Leader Development: Tactics, Techniques, and Procedures for Working with Union Employees[1]

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Introduction

You have just become the Corps Commander at Fort Snuffy, a large Army installation with 41,000 soldiers and 8000 civilians. As an officer with more than thirty years of military experience and schooling, you are confident in your ability to lead and develop your officers and enlisted personnel; but, are you equally confident that you are ready to lead your civilian employees, 4000 of whom have elected to have a union representative speak on their behalf?

How prepared are the senior leaders of today's Army to lead and work with the fifty-six percent of federal civilian workers who belong to unions?[2] In most cases, the answer depends on whether they understand labor-management relationships and their important role in successful leadership. Army leaders "must be appropriately developed before assuming leadership positions"[3] and "must have a certain level of knowledge to be competent."[4] Part of that knowledge includes developing technical, conceptual, and interpersonal skills that enable them to know their people and how to work with them.[5] To develop these leadership and occupational skills, Army officers and noncommissioned officers progress through a formal leader development system.[6] They receive extensive institutional training at military schools throughout their careers.[7] They advance to operational assignments[8] where they plan and execute complex missions worldwide using the most technologically advanced equipment and technically skilled personnel available. Leaders carefully manage their careers and learn to develop their military subordinates as they advance in rank and responsibility. But do they learn to develop their federal civilian employees, especially those represented by a union?[9]

In 2001, the Army had 114,798 union employees—fifty-six percent of its civilian workforce. Unions also represent fifty-four percent of the civilian employees at the Department of Defense (DOD), seventy-one percent of those in the Department of the Air Force, and fifty-nine percent of those in the Department of the Navy.[10] Most of these employees work in the United States, but union employees are also assigned to Bermuda, Puerto Rico, Panama, Guam, Europe, Japan, South Korea, and Hawaii.[11]

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1. A more detailed version of this article was originally published in the July-August 2002 edition of the *Military Review.*

2. U.S. Office of Personnel Management, Union Recognition in the Federal Government, Statistical Summary, Summary Reports Within Agencies, and Listings Within Agencies of Exclusive Recognitions and Agreements 52 (2002) [hereinafter Statistical Summary].

3. U.S. Dep't of Army, Pam. 350-58, Leader Development for America's Army 1 (13 Oct. 1994) [hereinafter DA Pam. 350-58].

4. U.S. Dep't of Army, Field Manual 22-100, Army Leadership 1-7 (31 Aug. 1999) [hereinafter FM 22-100].

5. *Id.*

6. DA Pam. 350-58, *supra* note 3, at 1.

7. Institutional training is the first step in the Army Leader Development Model and focuses on basic job skills. *Id*. at 3. Officers usually complete a basic course, advanced course, and the Command and General Staff Officer Course. Some officers also attend pre-command courses and senior service schools. Noncommissioned officers (NCOs) attend basic training, advanced individual training, primary leadership development training, basic and advanced NCO courses, and, if selected, the Sergeant's Major Academy. Officers and NCOs also attend a variety of short courses designed to develop further the specific skills needed for their positions. This formal education process does not include detailed instruction in labor-management relations.

8. Operational assignments are the second step in the Army Leader Development Model and provide leaders the opportunity to translate institutional theory into practice in progressively more complex assignments. *Id.*

9. In this article, the term "union employees" connotes a "bargaining unit"—a group of federal civilian employees who have elected a particular union to serve as their exclusive representative under a collective bargaining agreement (CBA). The fact that the union represents these federal employees does not necessarily mean that the employees pay dues to the union or that every employee in the group voted for the union. This article addresses federal civilian employees represented by unions under public sector labor laws. It does not address contractor employees covered by private sector labor laws or foreign nationals covered by unions under their host nation laws.

10. Statistical Summary, *supra* note 2, at 51-53.

As leaders move to assignments at higher levels of command, they inevitably supervise more union employees. The Army's traditional military schools, however, do not train leaders about labor-management relations. Leaders who have not previously dealt with labor issues may gravely underestimate their importance. Although it is possible to learn these rules at operational assignments, this method may become a process of trial-and-error. Mistakes in labor relations often have legal consequences; they can also adversely impact mission accomplishment and the command's relationship with its employees and their elected union representatives. Leader self-development in the area of labor-management relations is clearly superior to trial-and-error.[12] As a minimum, Army leaders must learn the basic rules of working with union employees; they must also insure that the key subordinate leaders learn these rules. Knowing these rules is an important part of becoming "the very best leader you can be; your [civilian employees] deserve nothing less."[13]

This article distills the fundamental rules of labor-management relations into eleven Tactics, Techniques, and Procedures (TTPs). These TTPs are intended to help leaders develop their management skills without suffering the consequences of avoidable mistakes. They discuss such issues as preparing for a successful command, training key subordinates, communicating with union members and representatives, and understanding the consequences of violating the rules.

