

MS 659 Direct Hire Labor-Management Relations

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1.0 Purpose

This Manual Section establishes the policy and procedures that regulate Labor-Management Relations within the Peace Corps.

2.0 Background

Chapter 71 of Title 5, U. S. Code, 5 U.S.C. 7101 *et seq.* and implementing regulations.

Executive Order 13522 (December 9, 2009), 74 FR 66203 (December 14, 2009): “Creating Labor- Management Forums to Improve Delivery of Government Services.”

3.0 Scope

Any headquarters or regional recruitment office Direct Hire employee, except for the following, is eligible for union representation. Employees not eligible for representation are as follows:

- (a) Overseas employees;
- (b) Any management official or supervisor;
- (c) A confidential employee;
- (d) An employee engaged in personnel work in other than a purely clerical capacity;
- (e) An employee engaged in administering the provisions of this Manual Section;
- (f) Any employee engaged in investigative or security work which directly affects national security;
- (g) Any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by the Peace Corps whose duties directly affect the internal security of the Peace Corps, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity; and
- (h) Summer or student aides and interns.

4.0 Responsibilities

4.1 Associate Director, Management

The Associate Director for Management (AD/M) is responsible for the Labor-Management Relations Program. He or she shall review negotiated agreements for the Director and represent the Peace Corps in meetings of the Labor-Management Forum. The following actions shall be taken only after consultation with the Office of the General Counsel and approval by the AD/M:

- (a) Submission to the Federal Labor Relations Authority (FLRA) of any appeal;
- (b) Submission to the FLRA of a request for a ruling on a question of negotiability;
- (c) Peace Corps' response to the FLRA concerning any issue referred to the FLRA by a labor organization or employee;
- (d) A request to the FLRA to grant an exception to an arbitration award issued in a case involving arbitration under a negotiated agreement;
- (e) Submission to the Federal Service Impasses Panel (FSIP) of a negotiating impasse;
- (f) Submission to the FLRA of an Peace Corps position concerning unfair labor practices;
- (g) Submission to the FLRA of questions as to the appropriateness of units for the purpose of exclusive recognition and related issues.

The AD/M may re-delegate responsibilities for any of the functions set forth in the first subparagraph above, as he or she deems appropriate.

4.2 Employee and Labor Relations Manager, Office of Human Resource Management

The Employee and Labor Relations Manager (ELRM) in the Office of Human Resource Management (M/HRM) is responsible for developing and recommending labor relations policies, implementing the Labor Relations Program, representing the Peace Corps in negotiations and consultations with labor organizations, representing the Peace Corps in the Labor-Management Forum, and coordinating labor-management relations activities throughout Peace Corps.

The ELRM is assigned responsibility for attempting to resolve unfair labor practice charges filed with Peace Corps as well as any grievances filed with the Peace Corps under any negotiated agreement. The ELRM also assists the Office of the General Counsel (OGC) in representing the Peace Corps in formal unfair labor practice proceedings, in arbitration appeals, in negotiability disputes, and in grievance-arbitration proceedings under any negotiated agreement. The scope and procedures of grievance arbitration are as set forth in such agreement.

Heads of Staff Offices and Associate Directors are responsible for informing the ELRM promptly upon receipt of an unfair labor practice complaint or grievance and for cooperating in the conduct of an investigation of a complaint and in attempts to resolve complaints and grievances at the lowest levels. Heads of Staff Offices and Associate Directors will consult with the OGC and receive approval from the ELRM before filing an unfair labor practice charge or grievance.

Title 5 of the U. S. Code includes a number of provisions which discourage or prevent duplicate processing of the same case or issue in multiple appeals forums—FLRA, grievance-arbitration, Merit Systems Protection Board, Office of the Special Counsel, and Equal Employment Opportunity Commission. Additionally, the Foreign Service Grievance Board has limited jurisdiction to entertain some adverse action appeals from Peace Corps employees. Because of the complexity of these provisions and because ambiguities are often resolved through the

developing case law, questions regarding personnel and labor-relations issues must be directed to the ELRM, who will coordinate, as appropriate, with the Peace Corps Office of Civil Rights and Diversity, OGC, and M/HRM on a case-by-case basis. The ELRM is the primary point of contact and the representative of Peace Corps with labor organizations, and with other agencies concerned with labor relations matters such as the FLRA, the FSIP, and the Federal Mediation and Conciliation Service (FMCS).

