting documentation within 5 calendar days of petition receipt from the union. The documentation includes the meaning and intent of the language and any documents served on the local component.

(b) The proposal(s) declared non-negotiable and a draft statement of position, within 15 calendar days of petition receipt from the union. The DCPAS will review and concur or prepare the statement of position concerning disapprovals under AHR.



(c) In the event that the union does not provide a copy of the petition for review, the DoD Component will serve the material identified in Paragraphs 3.5.c.(2)(a) and 3.5.c.(2)(b) immediately upon notification from the FLRA.

#### **d. Negotiation Impasses.**

When the parties engage in collective bargaining, it is not uncommon for them to disagree on certain negotiable issues and reach an impasse. DoD Components will act pursuant to the procedures in Part 2470 of Title 5, CFR, and the statutory requirements of Section 7119 of Chapter 71 of Title 5, U.S.C., to resolve negotiation impasses.

##### **(1) Mediation.**

If negotiations fail to result in an agreement, the DoD Component should work with the union to seek a neutral third-party to mediate, as appropriate. In such circumstances, the Component may seek assistance from the Federal Mediation and Conciliation Service.

##### **(2) Impasses Panel.**

If the parties are unable to reach an agreement through mediation, the DoD Component may seek assistance from the Federal Service Impasses Panel, pursuant to Section 7119(b)(1) of Chapter 71 of Title 5, U.S.C., to resolve the contract matters at impasse. In order to preserve the DoD's ability to conduct AHR, the Component will not agree voluntarily to binding arbitration.

#### **e. Review of Arbitration Awards.**

##### **(1) Exception to Arbitration Awards.**

Exceptions to arbitration awards may not be based on employee reduction in grade or removals from federal service under Section 4303 of Chapter 43 of Title 5, U.S.C., or adverse actions under Section 7512 of Chapter 75 of Title 5, U.S.C., as the FLRA does not have jurisdiction over these types of awards. If grounds for review exist, DoD Components will follow the procedures in Part 2425 of Title 5, CFR.

##### **(2) Component-initiated Exceptions.**

DoD Components will contact the DCPAS and the appropriate DoD Component HQ when an exception to an arbitration award should be filed with the FLRA. The DCPAS will make the final determination to file an exception.

##### **(3) Submitting for Review.**

If a DoD Component is considering filing an exception to an arbitration award, the Component will forward a package of documents to its HQ and to the DCPAS at [dodhra.mcalex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil](mailto:dodhra.mcalex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil) within 5 calendar days of receipt of the arbitration award. The Component will provide:

(a) A copy of the arbitration award, with a copy of the postmarked envelope. If the award is served by personal delivery, the date of receipt will be stamped on the document.

(b) A copy of the grievance and arbitration file, as applicable.

(c) The arbitrator's name and address.

(d) The name, title, and address of the union representative in the arbitration proceeding or the designee.

#### **(4) Union-initiated Exception and Management Opposition.**

DoD Components will forward a union-initiated exception to an arbitration award to its HQ and to the DCPAS at [dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil](mailto:dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil) within 2 calendar days from receipt of the exception. The Component will provide:

(a) The grievance and arbitration case file.

(b) The Component's position regarding the union exception.

(c) Any documentation that supports the Component's position.

(d) A draft opposition.

#### **(5) Filing Determination.**

The DCPAS will make the final determination to file an exception or opposition. If approved for filing, the DCPAS will coordinate on a submission prepared by the DoD Component.

#### **(6) Filing Withdrawal.**

The DCPAS, in coordination with the ODGC(P&HP), may withdraw the filing with the FLRA if the DoD Component fails to follow the procedures described in this section.

### **f. National Consultation Rights (NCR).**

NCR are afforded to unions that meet eligibility criteria, as established in Part 2426 of Title 5, CFR. The DoD and the DoD's primary national subdivisions will act in accordance with Section 7113 of Chapter 71 of Title 5, U.S.C., and the procedures in Part 2426 of Title 5, CFR, when determining which unions receive NCR. The DCPAS maintains a list of unions to which the DoD has granted NCR.