TTP #1—Know What Decisions Require Prior Notice to the Union

> *When Physical Training (PT) at Fort Snuffy started at 0600 and ended at 0700, soldiers complained that because the Child Care Center did not open until 0600, they could not get to PT on time. The Child Care Center does not have sufficient staff to open earlier. In response, you changed the PT start time to 0630. The next day, the union filed an Unfair Labor Practice (ULP) charge against you for violating the rights of your civilian employees.*

How could labor relations laws limit a commander's exercise of a fundamental command prerogative, such as changing a PT schedule? The answer to this hypothetical question is that the commander may change the schedule, but must first consult with union representatives if the change could affect the working conditions of employees they represent.

Federal labor-management relations law[14] requires agencies to negotiate, or collectively bargain,[15] with civilian employees through their elected union representatives before making changes or policies that affect union employees' working conditions.[16] Some possible examples include rearranging office furniture, canceling an office water cooler or newspaper subscription, or implementing new parking rules.[17] Not every work-related issue is negotiable, however.[18] Congress has spe-

11. *Id.* at 105-231.

12. DA PAM. 350-58, *supra* note 3, at 1. Self-development is the third step in the Army Leader Development Model and is designed to fix weaknesses, reinforce strengths, and stretch and broaden an individual beyond the job or training. *Id.*

13. FM 22-100, *supra* note 4, at 1-1.

14. The rules of the federal labor-management relations process are codified within the Federal Service Labor Management Relations Statute (FSLMRS), 5 U.S.C. §§ 7101-7135 (2000).

15. The FSLMRS defines "collective bargaining" as follows:

> [T]he performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.

Id. § 7103(a)(12).

16. *Id*. § 7117(d)(2). There is no duty to bargain with union employees about issues that affect them only during off-duty hours. Nat'l Ass'n of Gov't Employees, Local R5-168 and Dep't of the Army, Headquarters, 5th Infantry Div. & Fort Polk, La., 19 F.L.R.A. 552 (1985).

17. 5 U.S.C. § 7102(2) (stating that each employee shall have the right "to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees"). The statute defines "conditions of employment" that must be negotiated as "personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions." *Id*. § 7103(a)(14). Conditions of employment do not include prohibited political activities, the classification of any position, or anything prohibited by federal law. *Id*.

18. For example, federal facilities do not have a duty to bargain over proposed changes to conditions of employment that will have a very minor or *de minimis* effect on union employees. Gen. Serv. Admin. and Nat'l Fed'n of Fed. Employees Local 81, 52 F.L.R.A. 1107 (1997) (deciding that an agency did not have to bargain over temporarily relocating a union employee from one building to another); Dep't of Health and Human Serv. and Am. Fed'n of Gov't Employees, Local 1760, 24 F.L.R.A. 403 (1986) (holding that agency did not have to bargain with union employee when it changed the title of her position but did not change her duties).

cifically exempted certain fundamental management responsibilities, such as creating budgets, internal security, hiring, firing, and the assignment of duties to employees, from the negotiation requirements.[19] While the substance of these rights is not negotiable, the parties are obligated to negotiate over the impact of these rights, if requested by the union. Leaders who want to change day-to-day working conditions that will impact on union employees must give union representatives notice of the proposed changes and the opportunity to bargain about them.[20] Once an agency gives notice, the union must make a timely request for bargaining. If not, then the agency may implement the change. If the union asks to bargain over the proposed change, then the agency must delay making the change pending completion of the bargaining process.[21]

The hypothetical commander of Fort Snuffy may have violated the rights of his union employees by unilaterally changing the PT start time without notifying the union representative and giving him the opportunity to bargain over the *impact* this change may have on union employees. Delaying the PT schedule by thirty minutes could affect traffic conditions at the time employees travel to work. They may have to slow down for soldiers running in formation, or face increased traffic congestion immediately after PT. If these employees are late for work, the agency could discipline them. Their union could therefore argue that the PT schedule change impacts their working conditions. This, in turn, would give the union the legal right to prior notice of the change and the opportunity to bargain over its impact. Because the commander did not give the union representative advance notice of this change, the union may now file a ULP charge at the Federal Labor Relations Authority (FLRA).[22]

TTP #2—Understand the ULP Process

Once a union files a ULP charge against a command or agency, there are two ways to resolve it. The first—and best—way to resolve a ULP is for the parties to resolve the charge through informal bargaining or through the grievance procedure in the collective bargaining agreement (CBA).[23] A representative of Fort Snuffy, for example, could meet with the union representative to discuss possible compromises. Among other possible solutions, the parties could agree to temporarily give affected civilians an additional fifteen minutes of administrative time to get to work on PT days, or find a way to alleviate traffic congestion. Regardless of its terms, an amicable compromise and the withdrawal of the ULP charge would save both sides time and money, and would promote positive labor-management relations.

