

**§ 9701.518 Duty to bargain, confer, and consult.**

(a) The Department or appropriate component(s) of the Department and any exclusive representative in any appropriate unit in the Department, through appropriate representatives, must meet and negotiate in good faith as provided by this subpart for the purpose of arriving at a collective bargaining agreement. In addition, the Department or appropriate component(s) of the Department and the exclusive representative may determine appropriate techniques, consistent with the operational rules of the HSLRB, to assist in any negotiation.

(b) If bargaining over an initial collective bargaining agreement or any successor agreement is not completed within 90 days after such bargaining begins, the parties may mutually agree to continue bargaining or mutually agree to refer the matter to an independent mediator/arbitrator for resolution. Alternatively, either party may refer the matter to the HSLRB for resolution in accordance with procedures established by the HSLRB. Either party may refer the matter to the Federal Mediation Conciliation Service (FMCS) for assistance at any time.

(c) If the parties bargain during the term of an existing collective bargaining agreement over a proposed change that is otherwise negotiable, and no agreement is reached within 30 days after such bargaining begins, the parties may mutually agree to continue bargaining or mutually agree to refer the matter to an independent mediator/arbitrator for resolution. Alternatively, either party may refer the matter to the HSLRB for resolution in accordance with procedures established by the HSLRB. Either party may refer the matter to the Federal Mediation Conciliation Service (FMCS) for assistance at any time.

(d)(1) Management may not bargain over any matters that are inconsistent with law or the regulations in this part, Governmentwide rules and regulations, Departmental implementing directives and other policies and regulations, or Executive orders.

(2) In promulgating Departmental policies and regulations that deal with otherwise negotiable subjects, the De-

partment will utilize the process set forth in § 9701.512, except that the Department will confer with those labor organizations that request and have been accorded national consultation rights (NCR) established pursuant to 5 U.S.C. 7113, which is not waived for these purposes, and consult with those organizations on other appropriate matters.

(3) Management has no obligation to bargain over a change to a condition of employment unless the change is otherwise negotiable pursuant to these regulations and is foreseeable, substantial, and significant in terms of both impact and duration on the bargaining unit, or on those employees in that part of the bargaining unit affected by the change.

(4) Management has no obligation to confer or consult as required by this section unless the change is foreseeable, substantial, and significant in terms of both impact and duration on the bargaining unit, or on those employees in that part of the bargaining unit affected by the change.

(5) Nothing in paragraphs (b) or (c) of this section prevents or delays management from exercising the rights enumerated in § 9701.511.

(e) If a management official involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the HSLRB in accordance with procedures established by the HSLRB.

**§ 9701.519 Negotiation impasses.**

(a) If the Department and exclusive representative are unable to reach an agreement under §§ 9701.515 or 9701.518, either party may submit the disputed issues to the HSLRB for resolution.

(b) If the parties do not arrive at a settlement after assistance by the HSLRB, the HSLRB may take whatever action is necessary and not inconsistent with this subpart to resolve the impasse.

(c) Pursuant to §§ 9701.508 and 9701.525, the HSLRB's regulations will provide for a single, integrated process to address all matters associated with a negotiations dispute, including unfair

## § 9701.520

labor practices, negotiability disputes, and bargaining impasses.

(d) Notice of any final action of the HSLRB under this section must be promptly served upon the parties. The action will be binding on such parties during the term of the agreement, unless the parties agree otherwise.

### § 9701.520 Standards of conduct for labor organizations.

Standards of conduct for labor organizations are those prescribed under 5 U.S.C. 7120, which is not waived.

### § 9701.521 Grievance procedures.

(a)(1) Except as provided in paragraph (a)(2) of this section, any collective bargaining agreement must provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in paragraphs (d), (f), and (g) of this section, the procedures must be the exclusive administrative procedures for grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b)(1) Any negotiated grievance procedure referred to in paragraph (a) of this section must be fair and simple, provide for expeditious processing, and include procedures that—

(i) Assure 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;

(ii) Assure 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

(iii) Provide that any grievance not satisfactorily settled under the negotiated grievance procedure is subject to binding arbitration, which may be invoked by either the exclusive representative or the Department.

(2) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (b)(1)(iii) of this section must, if or to the extent that an al-

## 5 CFR Ch. XCVII (1–1–13 Edition)

leged prohibited personnel practice is involved, allow the arbitrator to order a stay of any personnel action in a manner similar to the manner described in 5 U.S.C. 1221(c) with respect to the Merit Systems Protection Board and order the Department to take any disciplinary action identified under 5 U.S.C. 1215(a)(3) that is otherwise within the authority of the Department to take.

(3) Any employee who is the subject of any disciplinary action ordered under paragraph (b)(2) of this section may appeal such action to the same extent and in the same manner as if the Department had taken the disciplinary action absent arbitration.

(c) The preceding paragraphs of this section do not apply with respect to any matter concerning—

(1) Any claimed violation of 5 U.S.C. chapter 73, subchapter III (relating to prohibited political activities);

(2) Retirement, life insurance, or health insurance;

(3) A suspension or removal under § 9701.613;

(4) A mandatory removal under § 9701.607;

(5) Any examination, certification, or appointment; and

(6) Any subject not within the definition of *grievance* in § 9701.504 (e.g., the classification or pay of any position), except for any other adverse action under subpart F of this part which is not otherwise excluded by paragraph (c) of this section.

(d) To the extent not already excluded by existing collective bargaining agreements, the exclusions contained in paragraph (c) of this section apply upon the effective date of this subpart, as determined under § 9701.102(b).

(e)(1) An aggrieved employee affected by a prohibited personnel practice under 5 U.S.C. 2302(b)(1) which also falls under the coverage of the negotiated grievance procedure may raise the matter under the applicable statutory procedures, or the negotiated procedure, but not both.

(2) An employee is deemed to have exercised his or her option under paragraph (e)(1) of this section to raise the matter under the applicable statutory