GUIDE TO

LABOR-MANAGEMENT RELATIONS

PRACTICE BEFORE THE

PERSONNEL APPEALS BOARD

THE PERSONNEL APPEALS BOARD

Mary E. Leary, Chair
Steven H. Svartz, Vice-Chair
Paul M. Coran, Member

Beth L. Don, Executive Director
Susan P. Inzeo, Solicitor
Sue Sung Farley, Senior Staff Attorney
Gail Gerebenics, Director – EEO Oversight
Patricia Reardon-King, Clerk of the Board

CONTACTING THE BOARD

To write to the PAB or to file by mail use one of the following addresses:	*Through GAO Headquarters:* Personnel Appeals Board U.S. Government Accountability Office Suite 560, UCP II 441 G Street, N.W. Washington, D.C. 20548 **Or** *Directly to PAB:* Personnel Appeals Board, GAO Suite 560, Union Center Plaza II 820 First Street, N.E. Washington, D.C. 20002
To file in person, by messenger or commercial carrier (other than U.S. Postal Service) at the PAB offices, the address is:	Personnel Appeals Board, GAO Suite 560, Union Center Plaza II 820 First Street, N.E. Washington, D.C. 20002
By telephone:	**Telephone**: 202-512-6137 **NexTalk-VM (for the hearing impaired):** 202-512-7506
By fax:	202-512-7525
By e-mail:	pab@gao.gov

CONTACTING THE BOARD OFFICE OF GENERAL COUNSEL

To write to the PAB/OGC or to file by mail use one of the following addresses:	*Through GAO Headquarters:* PAB/Office of General Counsel U.S. Government Accountability Office Suite 580, UCP II 441 G Street, N.W. Washington, D.C. 20548 **Or** *Directly to PAB/OGC* PAB/Office of General Counsel, GAO Suite 580, Union Center Plaza II 820 First Street, N.E. Washington, D.C. 20002
To file in person, by messenger or commercial carrier (other than U.S. Postal Service) at the PAB offices, the address is:	PAB/Office of General Counsel, GAO Suite 580, Union Center Plaza II 820 First Street, N.E. Washington, D.C. 20002
By telephone:	**Telephone:** 202-512-7507 **NexTalk-VM (for the hearing impaired):** 202-512-7506
By fax:	202-512-7522
By e-mail:	pabogc@gao.gov

GUIDE TO
LABOR-MANAGEMENT RELATIONS PRACTICE
BEFORE THE PERSONNEL APPEALS BOARD

Introduction 1

PAB Regulations 1

Procedural Guidance 2

The Personnel Appeals Board Labor Relations Functions 2

Representation Proceedings 4

Introduction 4

Who May File Petitions 4

When Representation Petitions May be Filed 5

When a Representation Petition Would be Barred 5

Contents of Representation Petition 7

How and Where Petitions are Filed 10

Pre-investigation Proceedings 10

How Representation Petitions are Processed 11

How Elections are Conducted 13

Unfair Labor Practice Proceedings 17

Introduction 17

Examples of Potential Management Violations 18

Examples of Potential Union Violations 19

Processing Allegations of Unfair Labor Practices 20

Time Limitations for Filing Allegations of Unfair Labor Practices 22

Standards of Conduct for Labor Organizations 23

Standards of Conduct for a Labor Organization Seeking to Represent GAO Employees 23

Individuals not Allowed to Participate in the Management of a Labor Organization or Act as a Representative of a Labor Organization 25

Participation in a Strike or Certain Picketing 25

Charging a Labor Organization with Violations of Standards of Conduct 25

Negotiability Determinations 26

Negotiability Disputes 26

Appealing Negotiability Disputes to the Board 26

BARGAINING IMPASSES 27

Resolution of Negotiation Impasses 27

Review of Arbitration Awards 29

Introduction 29

Time Limits 29

Contents of an Exception 30

Grounds for Review of an Arbitrator's Award 30

When the Board will not Consider an Exception to an Arbitration Award 31

Board's Decision and Order on Exceptions 31

GLOSSARY 32

GUIDE TO LABOR-MANAGEMENT RELATIONS PRACTICE BEFORE THE PERSONNEL APPEALS BOARD

Introduction

This Guide outlines the procedures for labor-management relations practice at the Personnel Appeals Board (PAB or Board) of the Government Accountability Office (GAO) established by regulations and policies of the PAB. It is designed to provide administrative information and procedural guidance regarding the labor-management processes at the PAB.[1] The Guide is intended to give an overview of the Board's processes, provide a basic explanation of terms and procedures, and point to sources for more specific answers.