If the parties do not reach an informal agreement, the FLRA will resolve the ULP charge at formal proceedings. Initially, the FLRA's General Counsel will receive the charge at one of its regional offices. The General Counsel (or a regional representative) will investigate the charge, evaluate its merit, and may then prosecute the charge at a hearing before an Administrative Law Judge (ALJ).[24] An attorney from the Office of the FLRA General Counsel will prosecute the case on behalf of the party filing a ULP charge. Counsel for the other party—whether that party is an agency or a union—will also have an opportunity to present witnesses and evidence supporting its side of the case. The ALJ will then decide the matter.[25] Either party may file exceptions to the ALJ's decision with the FLRA, which will consider all the arguments before making a final decision.[26] A final decision by the FLRA binds the parties. In

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19. 5 U.S.C. § 7106(a) states that management officials have the following rights that are not subject to negotiation:

> (1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
> (2) in accordance with applicable laws—
> (A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
> (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
> (C) with respect to filling positions, to make selections for appointments from—
> (i) among properly ranked and certified candidates for promotion; or
> (ii) any other appropriate source; and
> (D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

Id.

20. *Id*. § 7113(b).

21. *Id*. § 7117(d)(3)(A).

22. The FLRA is the federal agency responsible for interpreting and administering the FSLMRS. It also renders the final decision in all ULP cases. *Id*. § 7104.

23. *See id*. §§ 7116(d), 7121(b), 7122(a)(1).

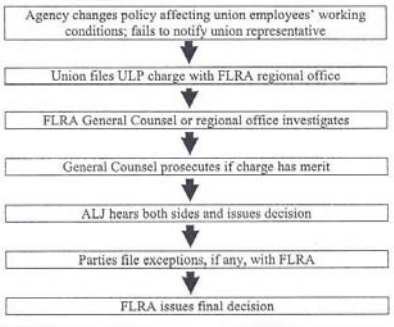
24. *Id*. §§ 7104(f), 7118(a)(1).

25. *Id*. § 7118(a)(6); 5 C.F.R. § 2423.40 (1999).

26. 5 C.F.R. § 2423.40.

very limited circumstances, a party may appeal to a federal district court.[27]

Fig. 1—Simplified Diagram of the ULP Process



TTP #3—Understand the Impasse Resolution Process

What if the Fort Snuffy commander and the union have fully discussed the PT start time, but cannot agree how to reduce its impact on the union employees? If the parties cannot agree, they have reached an impasse.[28] Here, unlike the ULP scenario discussed previously, no one has broken the law by denying the other party the chance to bargain over an issue. Both sides have complied with their duty to bargain; they simply cannot reach an agreement. In a civilian business, the employees could go on strike, but federal employees do not have this option.[29] Instead, the Federal Service Impasses Panel (FSIP) will hear their dispute.[30]

Before going to the FSIP, the parties must first try to settle their impasse through mediation.[31] If the parties reach an agreement, they will sign an agreement or memorandum of understanding concluding their mediation. If they do not reach an agreement, the mediation ends.[32] At this point, the parties may agree to binding arbitration, or either of them may take the dispute directly to the FSIP.[33]

The FSIP, a board within the FLRA designed to help agency and union counterparts resolve their negotiation impasses, hears disputes not resolved through negotiation, mediation, or arbitration.[34] When the parties cannot reach an agreement, the FSIP will take "whatever action is necessary" to resolve the impasse.[35] This can include reviewing written submissions, holding a hearing, or using any other method the FSIP deems appropriate for resolving the dispute. The FSIP then renders a final, binding decision,[36] one that is very rarely subject to review by a federal court.[37] If either the agency or the union fails to comply with the terms of the FSIP's decision, the other party may file a ULP charge with the FLRA,[38] which could lead to an expensive and time-consuming ULP hearing.

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27. 5 U.S.C. § 7123.

28. 24 C.F.R. § 2470.2(3) (1999); U.S. Dep't of Army, Pam. 690-33, Resolving Labor Negotiation Impasses para. 1-2 (1 Apr. 1983) [hereinafter DA Pam. 690-33].

29. 5 U.S.C. § 7116(b)(7)(A).

30. *Id.* § 7119(c); DA Pam. 690-33, *supra* note 28, para. 3-2.