Heads of Staff Offices and Associate Directors are responsible for the administration of labor relations programs within their organizations and within the scope of their authority.

4.3 Federal Labor Relations Authority

The FLRA has been assigned jurisdiction for the formal adjudication of unresolved unfair labor practice complaints. The rules and procedures to be used in the processing of complaints are contained in its regulations at 5 CFR §§2401 *et seq.*

5.0 Policy

Peace Corps recognizes that participation of employees in the formulation and implementation of conditions of employment, through their freely chosen representation, is in the public interest and contributes to the efficient administration of the Government. Additionally, Federal employees and their union representatives are an essential source of front-line ideas and information about the realities of delivering Government services to the American people.

The Peace Corps, in accordance with E.O. 13522 and by means of its labor-management forum,, allows employees and their union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106; provides adequate information on such matters expeditiously to union representatives where not prohibited by law; and makes a good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving the subjects set forth in 5 U.S.C. 7106(b)(1), through discussions in its labor-management forum. The Peace Corps also recognizes the statutory right of employees to form, join, and assist a labor organization, or to refrain from any such activity. Employees may exercise these rights freely and without fear of penalty or reprisal.

5.1 Negotiations

A labor organization granted exclusive recognition in an appropriate unit shall have the rights and obligations granted such organizations by 5 U.S.C 7114(b), 7117, and related provisions of Chapter 71 of Title 5, U.S. Code. It shall be the mutual responsibility of the designated representatives of the Peace Corps and of the labor organization accorded exclusive recognition to meet at reasonable times and to negotiate with the objective of reaching agreement while avoiding unnecessary delays.

The times during which negotiations may occur will be determined by agreement between the parties.

5.1.1 Requirements for Agreements

All agreements negotiated by units in Peace Corps must conform to the requirements of Chapter 71 of Title 5, U. S. Code.

5.1.2 Negotiation Impasses

It is recognized that although the parties have diligently and in good faith attempted to resolve issues, impasse situations will develop and will be handled in accordance with 5 U.S.C. 7119. Mediation will be considered the primary means of resolving negotiation impasses within Peace Corps.

When it appears that the parties are approaching an impasse situation, they are encouraged to utilize all the informal methods available to resolve the issue.

When informal efforts fail to resolve the impasse, the service of the FMCS may be requested by either party. The ELRM is required to obtain the concurrence of the Associate Director for Management prior to initiating any such request on behalf of the Peace Corps, or at such a time as the ELRM is notified that the labor organization has requested the services of the FMCS.

When the impasse prevails despite the efforts of the FMCS, the ELRM—with the concurrence of the Associate Director for Management—will determine whether Peace Corps will refer the issue to the FSIP for processing under its published rules and procedures.

In cases where the FSIP asserts jurisdiction, the ELRM will provide the necessary advice, assistance, and representation for the Peace Corps.

5.1.3 Negotiability Disputes

Should an issue develop in the course of negotiations concerning the negotiability of any subject or proposal, the labor organization or the Peace Corps official involved, or both may refer the issue in writing to the Director of Peace Corps. The AD/M and the ELRM shall receive copies of the request for a negotiability determination at the same time as it is referred to the Director of the Peace Corps. A determination as to negotiability will be made by the Director in accordance with 5 CFR. §2424.3. Final decisions regarding disputes over the negotiability of certain matters will be made by the FLRA.

5.1.4 Review and Approval of Agreements

All collective bargaining agreements negotiated by Peace Corps officials are subject to the approval of the Director of the Peace Corps. In accordance with 5 U.S.C 7114(c), the determination must be made within 30 days from the date the agreement is executed. Absent disapproval, the agreement shall be effective and binding after the 30-day period.

5.2 Standards of Conduct for Labor Organizations

When information available to a Peace Corps official raises a question concerning a labor organization's compliance with the Standards of Conduct set forth in 5 U.S.C 7120, that official shall promptly notify the ELRM, who may, after discussion with the national office of the labor organization involved, refer the matter under 5 U.S.C 7120(d) and the implementing regulations of the Assistant Secretary of Labor to the Office of Labor Management Standards, Department of Labor.

