Why Do People Still Say Impact and Implementation?

What is the problem with saying "impact and implementation" with respect to collective bargaining?

By **Joe Swerdzewski**
April 28, 2021 1:20 PM

Human Resources

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When I teach classes on federal sector collective bargaining, I often start by asking if someone has a 20-dollar bill. I then hold up the bill and ask if anyone is willing to bet $20 that they can find the words impact and implementation in the Federal Service Labor Management Relations Statute (Statute). I hold up a copy of the Statute and offer to let anyone look at it.

The answer is that nowhere in the Statute do the words impact and implementation appear, yet they appear everywhere in collective

bargaining agreements and even Federal Labor Relation Authority (FLRA) decisions.

I have been on a mission since 1986 to convince people to no longer use "I and I" to describe bargaining. Unfortunately, I have failed.

I asked a chief counsel to one of the Members of the FLRA why they use impact and implementation when they order bargaining in an unfair labor practice case. It is used in issuing an order to bargain, even though in the body of the decision, the analysis uses procedures and appropriate arrangements. I was told that federal sector labor relations personnel would be too confused if they no longer used the term 'impact and implementation'.

The FLRA in the *Kansas National Guard* (KANG) case issued in 1986 (21 FLRA 24) established the meaning of procedures and appropriate arrangements found in the Statute. Procedures and appropriate arrangements bargaining replaced the concept of impact and implementation bargaining found in the Nixon and Kennedy Executive Orders on federal sector labor relations. Anyone reading KANG in 1986 or after realized that impact and implementation were no longer the standards for bargaining in the federal sector.

Traditionally impact and implementation referred to bargaining when management makes a change in working conditions. You bargained over the impact of the change and its implementation. Impact, in theory, could be either positive or negative. However, under the Statute, a union can only bargain over procedures and appropriate arrangements.

To bargain over appropriate arrangements, the union must show that employees are adversely affected by the exercise of a management right. To bargain over procedures there need be neither a positive nor an

adverse effect for unions to have the right to bargain over the exercise of a management right.

So, how does this work?

Management wants to make a change in working conditions such as a relocation of employees to a new building. There could be multiple changes associated with a relocation such as employee transportation, parking, building security and hours of operation, office arrangement including the all-important who gets to sit next to a window. The list could go on and on, and it usually does. For the most part, these changes are the exercise of management rights.

Next, the union must make negotiable proposals. Most of the union's proposals deal with appropriate arrangements whether they know that or not.

To be negotiable appropriate arrangements, the proposals must mitigate the adverse effects of these changes on employees, but they also must not excessively interfere with the management right being exercised. Management will then decide if the Union proposals are negotiable. At no time are the parties bargaining the impact and implementation of the change.

What's wrong with using the term impact and implementation aside from the fact there is no statutory standard recognized by the FLRA to support "I and I" bargaining? What I have found is that labor and management who are still using the term impact and implementation do not realize that there are bargaining standards that apply to bargaining over changes in working conditions.

The FLRA has established the following five-part test to determine if a proposal is a negotiable appropriate arrangement:

1. Determine what management right, under Section 7106(a), management is exercising.
2. Determine adverse effects on employees from the exercise of the management right – "Adverse Effects" cannot be speculative or hypothetical.
3. Tailor the proposal to only those adversely affected.
4. Determine whether the proposal excessively interferes with the management right.
5. Weigh benefits to employees against intrusion on the exercise of management rights.

To be negotiable, procedures must not "directly interfere" with the management right being exercised.

To a certain extent procedures and appropriate arrangements could be seen as an expansion of bargaining for unions compared to impact and implementation. If for no other reason, there are recognized standards for procedures and appropriate arrangements bargaining while none exist for impact and implementation bargaining.

Excessive interference is a relatively high standard that must be met for a proposal to be non-negotiable. This means a proposal can interfere with a management right but not to an excessive degree. It also means that in determining whether a proposal is negotiable, you must weigh the benefits to employees against the intrusion on management rights. As an example, if the benefits are great and the intrusion on rights is seen as less, the proposal is negotiable assuming all the other criteria are met.

It is important that both sides know that proposals must meet these requirements in order to be determined negotiable. They are not just used in change bargaining but also appear in most FLRA negotiability decisions where the issues of procedures and appropriate arrangements are involved. It's not just harmless to use "I and I" but may lead to a

significant misunderstanding of the rights of both parties when bargaining.

I tell every bargaining class I teach that from that day forward the words impact and implementation shall never go forth from their lips. After you read this article, join the crusade to eradicate this antiquated terminology that may actually negatively affect your collective bargaining.

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Bargaining, FLRA, Labor Relations

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About the Author

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