31. 5 U.S.C. § 7119(a), (b); 5 C.F.R. subpt. 2471.6; *see* Office of the Executive Director, Federal Service Impasses Panel, A Guide to Dispute Resolution Procedures Used By the Federal Service Impasses Panel 4-5 (June 2002), *available at* http://www.flra.gov/fsip/fsip_drp.html. The parties typically choose a mediator from the Federal Mediation Conciliation Service (FMCS) as a neutral third party to listen to their positions and help them resolve their dispute. The mediator does not decide the case; the parties do. The mediator merely meets with the parties, together and separately, and allows them to vent their complaints and concerns. Using the information provided, the mediator seeks concessions from each side and relays that information to the opposite side. The mediator has no authority to force either side to concede or agree to any particular language. However, parties participating in the mediation process should remember that mediation is their last chance to have direct input into the outcome of their dispute. If mediation fails, a third party will review each side's position, then direct specific binding contract language to resolve the impasse. Astute mediators focus primarily on the parties' underlying concerns rather than on their specific demands. For example, a mediator chosen to hear the Fort Snuffy PT case would focus on the reason why the PT time change concerns the union, rather than on the time change itself. This tactic gives the parties flexibility in brainstorming possible alternatives that address the union's concerns about employees being on time for work, while still alowing the command to make the change it wants to support soldiers needing childcare during PT.

32. 5 C.F.R. § 2471.10.

33. 5 U.S.C. § 7119(b).

34. *Id.* § 7119(c)(1).

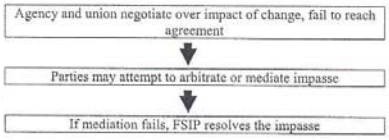
35. *Id.* § 7119(c)(5)(B)(iii).

36. 5 C.F.R. § 2471.10.

37. 5 U.S.C. § 7119(c)(5)(C).

38. *Id.* § 7116(a)(6), (b)(6).

Fig. 2—The Impasse Resolution Process



TTP #4—Read the CBA

Army leaders must read the CBAs affecting their union employees as soon as they arrive at a new unit. The CBA is the document negotiated by command and union representatives that establishes the rules applicable to a bargaining unit.[39] Installations usually designate certain leaders as agency representatives for labor-management relations, but all leaders are bound by the terms of the CBA and must understand their responsibilities towards union employees. At a minimum, leaders and managers should know which employees the CBA covers, which union represents them, and the rules governing the day-to-day working relationship between the command and those employees. For example, the first page of a typical CBA might look like this:

Fig. 3—Cover Page of a Typical CBA

Collective Bargaining Agreement
between
Fort Snuffy and the American Federation of Government Employees (AFGE)
January 1, 2001 to January 1, 2004

Table of Contents:
Applicability . . . 1
Management Rights . . . 2
Official Time . . . 3
Grievance Arbitration Procedures . . . 4
Leave Procedures . . . 5

This example immediately tells the reader that (1) there is a CBA in effect at Fort Snuffy; (2) it covers all clerical employees working on post; and (3) the AFGE represents them.[40] Fort Snuffy must comply with the CBA and work with AFGE on all labor relations issues that affect the workers it represents. The index highlights some of the specific subject areas the CBA covers; some of these reflect statutory requirements, and some are unique to the installation. Leaders can only comply with these terms if they know what the rules are.

These first pages also reveal that the CBA will expire on 1 January 2004. The command should prepare to negotiate a new contract with the union at least six months before then, unless both sides want the existing CBA to roll over unchanged. The installation should identify a team to represent it at the bargaining table, and then schedule and fund training for its members. The team should survey all of the levels of management about specific terms in the CBA that it should target for renegotiation. It should then draft proposed revisions to those terms and staff them through the senior leadership.[41]

On many installations, Army leaders work with several CBAs and unions representing their civilian employees. For example, five different CBAs apply to five different groups of employees working at Fort Bliss, Texas.[42] Each CBA governs the day-to-day working conditions for the specific employees covered by the agreement. All military and civilian leaders working with union employees must understand their installation's CBAs as part of their obligation to treat their employees fairly.

How can leaders get access to their installation's CBAs? First, they can contact their servicing management-employee relations (MER) or labor relations specialist and ask for copies of all applicable agreements.[43] After reading the CBAs, leaders should ask about the history of the relationship with each union. If there is no installation MER specialist, Army leaders can contact the labor counselor[44] at their servicing staff judge advocate office for assistance. Labor counselors for reserve compo-

39. *See id.* § 7102(2).

40. While the CBA states which employees it covers, the parties do not bargain over whom to include in the bargaining unit. When a union first seeks to represent a group of employees, it petitions the FLRA with the relevant information and the FLRA decides which employees constitute an appropriate bargaining unit. 5 C.F.R. pt. 2422.

