INTRODUCTION

Having to learn new skills is simply part of any federal supervisor's job and learning to supervise a unionized workplace is just another to add to the list.

When you supervise unionize employees, you supervise them differently from the way you would in a non-unionized workplace. In many federal agencies supervisors have employees who belong to several different unions, each of whom is under one of several different contracts, so you supervise them not just differently from non-unionized employees but from other unionized employees as well.

So, federal labor relations can be an amazingly complicated and constantly mutating topic. It can find or create distinctions that would baffle the most accomplished Jesuit or Talmudic scholar. Thankfully, the good news is that most of these complexities are not relevant to the day-to-day realities of federal supervision.

When supervising federal employees, you have five prime human resources management responsibilities: structuring jobs, filling jobs, managing time, managing performance, and maintaining discipline. This book covers the sixth that is added when you supervise unionized employees: labor relations. Labor relations differs from these others in three ways, all of which are good news for federal supervisors.

First, in the other five prime HR responsibilities, you're the one who bears the primary responsibility—not your HR office, not your disability coordinator, not your budget office, and only higher management in a broad sense.

For example, OPM, your agency, and its higher level components promulgate all manner of regulations and policies about administering leave and controlling absenteeism. But you're the one who has to make it happen, and if, for example, sick leave is out of control in your department, bluntly, you're not doing your job, and you're the one your agency should and will hold responsible.

In hiring, even with all the OPM and agency rules, you're the one who chooses sources of selection and the assessment measures when you get that final short list from HR. You're the one who makes that final selection and if it results in a bad hire, you're the one who has to live with the consequences.

In labor relations, however, while individual supervisors play an important role, your role is limited and responsibility rests mostly with higher levels and other departments in your agency. It's those well above you and others who

negotiate the labor contracts. It's the lawyers and your labor relations staff who have to deal with charges of unfair labor practices (ULPs). Your labor relations people do the notification of changes that may require negotiations. They also take care of handling representational situations where the union has the right to be present.

Your role is administering the labor contract, dealing with the union officials at your level, and then being aware of and passing on to your labor relations staff those situations where official notifications and cooperation with the union is required.

Second, the consequences of mistakes in labor relations, even serious ones, are not calamitous. In the other five areas of HR management, failing to deal with employee conduct problem, making a bad hire, leaving a performance failure in an important job, and other missteps can and have had irreversible disastrous consequences that cost federal supervisors not just their jobs, but in some cases even serious legal liability.

In dealing with unions at your level, there's virtually no mistake you can make of omission or commission that will cause any lasting or irreparable damage to you or your agency. To be sure, if you physically attack a union official, or deliberately engage in some harmful behavior that seriously damages the union or an official, you'll get what's coming to you.

However, if, for example, you misunderstood the rule and failed to allow a union rep to be present at a disciplinary interview, the worst that happens is (a) you're embarrassed, (b) your agency posts a notice on the bulletin board with many other similar notices that it won't that mistake again, and (c) you might have to do the interview over with a union rep there.

Third, in dealing with labor relations, you have sound and reliable resources available who not only advise you, but who are accountable for their advice. Because of the complexity of labor relations, staffs in most federal agencies, especially those with active unions are thoroughly knowledgeable and well prepared to advise you, hold your shaking hand while they speak, and then take over the entire matter.

This book was written for federal managers and supervisors who supervise unionized employees. We'll start by showing you the basics of federal labor law that apply to you, and then carry you through the most common situations you'll be dealing with. The first few chapters outline the basic principles of federal labor law and the rights of the parties. Then we'll turn to the four most common issues you'll encounter: administering the agreement, change situations, dealing with union officials, and the representational situations of formal discussions and investigative interviews. In the Appendix, we'll list

the labor relations implications of the most common day-to-day supervisory decisions.

We will not, however, cover several issues. First, I'm not going to cover the dynamics or practicalities of negotiating labor agreements. It is doubtful that you'll be part of a management negotiating team, and if you are attend one of the training sessions on negotiations. Second, I've chosen to avoid the abstractions of the interpersonal aspects of dealing with union officials. Building relationships depends on too many factors that are out of your control. Building strong interpersonal relationships must start with a clear sense of purpose and message before one can worry about the medium and the atmospherics.

As with most of my other books, this book was written for supervisors and managers in the trenches. Although lawyers and personnel specialists will find the information valuable, the book is not written for practitioners of federal labor law. If you are a practitioner or want a detailed discussion of all of these issues with analysis of nearly every case that ever was, get *A Guide to Federal Labor Relations Authority Law and Practice* (Dewey Publications) written by my publisher, Peter Broida. To that end, while I give dozens of examples from FLRA and arbitration cases, I have omitted cluttering the text with citations, except where I am quoting directly from the decision. If you need a specific cite, get Peter's book or give me a call or send an email and I'll get the citation for you.