PAB Regulations

PAB regulations contain important information concerning such requirements as the deadlines for filing with the Board, the number of copies required to be filed, the content of the filings and other matters. This Guide contains much of the information found in the regulations. The Board looks to the Federal Labor Relations Authority (FLRA) regulations and policies for guidance. However, the FLRA's regulations are not binding on the PAB and given the differences in structure between the PAB and FLRA, identical procedures are not appropriate for every situation.

[1] The GAO Personnel Act, 31 U.S.C. §731 *et seq.*, guarantees the rights of GAO employees to form, join, assist, or not form, join or assist an employee organization freely and without fear of penalty or reprisal.

Procedural Guidance

Procedural questions may be directed to the Clerk of the Board. The Clerk of the Board may not provide substantive legal advice. Some additional assistance may be available from the Board's investigative and prosecutorial arm, the Personnel Appeals Board Office of General Counsel, in the form of oral advice responding to inquiries from employees about labor-management relations.

The Personnel Appeals Board Labor Relations Functions

The Personnel Appeals Board is an independent entity established by the GAO Personnel Act of 1980 (GAOPA) to serve as the Equal Employment Opportunity Commission, Merit System Protection Board, Federal Labor Relations Authority and the Office of Special Counsel for GAO employees.[2]

In the exercise of its employment law responsibilities, the PAB adjudicates disputes, issues decisions, and orders corrective or disciplinary action, as appropriate, involving employees (and applicants for employment) of GAO. For guidance on pursuing disputes regarding equal employment opportunity or issues regarding allegations of prohibited personnel practices, please see the PAB's *Guide to Practice Before the Personnel Appeals Board*.[3]

---

[2] The provisions of the GAOPA, 31 U.S.C. §§ 731-755, can be found online at www.gpoaccess.gov under United States Code, Title 31, Subtitle I, Chapter 7, Subchapters III and IV.

[3] The Guide is available at the PAB website, www.pab.gao.gov, or by calling the PAB office at (202) 512-6137.

The GAOPA requires that GAO establish a personnel management system that is consistent with the Executive branch under Chapter 71 of Title 5, United States Code (5 U.S.C. §§7101 *et seq.*). Accordingly, the regulations of the Personnel Appeals Board include provisions governing labor-management relations for GAO employees. The regulations, which implement 31 U.S.C. §§753(a)(4)-(6) of the GAOPA, are set forth in 4 C.F.R. §§28.110-24. In general, the regulations are intended to be applied with due regard for relevant provisions of GAO Orders and with the objective of insuring that the GAO labor-management relations program is consistent with the Executive branch provisions which are administered by the Federal Labor Relations Authority. GAO Order 2711.1 also describes the scope and coverage of the Labor-Management Relations Program at GAO and its program administration, labor-management procedures, employee and management rights, and the powers and duties of the PAB as they relate to the program.

The Board's labor-management relations regulations address five areas: (1) representation proceedings; (2) unfair labor practice proceedings; (3) standards of conduct for labor organizations; (4) negotiability determinations; and (5) review of arbitration awards. In addition, the Board's role in resolving an impasse during negotiations is outlined in ¶14 of GAO Order 2711.1. This Guide briefly describes these areas below.

Representation Proceedings

Introduction

In representation proceedings, the Board: (1) determines appropriate units of GAO employees for collective bargaining; (2) conducts elections in order to determine whether the employees in an appropriate unit wish to select a labor organization to represent them in collective bargaining; and (3) certifies or, in some circumstances, decertifies labor organizations that are selected as the designated exclusive bargaining representatives. Representation proceedings are initiated through the filing of Representation Petitions with the PAB Office of General Counsel. Matters relating to the filing and processing of Representation Petitions are addressed in this section.

Who May File Petitions

Representation Petitions may be filed by:

1. A labor organization seeking to be designated as the exclusive representative for collective bargaining by the GAO employees in an appropriate unit, or by a labor organization desiring to replace another labor organization that is currently an exclusive representative;
2. An employee or a group of employees (or an individual on his, her or their behalf) desiring a new election to determine whether a labor organization has ceased to represent a majority of employees in a unit;
3. GAO, if it has a good faith reason to doubt that a majority of employees in the bargaining unit wish to be represented by their current exclusive representative;

4. GAO or a labor organization currently recognized as an exclusive representative desiring the Board to clarify an earlier unit determination or certification; or
5. Any person seeking clarification of, or an amendment to, a certification then in effect or any other matter relating to representation.

When Representation Petitions May be Filed

Subject to the exceptions noted below, Representation Petitions may be filed at any time.