#### **(1) Union Request.**

The DoD will grant NCR to a union, upon request, when the union meets the criteria established in Part 2426 of Title 5, CFR. The DoD's primary national subdivisions will immediately notify the DCPAS at [dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil](mailto:dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil) of any union request and provide:

- (a) A copy of the union request.
- (b) The DoD Component's position on the union request.
- (c) Evidence that supports the DoD Component's position.

**(2) Termination of NCR.**

The DoD or a DoD primary national subdivision will terminate NCR when a union no longer qualifies for such rights. To terminate NCR, the DoD or the primary DoD national subdivision will:

- (a) Serve the union with a 30 calendar day advance notice of intent to terminate NCR.
- (b) Provide a statement of reasons and supporting documentation.

**(3) Review of NCR Determination.**

DoD primary national subdivisions will provide the DCPAS a copy of the correspondence granting or denying a union's request for NCR or notifying a union of its intent to terminate NCR.

**g. General Statements of Policy or Guidance.**

DoD Components will forward any recommendation that the DoD seek a general statement of policy or guidance from the FLRA, in accordance with FLRA regulations in Part 2427 of Title 5, CFR, through their DoD Component HQ to the DCPAS for appropriate action. DoD Components will immediately notify the DCPAS of any referrals to FLRA for review and decision or general rulings, pursuant to Part 2429 of Title 5, CFR.

**3.6. REVIEW OF ARBITRATION AWARDS RELATING TO ADVERSE OR UNACCEPTABLE PERFORMANCE ACTIONS.**

**a. Review of Exceptions for Adverse Action Awards.**

Pursuant to Section 7121(f) of Chapter 71 of Title 5, U.S.C., exceptions to arbitration awards involving certain adverse actions or unacceptable performance actions may not be filed with the FLRA. However, such awards are subject to judicial review in the same manner and on the same basis as if those matters had been decided by the Merit Systems Protection Board. An arbitration award that mitigates a penalty imposed by a DoD Component pursuant to adverse action procedures is not subject to judicial review.

**b. Grounds and Procedures.**

The grounds and procedures for judicial review of a decision made by the Merit Systems Protection Board are described in Section 7703 of Chapter 77 of Title 5, U.S.C. Pursuant to that section, only the Director of the OPM may seek judicial review of such matters.

**c. Request Approval.**

Before seeking OPM involvement in a request for reconsideration or judicial review, DoD Components will request approval from the DCPAS and the ODGC(P&HP), providing all relevant documents in support of the request. DoD Components will forward requests for reconsideration of arbitration awards within 1 workday of receipt of an arbitrator's award through DoD Component HQ to the DCPAS at dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil and ODGC(P&HP) for review and approval. The request for reconsideration must identify the basis for seeking reconsideration and be accompanied by a complete copy of the case file submitted to the arbitrator.

**d. Reconsideration of Award.**

If the Director of OPM did not intervene in the matter before the arbitrator, the DoD Component will first petition the arbitrator for reconsideration of the award to facilitate involvement of the Director of OPM.

(1) Individuals representing DoD Components in an arbitration proceeding are to instruct the arbitrator at the hearing to prepare an administrative record.

(2) The DoD Component should maintain the administrative record for at least 45 calendar days from the date of the award or until final resolution of the case, whichever is later.

**3.7. JUDICIAL REVIEW.**

**a. Appeal of Final Orders.**

Certain final orders of the FLRA may be appealed to an appropriate United States Court of Appeals, pursuant to Section 7123 of Chapter 71 of Title 5, U.S.C.

**b. Judicial Review Request.**

To ensure consistency of interpretation and full consideration of the policy and program implications of such appeals, DoD Components will forward requests for judicial review of FLRA decisions or requests to intervene in judicial proceedings through DoD Component HQ to the DCPAS at dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil and ODGC(P&HP) for review and approval.

**c. Appeal Implications.**

Before making decisions to seek judicial review, the DCPAS will consult and coordinate with ODGC(P&HP) and the Office of the DASD(CPP) to consider the personnel policy and labor relations program implications of the action.

