

ARTICLE 4
RIGHTS AND OBLIGATIONS OF THE PARTIES

Section 4.01 - Governing Authorities. In the administration of all matters covered by this Agreement, the parties are governed by existing and future laws, existing Government-wide regulations, and existing and future decisions of outside authorities binding on the Department. The parties also recognize the importance of pre-decisional involvement to the fullest extent practical without regard to whether those matters are negotiable subjects.

Section 4.02 - Rights of Union Recognition. The Union is the exclusive representative of the employees in the unit and is entitled to act and contract for all employees in the unit.

Section 4.03 - Union Presence at Formal Discussions.

(1) The Civil Service Reform Act of 1978 provides that the Union shall be informed of and entitled to at least one representative or more by mutual agreement, at all formal discussions between one (1) or more representatives of Management and one (1) or more unit employees, or their representatives, concerning any grievance, personnel policy and/or practice, and other general conditions of employment. The Union has the exclusive right to name its representative and may participate and ask questions, as appropriate. (2) Meetings held for the purpose of making a statement or announcement and not to engender a dialogue, if they meet the Federal Labor Relations Authority (FLRA) criteria, are formal discussions. It is not necessary that a meeting propose or result in a change in working conditions or personnel policies or practices to be considered a formal meeting. Direct communication is defined by prevailing FLRA case law.

(2) In a number of case decisions, the FLRA has noted several factors relevant to a determination of whether discussions are formal. **In most cases, several of these factors must be present for a meeting to rise to the level of a formal discussion.**

- (a) Whether the individual who held the discussions is a first-level supervisor or is higher in the management hierarchy;
- (b) Whether any other Management representatives attended;
- (c) Where the individual meetings took place, i.e., the supervisor's office, at each employee's desk, or elsewhere;
- (d) How long the meetings lasted;
- (e) How the meetings were called, i.e., with formal advance written notice or more spontaneously and informally;
- (f) Whether a formal agenda was established for the meetings;
- (g) Whether each employee's attendance was mandatory; and
- (h) The manner in which the meetings were conducted, i.e., whether the employee's identity and comments were noted or transcribed.

(3) Examples of discussions which would be formal, if the above described factors are present, are meetings between bargaining unit employees and Management representatives to discuss such topics as reorganizations, reductions-in-force, employee orientation, exit interviews, and office relocations. A discussion that begins as an informal meeting may evolve into a formal discussion if the above criteria

are met. In that circumstance, the Union would be given the opportunity to be present. These examples are not intended to be exhaustive.

Examples of discussions that are not formal are:

1. Meetings between a supervisor and an employee that involves the employee's performance;
2. Performance evaluations and appraisals; and
3. Supervisory discussions to a group of employees that merely involves the assignment of work;
4. The delivery of a proposed disciplinary action or the final decision.

These examples are not intended to be exhaustive.

Section 4.04 - Proper Notice. Notice to the Union of a formal meeting shall be provided to the designated Union representative at least 2 days in advance unless extenuating circumstances exist.

The notice shall include:

- (1) The general nature of the meeting;
- (2) Copies of any handouts that will be distributed, if available; and
- (3) The general identification of who will be expected to attend.

Section 4.05 - Union Delegations of Authority. The Union may delegate its authority as exclusive representative to whatever agent it deems appropriate. Upon written receipt, Management shall recognize such agents and conduct appropriate labor relations business with them. If the designated union representative or agent is unavailable, an alternate representative will be made available within a reasonable period of time.

Section 4.06 - Management Rights. Nothing in this Agreement shall affect the statutory authority of Management under the Labor-Management Relations Statute, Section 7106.

Section 4.07 - Management Delegations of Authority. Should a Union representative be uncertain of which Management official has the authority to represent the Department on a matter of concern, the Union official may request clarification from Management. Management shall promptly provide clarification.

Section 4.08 - HUD and Other Surveys. The parties recognize the importance of conducting surveys and/or data collection initiatives in order to ascertain employee morale and workplace concerns. Management will provide the Union with an advance copy of all HUD surveys and other non-HUD surveys on personnel practices, policies and working conditions, if Management receives them in advance. Results, analyses, and recommendations produced by these surveys will be shared with the Union before it is communicated to Bargaining Unit employees. Jointly developed surveys shall include a statement of the Union's concurrence.

Section 4.09 - Conduct of Labor-Management Relations.

Representatives of the parties shall conduct themselves in a professional, respectful manner that reflects their duties and responsibilities irrespective of their grade level or pay.

Section 4.10 - Agency Regulations. Management will furnish the Council with an advance copy of any proposed change in agency regulations referred to in this Agreement governing personnel policies and practices, and general conditions of employment. This Section shall not be construed to require Management to issue, change, or retain a regulation.