When a Representation Petition Would be Barred

There are four situations in which a Petition that seeks representation rights for employees in a unit may not be filed.

a. Election Bar

An election bar refers to a one-year period following a representation election in which there can be no other elections to challenge an exclusive representative's status. Even if the election fails to result in the selection of an exclusive representative, the one-year bar stands and there can be no other election held in the same unit. This bar provides a period of stability for the parties involved (employees, management, and the labor organization). During this period, the PAB will not consider any Representation Petitions for that unit or any subdivisions thereof.

b. Certification bar

A certification bar refers to a one-year period after a union is certified as the exclusive representative for a unit during which petitions by rival unions or employees seeking to replace or remove the incumbent union will be considered untimely (during this period, a union cannot be challenged by another labor organization). This bar protects a union from challenge in the absence of a negotiated agreement. The bar is designed to give the certified union an opportunity to negotiate a substantive agreement, after which the contract can become a bar to a Representation Petition, except during the contract's "105-60 day open period" (see below under "**contract bar**").

c. and d. Contract bars

The other two situations when Representation Petitions may not be filed are commonly known as contract bars. No Petition that seeks representation rights for employees in a unit may be filed in either of the following circumstances:

c. Where an existing collective bargaining agreement having a term of three years or *less* is in effect, unless the Petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration of the collective bargaining agreement (the "105-60 open period"); or

d. Where an existing collective bargaining agreement having a term of *more than* three years is in effect, unless the Petition for recognition is filed

not more than 105 days and not less than 60 days before the third anniversary or any subsequent anniversary of the collective bargaining agreement.

Contents of Representation Petition

The contents of a Representation Petition vary depending on the purpose of the Petition.

a. Labor Organization Petition

If a labor organization seeking to be designated as an exclusive representative, or seeking to replace an exclusive representative, files a Representation Petition, the Petition must contain the following information:

1. A detailed description of the unit of employees to which the Petition applies, and their geographical locations within GAO, the classifications of employees to be included and excluded, and the number of employees involved;
2. Names, addresses, and telephone numbers of the officers or contact persons for any other labor organizations known by the Petitioner to be interested in representing employees covered by the Petition, including a labor organization that is a party to a current collective bargaining agreement covering any employees in the unit;
3. Name, mailing address, and telephone number of the Petitioner. If a labor organization Petitioner is affiliated with a national organization, the local designation and national affiliation must be included;

4. A copy of the constitution and bylaws of the labor organization, a roster of the organization's officers and representatives, and a statement of the organization's objectives, together with a statement that these documents have also been supplied to GAO;
5. A declaration by the signer of the Petition, under penalties prescribed by the U.S. Criminal Code (18 U.S.C. §1001), that the Petition's contents are true and correct, to the best of his or her knowledge and belief;
6. The signature of the representative of the Petitioner, including title and telephone number; and
7. A showing that at least 30 percent of the employees in the proposed unit wish to be represented for purposes of collective bargaining by a labor organization. Documents which may be submitted to establish the showing of interest may include union membership cards, dues records, signed statements, petitions or similar evidence acceptable to the Board indicating the employees' desire to be represented by the labor organization for the purpose of collective bargaining. Petitioner shall also include an alphabetical list of the names constituting the showing of interest.

b. Employees Decertification Petition

If an employee or group of employees files a Petition seeking an election to determine if a labor organization still represents a majority of employees in a unit, the same requirements as those set forth above apply, except that the information in paragraphs (4) and (7) does not need to be supplied. Additionally, such a Petition must

include evidence satisfactory to the Board that at least 30 percent of the employees in the unit no longer wish to be represented by the labor organization currently certified as the exclusive bargaining representative.

c. Management Continued Representation Petition

If GAO files a Petition alleging that it has a good faith reason to doubt that a majority of employees in the bargaining unit wish to be represented by their current exclusive representative, the same requirements as those set forth above apply, except that the information in paragraphs (4) and (7) need not be supplied. Additionally, such a Petition must include a detailed statement giving the objective considerations that support GAO's good faith reason for doubting the labor organization's continued status as the exclusive representative of the majority of the bargaining unit employees.

d. Petition Seeking Clarification of or Amendment to Certification

If a Petition seeking clarification or amendment of a previously certified bargaining unit is filed, it must include the same information set forth above, except for the information in paragraphs (4) and (7). Also, instead of the information listed in paragraph (1) above, the Petition must identify the existing unit and the date the organization was recognized by GAO or certified as the exclusive representative, and must explain the changes desired in the unit and the reasons for those changes.

How and Where Petitions are Filed

Representation Petitions must be filed with the PAB/OGC and must be in writing. A Petition may be in letter form if the letter includes all the information required, as stated above.