41. Every CBA must contain negotiated grievance procedures to resolve complaints that stem from violations of the CBA itself. 5 U.S.C. § 7121(a)(1). If the parties do not settle the grievance within command channels, then either the command or the union may invoke binding arbitration to resolve the complaint. *Id.* § 7121(b)(1)(C)(iii). Binding arbitration is the last step in every negotiated grievance procedure. *Id.* Usually, the parties cannot appeal an arbitrator's decision, except when they can show that the decision is contrary to any law, rule, or regulation. *Id.* § 7122(a)(1). The parties may also agree to use the grievance procedures to enforce compliance with federal labor laws instead of ULP procedures. *Id.* § 7116(d). Once a party elects to use the grievance procedures instead of the ULP process, it may not change its mind. *Id.*

42. STATISTICAL SUMMARY, *supra* note 2, at 154-56.

43. An MER or labor relations specialist is a civilian employee assigned to advise Army leaders on labor-management relations issues, prepare civilian personnel documents relating to performance or discipline, and represent the agency in its contacts with union representatives. The MER specialist also maintains copies of the installation CBAs, and is often the best source for historical information regarding labor-management relationships at a facility. Labor relations specialists usually work at the servicing Civilian Personnel Advisory Center (CPAC).

nent units can be found at the servicing Regional Support Command or at Fort McCoy, Wisconsin.[45]

TTP #5—Know the Players

While laws and agreements are the structure of labor-management relationships, the people who participate in the process often determine its success or failure. Army leaders who manage union employees must recognize the potential impact of their actions on current and future labor-management relations. New leaders can gain valuable insight about the labor-management relationships on their installations by inquiring about the history of those relationships. When a command and a union have established a history of trust and mutual respect, a new leader can focus on maintaining that positive relationship. When personality differences and distrust have harmed the relationship, a new leader must gradually rebuild it.

Garrison commanders and other leaders must know which persons are designated representatives for the command and the unions, how effectively they have interacted in the past, and what labor relations issues have affected their interactions. Predecessors, MER specialists, and labor counselors usually know the answers to these questions. When potential labor issues arise, leaders should work through agency representatives rather than contacting union representatives directly. Agency representatives should track any information sent to the unions and any union responses, including requests to bargain over certain issues.

After gathering information about the union and reading the relevant CBAs, new agency representatives should meet their union counterparts and try to make positive impressions early in those relationships. Army leaders must recognize that they will have to work harder at developing successful labor-management relationships than more experienced union representatives who may have been on their installations for years. Agency representatives, however, change frequently, complicating the process of building trust and respect with union representatives. Designating non-union civilians as agency representatives may help stabilize these relationships, but Army leaders should also designate military representatives to demonstrate that the military leadership cares about the union employees' concerns. Open, sincere, and regular communication with union representatives is the best way to build strong working relationships with them.

TTP #6—Insure That Agency Representatives Receive the Training They Need

Leaders have a duty to assess and develop themselves and their organizations.[46] If leaders' knowledge of the labor-management relations process is weak, they must add "self study, reading programs, and civilian education courses"[47] to their personal leadership development programs. Unfortunately, most books about federal labor relations are written for labor lawyers; they are not helpful resources for those who seek to familiarize themselves with the basic elements of the labor relations process. Some better resources include the Web sites of the FLRA, Office of Personnel Management (OPM), and Army civilian personnel offices.[48] Commanders and their subordinate supervisors should also attend labor relations or negotiation courses offered at local installations or at the Army's Civilian Personnel Operations Center Management Agency (CPOCMA).[49] New battalion and brigade level commanders can take federal labor relations classes during the Senior Officer Legal Orientation (SOLO) Course at The U.S. Army Judge Advocate General's School,[50] or during pre-command courses at Fort Leavenworth, Fort Belvoir, and Fort McCoy.

Army leaders must also devote time and resources to training their civilian leaders. Some civilian employees do not understand the federal labor relations system because either a union has never represented them or because they have never worked with union employees. Leaders sometimes forget that "[s]oldiers and civilians of the Active Army and Reserve com-

44. A labor counselor is a judge advocate or civilian attorney responsible for advising senior leaders on the legal aspects of labor-management relations and representing the command or federal facility at third-party labor proceedings (for example, ULP hearings, federal mediations, and grievance procedures). The labor counselor also advises the management team negotiating the CBA for the command or federal facility.

45. Personnel assigned to reserve component units that do not have a labor counselor at the Regional Support Command can contact a labor counselor at Fort McCoy by calling (608) 388-2165. Telephone Interview with Tim Johnson, Labor Counselor, Fort McCoy, Wisconsin (Feb. 6, 2002). The Deputy Chief of Staff for Personnel at the servicing Regional Support Command will have the name and phone number for a specific point of contact at the Fort McCoy Civilian Personnel Advisory Center. Telephone Interview with Kim Meyer, Fort McCoy Civilian Personnel Advisory Center (Feb. 6, 2002).