**d. Union-initiated Court Action.**

DoD Components will promptly notify the DCPAS, ODGC(P&HP), and DASD(CPP), through their HQ, when a union has initiated court action in a matter arising from its relationship with the Component.

**3.8. OFFICIAL TIME.**

**a. Timely Reporting Requirement.**

The President, and the Congress, may order reports on the use of official time used by union representatives pursuant to provisions negotiated in CBAs pursuant to Section 7131 of Title 5, U.S.C. DoD Components will respond to reports in accordance with guidance published by the DCPAS.

**b. Requirement for Accurate Records.**

The certification of time and attendance, including official time for union representatives, is an authorization for the expenditure of Government funds. Accordingly, supervisors are responsible for the timely and accurate preparation, certification, and submission of time and attendance records for all employees, including those DoD employees designated as union representatives, pursuant to Section 3528(a) of Title 31, U.S.C., and Chapter 33 of Volume 5, and Chapter 2 of Volume 8, DoD 7000.14-R. DoD Components will:

- (1) Ensure that certifying officials are trained in certifying official responsibilities and liabilities pursuant to federal law and DoD 7000.14-R.
- (2) Ensure that each employee's time and attendance report is certified as correct by the employee's supervisor, acting supervisor, or other designated representative authorized to act as an alternate certifier at the end of each pay period.
- (3) Take appropriate administrative measures, to include disciplinary action, for erroneous time records entered by employees, as well as those certified for payment made by certifying officials.

**3.9. STANDARDS OF CONDUCT.**

Parties involved in standards of conduct proceedings are responsible for following Department of Labor regulations, including Parts 457 through 459 of Title 29, CFR, which implement Section 7120 of Chapter 71 of Title 5, U.S.C., relating to the standards of conduct for labor organizations pursuant to Chapter 71 of Title 5, U.S.C.

## GLOSSARY

### G.1. ACRONYMS.

ACRONYM	MEANING
AHR	agency head review
ALJ	administrative law judge
CBA	collective bargaining agreements
CFR	Code of Federal Regulations
DASD(CPP)	Deputy Assistant Secretary of Defense for Civilian Personnel Policy
DCPAS	Defense Civilian Personnel Advisory Service
E.O.	Executive order
FLRA	Federal Labor Relations Authority
HQ	headquarters
NCR	national consultation rights
ODGC(P&HP)	Office of the Deputy General Counsel, Personnel and Health Policy
OPM	Office of Personnel Management
ULP	unfair labor practice
U.S.C.	United States Code
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

### G.2. DEFINITIONS.

These terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
<b>agency</b>	Pursuant to Sections 101, 105, and 7103(a)(3) of Title 5, U.S.C., the DoD is an “agency” for purposes of this instruction and functions as an executive agency of the Federal Government.
<b>arbitration</b>	A process by which the parties refer their dispute to an impartial third party (i.e., an arbitrator) for resolution.

<b>TERM</b>	<b>DEFINITION</b>
<b>arbitration award</b>	A written decision issued by an arbitrator that resolves a dispute between the parties to a labor agreement.
<b>automatic rollover provision</b>	A provision in the agreement that permits a collective bargaining agreement to automatically renew (“rollover”) when the agreement expires. An automatic rollover provision does not apply if either party to a collective bargaining agreement demands to renegotiate the agreement in accordance with the procedures in the labor agreement.
<b>bargaining unit</b>	Employees within an organization who a union represents or seeks to represent and the FLRA determines to be appropriate for collective bargaining purposes
<b>bargaining unit status code</b>	A discreet number assigned by the OPM to identify three types of positions: positions that are not eligible by law to be included within a bargaining unit, positions that are eligible for inclusion within a bargaining unit but not represented by a union, or positions represented by a specific union within that agency.
<b>CBAs</b>	Any agreements entered into as a result of collective bargaining pursuant to the provisions of Chapter 71 of Title 5, U.S.C.
<b>collective bargaining</b>	The process of an agency and a union through which they meet and consult to reach agreement on issues that affect bargaining unit employees. The characteristics of collective bargaining include meeting at reasonable times, making a good-faith effort to reach an agreement, and developing and signing a written agreement if requested by either the agency or the union. There is no requirement for the agency or the union to agree to any proposal or to make concessions to one another throughout this process.
<b>employee</b>	Defined in Section 7103(a)(2) of Chapter 71 of Title 5, U.S.C. For the purposes of this volume, in addition to that definition, the term also includes civilian employees paid from non-appropriated fund instrumentalities. Excepted service employees are covered by this definition unless they meet one of the exclusions in Section 7112(b) of Chapter 71 of Title 5, U.S.C. Military personnel are not considered employees with respect to any matter related to their military status or assignment, nor are contractor personnel included in this definition.