Good luck.

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CHAPTER ONE
Basics of Federal Labor Relations

You see it in old movies all the time. After a few days on the job, the new worker in the factory is approached by a rough-hewn labor organizer wearing a cloth cap who tells the new employee that the union representing workers in this factory would be delighted if he would join, and goes on to tell him in indelicate terms what will happen to him if he does not.

It's not like that in federal service. Union representatives don't wear cloth caps, cannot call strikes, and cannot intimidate people into joining. Federal labor relations is governed by a different set of principles, many of which are similar to private industry, but are at the same time markedly different. In this introductory chapter, let's take a look at what it means to have a union, the structure of federal labor/management relations, and then the differences between federal and private sector labor relations.

HOW A UNION PRESENCE CHANGES SUPERVISION

Without a Union

Where you do not have a union, management enjoys four significant advantages. First, management deals directly with all employees about everything with no intervening party. If you want to talk with your employees about anything—a new organization, safety rules, performance standards—you do it directly without having to involve any outside party. Or if you want to talk with an employee about some conduct deficiencies and the person insists on having a witness or representative there, you have every right to say "no." It's between you and the employee and that's it. Any involvement by any outside party is possible only after the fact—if you fire an employee in the competitive service, he or she could appeal to the Merit Systems Protection Board, but again, this is only after it happens.

Second, all management decisions are unilateral without any solicitation of input from anybody. Don't misconstrue this. All good supervisors and managers engage employees in interactive discourse about most job matters, which I referred to as inter-subjectivity. The simple legality of it is that federal

supervisors and managers are not *compelled* to seek or listen to input from anybody below or outside their chain of command when deciding work issues in a non-unionized environment.

Third, management can act in secrecy. Without a union, management is under no obligation to routinely divulge information about the way it runs the organization. To be sure, it can be compelled to disclose some information under the FOIA and Privacy Acts, or to reveal certain information during legal appeals such as EEO complaints or MSPB appeals. However, absent those mechanisms, the agency can cloak all its actions from external and internal scrutiny. If a group of employees got together and asked to see the disciplinary records for a particular branch over the past few years, or all referral lists for a particular job, they would be out of luck.

Last, employees have precious little recourse over matters of dissatisfaction. It is a myth that any federal employee can just walk into a federal court and demand that his desk be moved closer to the window or that her supervisor stop yelling at him or her when he or she comes in late. Sure, many appellate mechanisms are available to federal employees, but the reality of it is that unless you're a tenured employee and get fired, demoted, RIF'd, or suffer some other serious action, there's not much you can do to challenge management.

When a Union Is Created

When you supervise an organization where a union has been recognized, those four qualities dissipate. First, you will have to start dealing with a third party—the union—about some of the matters you previously directly involved your employees. I say some, but not all, because as we'll see, you will still be dealing directly with unionized employees about many issues. Work assignments, for example, will go directly from supervisors to employees without any union involvement. You'll take disciplinary actions directly without involving the union. Hiring people will also be an exclusive prerogative of management.

You will have to deal exclusively with the union, to the exclusion of other entities, over many matters you previously discussed directly with employees. For example, in resolving grievances, you're not going to be able to just call an employee into your office and work things out. You'll have to deal with the union instead. In soliciting input or giving information about a variety of matters, you'll be dealing directly with the union and not with the employees.

Second, many of the decisions—especially those involving working conditions—will require some degree of negotiation or discussion with the union. When you're setting policies about things like break times, grooming rules, personal phone calls at work, and hundreds of other topics, you'll have to notify and negotiate with the union. Even when you're exercising a management right,

you may still have to involve the union in working out the details about how exercising your right will affect the employees—what we'll call, "bargaining about arrangements."

Third, you'll have to lift the veil of secrecy. While the union will not have an unlimited right to see anything it wants, it will now have routine access to information about much of what management does. When it asks to see the disciplinary records for the organization over the past two years, management will have to provide them—even if there's no grievance or appeal about the issue. If they want to see the promotion records for Electrical Engineers in your department, you'll have to pony up, again even if there is no current grievance or complaint.

Last, employees will now have greater recourse over matters of dissatisfaction. By law, if you have a union you must negotiate a contract, and that contract must contain a grievance article that gives the union the broad right to challenge management actions, and a challenge can even go up to an independent third party who can make a binding decision. Now let's look at the structure of labor relations in the federal service and how this differs from private industry.

FEDERAL LABOR MANAGEMENT RELATIONS STRUCTURE

In the private sector, labor management relations is governed by the Wagner Act, called the National Labor Relations Act, and various amendments. The National Labor Relations Board (NLRB) does all oversight and regulation. The Wagner Act, however, does not apply to agricultural employees or public employees (somebody tell me why they lumped those two together).