5.3 Suspension of Labor Management Relations During Emergencies

In situations of emergency, nothing in this section or any agreement entered into under its provisions shall restrict Peace Corps and its officials from carrying out the mission of the Peace Corps. Whenever an emergency arises, and when practicable, the appropriate Peace Corps official(s) shall discuss the nature of the emergency with representatives of the union and shall expect their full cooperation and assistance.

5.4 Solicitation of Membership and Support

Employees, while on Peace Corps premises, may solicit membership or support on behalf of, or in opposition to, a labor organization during the non-work time of the employees involved (this applies to both those soliciting and those being solicited), provided there is no interference with the work of the Peace Corps.

Employees, while on Peace Corps premises, may distribute literature on behalf of, or in opposition to, a labor organization provided there is no interference with the work of the Peace Corps. Union representatives needing to enter other worksites in order to carry out Union functions will notify the supervisor of that worksite. Literature distributed on Peace Corps premises must not violate any law or applicable provision of a negotiated agreement.

5.5 Use of Official Time

In the interests of the efficient conduct of Government business and the economical use of Government time and in order to draw a reasonable distinction between official and non-official activities, the following limitations, in accordance with 5 U.S.C. 7131(b), are placed on the use of official time by Peace Corps employees:

- (a) Activities concerned with organizing (including decertification) efforts and the internal management of a labor organization, including but not limited to the solicitation of membership, collection of dues or other assessment, circulation of authorization cards, petitions or dues withholding authorization forms, or solicitation of signatures on such items, campaigning for labor organization office, and the distribution of literature may not be conducted during the working hours of the employees involved.
- (b) An employee attending labor organization membership meetings, internal elections, or local, state, or national conventions within regular working hours, may take annual leave or leave without pay. A request for leave for this purpose must be submitted, in advance, in writing; its approval is subject to the needs of the Peace Corps.
- (c) Employees appearing as witnesses in a hearing at FLRA will be granted official time pursuant to the governing regulations of FLRA, in accordance with 5 U.S.C. 7131(c). Employees who represent labor organizations in the negotiation of a labor management agreement shall be granted official time in accordance with 5 U.S.C. 7131(a).

An employee who is an official or representative of a labor organization holding exclusive recognition may be excused without charge to leave to attend a training session sponsored by that labor organization, provided the training is of mutual concern to Peace Corps and the employee in his or her capacity as a labor organization representative, and the Peace Corps'

interest will be served by the employee's attendance. The amount of administrative leave granted for this purpose shall be governed by applicable provisions in the prevailing negotiated agreement. A request for administrative leave for this purpose must be submitted in advance and in writing and must provide the information necessary to determine the appropriateness of the training. The request will be submitted to the supervisor responsible for the employee's leave, with an information copy to the ELRM.

5.6 Furnishing Information

Lists of names, positions, titles, grades, and/or duty stations of Peace Corps bargaining unit employees will be furnished to labor organizations upon request. The labor organization requesting the list will reimburse the Peace Corps for the cost of any information which the Peace Corps is not required to furnish under 5 U.S.C. 7114(b)(4) or any other applicable negotiated agreement between the Peace Corps and the labor organization. In the case of labor organizations granted exclusive recognition, the frequency with which updated lists of unit employees are furnished is a matter for negotiation. Requests for lists should be submitted to the ELRM. Under the Privacy Act, 5 U.S.C. 552(a), and relevant case law lists of Peace Corps employees' home addresses or home telephone numbers may not be furnished to labor organizations.

5.7 Use of Government Facilities

The use of Peace Corps facilities by labor organizations is a matter appropriate for negotiation and will be governed by the appropriate section of the prevailing negotiated agreement.

Requests for the use of Peace Corps facilities by labor organizations shall be made to the ELRM.

5.8 Payroll Withholding of Labor Organization Dues

When a labor organization holds exclusive recognition for a unit of employees of Peace Corps, employees in the unit may authorize the payment of their dues to the organization through payroll withholding.

An employee in the unit will have the right to make a voluntary allotment from his or her pay for the payment of dues to the labor organization, as well as the right to revoke such allotment if he or she desires to do so. The right to revoke under this subparagraph is subject to the provision in 5 U.S.C 7115(a) and in accordance with the appropriate section of any current negotiated agreement.

Where such allotment has been made by an employee, dues will be withheld from his or her pay each pay period, except that no dues will be withheld for any pay period in which the employee's net salary, after other legally required deductions, is insufficient to cover the amount of the allotment for dues. The amount to be withheld is based on the employee's salary.