46. FM 22-100, *supra* note 4, at ix.

47. DA PAM. 350-58, *supra* note 3, at 3.

48. The FLRA Web site, www.flra.gov, contains extensive information about rules and procedures for ULPs, impasses, negotiation, dispute resolution, and other labor relations issues. It also has copies of FLRA decisions. The Office of Personnel Management helps federal government agencies work effectively with federal labor organizations. Its Web site, www.opm.gov/lmr, contains numerous resources for managers and agency representatives. The Army also maintains a labor law Web site at http://cpol.army.mil/index.html.

49. The CPOCMA offers numerous labor relations at Aberdeen Proving Ground, Maryland, each year, including a labor relations course for executives. Course information is available at CPOCMA's Web site, www.cpocma.army.mil/catalog/list-alpha.htm.

ponent are equally essential to the success of our national security."[51] Army leaders should give civilians the same training in labor relations as their military counterparts.

TTP #7—Management Must Stay Neutral About Employee Participation in Unions

> *A union employee at Camp Snuffy, Korea submitted a request to stay in Korea for another overseas tour. The command has granted similar requests in limited circumstances, but denied this one without explanation. Is this a problem?*

Federal law gives civilian employees the absolute right to decide whether they will join unions or participate in union activities, free of coercion or interference with their choices.[52] Leaders may not express their disapproval of a particular union or encourage employees to join a different union.[53] They may not penalize or discriminate against any employee for filing a complaint against an installation or supporting union activity.[54] Assume that the hypothetical civilian employee in Korea was an active member of the union and that the command disapproved of his union activities. If the union could show that the command denied the employee's tour extension for this reason, the FLRA would find that the command interfered with the employee's statutory rights and engaged in a ULP.

Just as management must respect workers' choices to join unions, the unions must also respect workers' choices *not* to join them. Unions may not coerce or discriminate against workers who are covered by a CBA but choose not to pay dues or participate in union activities.[55] Once a group of employees elects a union to represent it, the union has a duty to represent each of them fairly and equally, including employees who do not join the union.[56] If, for example, a union routinely hires lawyers to represent its dues-paying members at ULP hearings, but merely provides union representatives for non-members, such a practice would create the initial appearance of discrimination, and thus, a ULP.[57]

TTP #8—Agencies and Unions Must Bargain in Good Faith

Army representatives must bargain with their union counterparts in good faith, beginning when they negotiate their first CBA, and continuing through any bargaining over changes to the CBA or working conditions.[58] Army leaders must always work through union representatives when discussing changes in working conditions or other issues subject to bargaining; they must not go directly to the employees.[59] For example, an installation that wants to modify the leave policies for union employees may not directly solicit employee preferences about this work-related issue unless it first obtains the union's permission to do so. If the installation sends a survey to union employees without the union's permission and then implements any suggestions it receives, it has bypassed the union, which may file a ULP charge alleging a breach of the duty to bargain in good faith.[60]

Union officials will often need information from the installation where the employees work to represent them properly. They will submit requests to relevant Army offices to obtain this information. A union request of this nature must show a "particularized need" for the information—a link between the information sought and the union's duty to represent the employees.[61] Once the union demonstrates its need, the Army

50. The U.S. Army Judge Advocate General's School offers the SOLO Course five times a year. The SOLO is a one-week course for Army and Marine Corps battalion and brigade commanders, covering the full spectrum of legal issues these commanders may encounter. The course includes electives on labor law subjects such as sexual harassment, labor-management relations, and civilian personnel law. Commanders interested in attending the SOLO course should contact their Army Training Requirements and Resources System (ATRRS) representative.

51. DA PAM. 350-58, *supra* note 3, at 3.

52. 5 U.S.C. § 7116 (2000).

53. *Id*. § 7116(a).

54. U.S. Penitentiary Leavenworth, Kansas and Am. Fed'n of Gov't Employees, 55 F.L.R.A. 1276 (1999).

55. 5 U.S.C. § 7114(a)(1).

56. *Id*. § 7116(b)(1).

57. Nat'l Treasury Employees Union v. Fed. Labor Relations Auth., 800 F.2d 1165 (D.C. Cir. 1986) (holding that the duty of fair representation applies only to matters related to the CBA).

58. 5 U.S.C. § 7114(b).

59. *Id*. §§ 7111(a), 7114(a)(1).

60. *See, e.g.*, Air Force Accounting & Fin. Ctr. and Am. Fed'n of Gov't Employees Local 2040, 42 F.L.R.A. 1226, 1239 (1991).