<b>TERM</b>	<b>DEFINITION</b>
<b>exclusive recognition</b>	The legal status accorded to a specific union certified by the FLRA for the purpose of representing and bargaining collectively on behalf of specific employees within an agency. The status of “exclusive recognition” bars an agency from dealing with any other individual or entity for the purposes of representation or collective bargaining on behalf of these employees.
<b>Federal Mediation and Conciliation Service</b>	An independent executive agency created by Congress to mediate disputes and facilitate conciliation between employers, to include the Federal agencies, and unions.
<b>FLRA</b>	An independent government agency charged with administering laws that protect the right of certain Federal non-postal employees to bargain collectively. The FLRA establishes policies and guidelines concerning Federal service labor-management relations, ensures compliance with statutory collective bargaining rights and obligations, determines the appropriateness of bargaining units, supervises and conducts Federal service representation elections, ensures conformance with government rules and regulations, investigates complaints about unfair labor practices, and adjudicates disputes. It also maintains a panel devoted to resolving impasses in negotiations between agencies and unions.
<b>level of recognition</b>	Establishes the level at which bargaining must take place. It is one of the factors in determining appropriateness of the unit.
<b>Merit Systems Protection Board</b>	An independent executive agency created by Congress to administer merit system principles and adjudicate appeals of certain actions taken against federal employees.
<b>negotiated agreement</b>	An agreement reached between an agency and a union through collective bargaining that affect the conditions of employment of specific agency employees. All negotiated agreements reached through collective bargaining are subject to review by the head of the agency. The term is synonymous with the term “collective bargaining agreement.”
<b>primary national subdivisions</b>	The OSD, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Military Departments, and the Defense Agencies, to include the National Guard Bureau. Does not include the National Security Agency and those agencies the President has excluded from coverage in Title 5, U.S.C.



<b>TERM</b>	<b>DEFINITION</b>
<b>three-prong test for national security exclusions under Section 7112(b)(6) of Chapter 71 of Title 5, U.S.C.</b>	Criteria the FLRA applies to determine if any employee should be excluded from a bargaining unit. The three prongs must determine whether an employee is engaged in (1) “security work,” that (2) “directly affects” (3) “national security.” All three tests must be met for the FLRA to approve an employee’s exclusion according to law.
<b>ULP charge</b>	An allegation (charge) made by an agency against a union, a union against the agency, or an individual against either a union or the agency that an applicable law was violated pursuant to Section 7116 of Chapter 71 of Title 5, U.S.C. A ULP may be raised by these parties in the form of a grievance filed pursuant to a labor agreement or through a formal process administered by the FLRA.

## **REFERENCES**

Code of Federal Regulations, Title 5  
Code of Federal Regulations, Title 29  
DoD 7000.14-R, Volume 8, “Department of Defense Financial Management Regulations (FMRs): Civilian Pay Policy,” current edition  
DoD Directive 1400.25, “DoD Civilian Personnel Management System,” November 25, 1996  
DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008  
DoD Instruction 1400.25, Volume 1231, “DoD Civilian Personnel Management System: Employment of Foreign Nationals,” July 5, 2011  
Executive Order 12171, “Exclusions from the Federal Labor-Management Relations Program,” November 19, 1979, as amended  
Executive Order 12391, “Partial Suspension of Federal Service Labor-Management Relations,” November 4, 1982  
Executive Order 14003, “Protecting the Federal Workforce,” January 22, 2021  
United States Code, Title 5  
United States Code, Title 18  
United States Code, Title 29  
United States Code, Title 31