5.8.1 Dues Withholding Arrangements

Arrangements for the withholding of labor organization dues may be incorporated in the labor-management agreement between the parties, subject to the provisions of 5 U.S.C. 7115, and will, at a minimum, provide the following:

- (a) That the labor organization is responsible for obtaining the prescribed allotment form (Standard Form 1187); distributing the form to its members; certifying as to the amount of its dues; delivering completed forms to the appropriate payroll office; and educating its members on the program for allotments for payments of dues, including the voluntary nature of the election to have dues withheld and the one-year commitment under 5 U.S.C 7115(a), and the uses and availability of the required form;
- (b) That an allotment may be submitted to the payroll office at any time, together with a statement as to when such allotments become effective;
- (c) That an allotment shall be terminated when the employee leaves the unit as a result of: resignation, retirement, transfer, or other separation from the rolls of the activity; when reassignment, promotion (except temporary promotion), or other personnel action removes the employee from the bargaining unit; when the agreement providing for dues withholding is suspended or terminated; or when the employee has been suspended or expelled from the organization;
- (d) That the labor organization shall promptly notify the appropriate payroll office when a member who has authorized dues withholding is suspended or expelled from the organization;
- (e) That there will be appropriate notification of the labor organization by the payroll office of the revocation of an allotment by an employee;
- (f) That it is explicitly stated that employee revocations of dues withholding authorizations are to be effective and will be processed at 12 month intervals; and,
- (g) That the specific officer in the labor organization is identified who is designated to receive from the payroll office, after each payroll period for which deductions are made pursuant to voluntary allotments, the remittance of dues withheld and a listing of names, and the amount withheld.

Peace Corps offices will make available the form provided for use in revoking an allotment (Standard Form 1188) and will make this form available to employees upon request. However, a written request for revocation of an allotment, which is otherwise in order and signed by the employee, will be accepted and acted upon pursuant to paragraph 5.9 above, whether or not it is submitted on the form. It is the employee's responsibility to see that his or her written revocation is received in the payroll office at the appropriate time.

5.9 Unfair Labor Practices and Grievance Proceedings
5.9.1 Prohibited Practices - Management

Section 7116(a) of Title 5, U. S. Code, prohibits certain practices on the part of management. Supervisors and management officials at all levels of the Peace Corps are responsible for assuring that they and any supervisors or managers under their supervision do not violate this section. For the purpose of this section, it shall be an unfair labor practice for an agency to:

1. Interfere with, restrain, or coerce an employee in the exercise by the employee of any right under this chapter;

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 any information or testimony under the chapter;
5. Refuse to consult or negotiate in good faith with a labor organization as required by the chapter;
6. Fail or refuse to cooperate in impasse procedures and impasse decisions as required by the chapter;
7. Enforce any rule or regulation (other than a rule or regulation implementing 5 U.S.C 2302, dealing with prohibited personnel practices) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulations was prescribed; or
8. Fail or refuse to comply with any provision of chapter 71 of Title 5, U.S. Code.

5.9.2 Prohibited Practices - Labor Organizations

Section 7116(b) of Title 5 prohibits certain practices on the part of labor organizations or their representatives. Labor organizations are responsible for the compliance of their officers and representatives. For the purpose of this section, it shall be an unfair labor practice for a labor organization to:

1. Interfere with, restrain, or coerce any employee in the exercise by the employee of any right under the chapter;
2. Cause or attempt to cause the Peace Corps to discriminate against any employee in the exercise by the employee of any right under chapter 71, Title 5, U.S. Code;
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;
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 non-preferential 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 chapter;
6. Fail or refuse to cooperate in impasse procedures and impasse decisions as required by the chapter;

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 the agency's operations; or to condone any such activity by failing to take action to prevent or to stop such activity; or
8. Otherwise fail or refuse to comply with any provision of chapter 71, U.S. Code.

Nothing in paragraph 7 shall result in any informational picketing which does not interfere with the Peace Corps' operations being considered as an unfair labor practice.

For the purpose of chapter 71, Title 5, U.S. Code, it is an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure to meet responsible occupational standards uniformly required for admission or to tender dues uniformly required as a condition of acquiring and retaining membership.

6.0 Effective Date

This Manual Section shall become effective upon the date of issuance.