61. Internal Revenue Serv. and Nat'l Treasury Employees Union, Chapter 66, 50 F.L.R.A. 661 (1995).

office receiving the request has a statutory duty to furnish the information in a timely manner.[62] Army officials cannot tell the union to copy the information itself, charge the union for providing the information, fail to reveal that the information no longer exists, destroy information, or delay its release.[63] If they do, the union may file a ULP charge for failure to furnish information as part of the agency's duty to bargain in good faith.

TTP #9—Respect Employees' Rights to Union Representation

Once civilian employees elect to have a union represent them, federal law creates a right to union representation at two types of work-related meetings. First, the union has the right to have a representative present at any "formal discussion" of a grievance or work-related issue when one or more employees from the bargaining unit are present.[64] The statute does not define the term "formal discussion," but prior ULP cases have helped to define it. The FLRA looks at the totality of the circumstances when deciding whether a meeting was formal; it considers circumstances such as the location of the meeting, its duration, who was present, whether there was an agenda, and whether anyone kept notes of the meeting.[65]

If the FLRA decides that a discussion is formal, its next inquiry will be whether the agency gave the union advance notice and the opportunity to be present.[66] It does not matter whether the employees want union representation at the discussion; the union itself has a right to attend.[67] If the agency did not give the union notice and the opportunity to be present, the FLRA may find that the agency violated the union's representation right and committed a ULP. The FLRA has held that union representatives also have a right to speak at formal discussions.[68] A union representative, however, may not disrupt the discussion, or use it as a forum for irrelevant union business.[69]

Union members also have the right to union representation when agency representatives question them at "investigatory examinations."[70] A meeting qualifies as an investigatory examination when: (1) an Army or DOD official talks to a union employee as part of an investigation; and (2) the employee reasonably believes that the discussion could result in disciplinary action against him.[71] If the employee asks to have a union representative present, the questioning official has three options. First, the official can allow the union representative an opportunity to attend. Second, the official can end the interview and continue the investigation without input from the employee. Third, the agency official can give the employee the option of either answering the questions without a union representative present or having no interview at all.[72] Note that the right to union representation at an investigatory examination belongs to the employee, not the union; the employee must affirmatively invoke it for it to apply.[73] Investigators and agency officials do not have a statutory obligation to tell union employees of their right to have a union representative present before an investigatory examination.[74] Agencies must remind employees of these rights annually, however.[75] Possible methods for notifying employees include mail, e-mail, or mandatory annual meetings.[76]

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62. 5 U.S.C. § 7114(b)(4).

63. Dep't of the Army 90th Reg'l Support Command Little Rock, Ark. and Am. Fed'n of Gov't Employees Local 1017, No. DA-CA-80370, 1999 F.L.R.A. LEXIS 200 (Sept. 17, 1999); Soc. Sec. Admin., Dallas Region and Am. Fed'n of Gov't Employees Local 1336, 51 F.L.R.A. 1219 (1996) (concluding that the agency violated duty to furnish information by destroying requested information and failing to tell the union that it no longer existed); Internal Revenue Serv. and Nat'l Treasury Employees Union, Chapter 66, 50 F.L.R.A. 661 (1995) (finding that a three-month delay in responding to a union's request for information was unreasonable).

64. 5 U.S.C. § 7114(a)(2)(A).

65. Marine Corps Logistics Base, Barstow, Cal. and Am. Fed'n of Gov't Employees Local 1482, 45 F.L.R.A. 1332 (1992).

66. *See* 5 U.S.C. § 7114(a)(2)(A).

67. *Id*. § 7114(a)(2)(A).

68. Dep't of the Army, New Cumberland Army Depot and Am. Fed'n of Gov't Employees Local 2004, 38 F.L.R.A. 671 (1990).

69. Nuclear Regulatory Comm'n and Nat'l Treasury Employees Union, 21 F.L.R.A. 765, 768 (1986).

70. 5 U.S.C. § 7114(a)(2)(B).

71. *Id.*

72. U.S. Dep't of Justice U.S. Penitentiary Leavenworth, Kan. and Am. Fed'n of Gov't Employees Local 919, 46 F.L.R.A. 820 (1992).

73. 5 U.S.C. § 7114(a)(2)(B).

74. Agency officials should carefully review the relevant CBA to determine if it imposes a more liberal notification requirement.

75. 5 U.S.C. § 7114(a)(3).