Federal unions have been around since the 19th century, but until the late 1970s were only recognized by executive order, and labor relations was governed by the Department of Labor. Federal unions gained official legal status in the late 1970s with the Civil Service Reform Act, which contained a section, similar in many ways to the Wagner Act, creating the framework and rules for labor management relations in the federal government. The law, usually referred to as the Federal Service Labor Management Relations Statute (FSLMRS), is now in Chapter 71 of Title 5 US Code, the title on federal administrative personnel rules. Congress also created the Federal Labor Relations Authority (FLRA) to oversee everything about labor relations in the federal civil service, and to perform functions homologous to those of the NLRB.

Now let's look at some of the significant differences between federal and private sector labor relations.

Union Shops Versus Voluntary Membership

First and by far the most important difference in private and federal sector labor relations is voluntary membership in federal unions. In the private sector, it is perfectly legal under the National Labor Relations Act for a company to require union membership as a condition of employment. However, in the federal civil service, union membership is wholly voluntary.

We'll go into the technicalities of what it means to be a bargaining unit employee later, but in the federal service, even if you work in a job that is represented by the union, you do not have to join the union. Yet federal law requires the union to represent you just as diligently as it does union members. This is what creates the dynamic where unions are always prodding nonmembers into joining, the chief reason, of course, being that members pay dues, which are automatically withheld by agencies from paychecks.

Wages and Most Benefits Non-Bargainable

The second major difference between federal and private sector labor relations is that the biggest issues are off the table. Federal unions cannot, with rare exception, negotiate over wages and economic benefits. Those are primarily set by Congress and the Office of Personnel Management, which means that federal unions cannot bargain over matters such as retirement benefits, holidays, salaries, overtime compensation, sick leave, annual leave, or other financial benefits that their counterparts can in the private sector.

The practical significance of this is that in the private sector, negotiating wages and financial packages is precisely why unions were formed in the first place. In the federal sector, unions are an excellent way for federal employees as a group to be heard and even have input into the organization that many devote their lives to, often in a literal sense, and to congressional oversight committees whose legislative efforts influence federal employee's pay and benefits.

Many strong union advocates argue that a union that cannot negotiate wages is not really a union. I'll leave that debate to others, but it does raise an important point that affects the dynamics of federal labor management relations: federal unions do not have the muscle that their counterparts in private industry do, so they have to expend their energy in other areas and they make the most of what they can.

When we get further into the book, many of you will throw up your hands at the seeming insignificance of some of the issues that you'll have to deal with unions about—negotiating over the size and layout of the break room, the new policy on personal smart phones in the office, or the assignment of parking

spaces. It is a reality that most of the important topics are excluded from labor-management discourse, and we must deal with what's left.

Striking and Concerted Activity Illegal

Next, federal unions have no right to strike or engage in other concerted activities like slowdowns, work to rule, picketing, sickouts, and all the other organized assaults, messages, and reprisals against management that private sector unions may engage in. The most federal labor law allows is a degree of informational picketing. This, of course, removes one of unions' greatest weapons and means that the only way they can seek recourse is through charges of unfair labor practices or grievances against management.

Management Rights

The last major difference between federal and private sector labor relations is that federal sector management has rights that do not exist in the private sector. The Wagner Act contains no exclusions, except for illegal acts, to the subjects of bargaining and a private company could be compelled to bargain about virtually anything that affects wages, benefits, or the terms and conditions of employment. The only decisions that private sector case law absolutely reserves to management are strategic and survival economic decisions, such as closing certain plants or discontinuing certain product lines.

The only way that a private company could establish management rights would be to bargain them into the contract, which means that it would have to give up something somewhere else. Private companies are compelled to bargain over holiday and vacation pay, performance standards, nonsupervisory work by supervisors, subcontracting, workload, union shops, work schedules, company rules, disciplinary actions, bonuses, assignment of duties, new technology, layoffs, and all the other matters federal agencies are precluded from bargaining.

Federal labor law explicitly reserves various rights for management. For example, management has an *absolute* right to assign duties to any job on either a permanent or temporary basis, and there's nothing the union can do about it. Similarly, management has an absolute right to contract out and lay people off, and need not negotiate with the union, except over what arrangements it may make for displaced employees.

Federal unions cannot bargain over the economic structure of the federal government or certain matters wholly reserved to management. So, if federal unions cannot bargain wages, economic benefits, job assignment, layoffs, and new technologies, then what's left? What's left is what we'll elaborate on throughout the remaining chapters.

Now let's look at the most important principles of federal labor relations.