TTP #10—Understand the Consequences of Violating the Rules

> *A union files a ULP charge against Camp Snuffy, Korea, for denying a union employee's overseas tour extension. The FLRA finds that the command illegally denied the request because of the employee's union activities. What could the FLRA do to remedy this violation?*

If the FLRA finds that an agency or a union has committed a ULP, it can take any remedial action it deems necessary to resolve the case.[77] In most cases, the FLRA will choose from a combination of five remedies. First, when the FLRA finds that a party has committed a ULP, it may order a *public posting* of its decision for a specified period of time.[78] Second, if the agency violated the law, the FLRA decision will identify the violation and what the agency must do to remedy it.[79] Third, the FLRA decision may include a *cease and desist order* requiring the agency to stop a continuing violation immediately.[80] Fourth, the FLRA could issue a *retroactive bargaining order* requiring the agency to go to the bargaining table to discuss a policy change or working condition with union representatives.[81] Finally, if the agency had disciplined an employee unfairly, the FLRA could issue a *status quo ante order* removing any disciplinary action taken and returning the employee to the position he was in before the ULP. Such an order may include a provision entitling the employee to collect back pay or reinstatement.[82]

If, for example, Camp Snuffy, Korea, denied its hypothetical employee's tour extension because of his legally protected union activities, it would have committed a ULP. The FLRA would probably order the unit to post a copy of its findings and decision. If the employee had already returned to the United States, the FLRA could issue a status quo ante order, requiring the Army to fly him back to Korea at government expense and place him in his former job. It could also issue a back pay award for the amount of any wages the employee lost as a result of the command's denial of the tour extension.[83]

Although much of this article has discussed potential violations of the rules by agencies, union representatives have the same duties to bargain and act in good faith. If a union improperly refuses to discuss an issue, refuses to cooperate in the impasse resolution process, or violates a settlement agreement, the agency can file a ULP charge against it.[84] The FLRA will investigate and resolve such a charge using the same procedures that apply to a complaint by a union.

TTP #11—Build and Preserve Good Labor-Management Relations

Violating the rules of good labor-management relations can have legal consequences; it may also have less obvious but equally destructive practical consequences. Army leaders must work hard to build mutual trust and amicable relations with their union counterparts. The conduct of every Army leader who works with a union will contribute to the success or failure of that relationship. Above all, Army leaders must comply with the rules, or risk causing lasting harm to the labor-management relationship. Union employees will carefully observe the command's attitude toward their welfare, their rights, and the rules. Civilian employees—whether union or non-union—may develop negative attitudes toward the command and their work if they perceive that the command is unfair, uninformed, or unconcerned about them.

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76. Agencies should exercise caution when communicating directly with employees; the more prudent course would be to notify union representatives and obtain their consent. *See id*. §§ 7111(a), 7114(a)(1). This is especially true of mandatory meetings, which could qualify as "formal discussions." *See* Marine Corps Logistics Base, Barstow, Cal. and Am. Fed'n of Gov't Employees Local 1482, 45 F.L.R.A. 1332 (1992).

77. 5 U.S.C. § 7105(g)(3).

78. *See, e.g.*, Dep't of the Army, Dir. of Fin. and Accounting, Assistant Sec'y of the Army (Fin. Mgmt.), Indianapolis, Ind. and Am. Fed'n of Gov't Employees Local 1411, 51 F.L.R.A. 1006, 1012 (1996); Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio and Am. Fed'n of Gov't Employees, 46 F.L.R.A. 1184, 1190 (1993).

79. 5 U.S.C. § 7118(a)(7).

80. *Id*. § 7118(a)(7)(A).

81. *Id*. § 7118(a)(7)(B).

82. *Id*. § 7118(a)(7)(C).

83. Memorandum from Joe Swerdzewski, General Counsel, U.S. Federal Labor Relations Authority, to Regional Directors, U.S. Federal Labor Relations Authority (May 8, 2000), *at* http://www.flra.gov/gc/ulp_remedy/gc_ulpr2.html.

84. 5 U.S.C. § 7116(b)(5)-(6).

Conclusion

In the field of labor-management relations, leadership begins at the top. Because the Army's traditional military schools do not teach labor-management relations, leaders must learn the process themselves or pay a price in unit efficiency and morale. Reading the TTPs discussed in this article is only a beginning; leaders and their key subordinates must read their installation CBAs, meet their agency and union representatives, and build good relationships with them. They should coordinate with their civilian personnel offices to train their key subordinates in the labor relations process.

Despite leaders' best efforts, representatives of either side may still violate the rules. Leaders must understand and accept the likely consequences of violations. Army leaders must be the command's standard bearers for efficient and amicable labor-management relations. They must understand the labor relations process and strive to abide by its rules. By doing so, they demonstrate that they can lead their union employees with the same degree of competence and caring they show their military personnel.[85]

85. The author would like to thank Mr. David Helmer, Labor Relations Officer, Office of the Assistant Secretary of the Army—Manpower and Reserve Affairs, and LTC Chuck Hernicz, Department of the Army Labor Counselor, Labor and Employment Law Division, for their helpful comments in finalizing this article for publication.