Pre-investigation Proceedings

Once a valid Petition is filed, the PAB/OGC will notify any labor organization—that the parties have identified as being affected by issues raised—that a Petition has been filed with the PAB/OGC. The PAB/OGC may request GAO to notify employees as to the existence of the Petition by posting a notice for at least 10 days in locations appropriately selected to reach all employees in the unit covered by the Petition, such as all employee bulletin boards and the GAO intranet where notices for employees in the unit are customarily posted. The notice is to include a request that the PAB/OGC be notified of the existence of any other interested parties.

GAO then gives the PAB/OGC any information in its possession concerning other potentially interested labor organizations, copies of relevant correspondence, and copies of existing or recently expired agreements covering any employees in the unit. GAO also provides the PAB/OGC with a list of employees it believes should be included in the unit, together with their classifications, and the names and classifications of those employees it proposes to exclude from the unit and the reasons for the proposed exclusions.

All interested parties then meet as soon as possible after the expiration of the 10-day posting period and attempt to resolve any issues in controversy.

A labor organization may request to intervene, *i.e.*, become an intervenor, in any representation proceeding by giving the PAB/OGC, within the 10-day period, evidence that it represents at least 10 percent of the employees in the proposed unit or that it is the exclusive representative of the employees involved. If the PAB/OGC denies such a request to intervene, the labor organization may appeal the denial to the Board. Such an appeal must be filed with the Clerk of the Board within 10 days of service of the PAB/OGC's determination.

How Representation Petitions are Processed

After the 10-day posting period has expired, and after the PAB/OGC considers an appropriate period has elapsed for consultation among the parties to resolve or identify issues, the PAB/OGC prepares a report for the Board. The report may recommend:

1. Approval of any agreement entered into by the parties during their consultations, including an agreement on the appropriate unit(s), the withdrawal of the Petition; or a joint request for approval of an election agreement setting forth the appropriate unit, the eligibility period, method of election, dates, hours, or locations of the election to determine which labor organization, if any, the employees select to be their exclusive bargaining representative;
2. Dismissal of the Petition as being without merit; or

3. Issuance of a Notice of Hearing[4] for the purpose of disposing of the remaining issues raised in the Petition.

After the report for the Board is prepared, the PAB/OGC provides copies to all interested parties. Unless all parties agree to a shorter period, they have 15 days to file a written response with the Board.

As expeditiously as feasible after the expiration of this period, but no later than 30 days thereafter, the Board will either approve the report and order appropriate steps to carry out its recommendations, or remand the report to the PAB/OGC with further instructions. For example, upon examination of the PAB/OGC report and recommendation, the Board might determine that a hearing is necessary and set a schedule including a pre-hearing conference.

Where a hearing is ordered, the Board will designate a Board member to act as an administrative judge. A Notice of Hearing will be served on all interested parties.[5] The Board will advise the parties of a hearing date and any other information relevant to the issues remaining. The report of the administrative judge following the hearing will include findings of fact and recommendations. After the Board receives the report

---

[4] A hearing is an official proceeding whereby the parties attempt to prove specific issues of fact to support their theories of legal entitlement.

[5] The Notice includes the official caption of the case—the name by which the case will be known in Board proceedings—the case docket number (beginning with the year filed), and the official service list for the case. The official service list provides the name and address of the respective designated representative for each side. These are the individuals who must be served with a copy of all pleadings, discovery requests, and official issuances of the Board. The parties are responsible for providing written notification to the Board and to one another of any changes in the service list's names or addresses. All subsequent filings should include the official caption, case number and a certificate of service in conformity with the service list (specifying how and where service was made). The filing must be signed by the party or the representative of the party.

from the administrative judge, and after it gives the parties an opportunity for comment, the Board will issue a Decision and Order determining the appropriate unit, directing an election, dismissing the Petition, or making some other appropriate disposition of the matter.

The Board encourages parties to reach stipulations or agreements for elections on representation matters or issues, as appropriate. This can eliminate the need for a hearing or reduce the number of issues to be decided.

While decisions of the Board regarding employment discrimination or prohibited personnel practices are appealable to the U.S. Court of Appeals for the Federal Circuit, final Decisions and Orders issued by the Board in representation proceedings are not considered subject to judicial review.

How Elections are Conducted

The Board supervises any election it orders to be conducted. The PAB may conduct the election or delegate ministerial functions relating to an election to any qualified independent organization, to members of the Board's staff, or to temporary employees hired for this purpose and not associated with the parties.

Notice of Election

As directed by the Board, GAO will post appropriate Notices setting forth details of the election. The Notices will state:

1. The purpose of the election;
2. The voting unit;

3. That the election is to be held by secret ballot and how that will be conducted, whether there will be absentee voting and whether there will be voting by mail;
4. Eligibility rules;
5. Information for requesting special assistance;
6. Information regarding challenge of voters;
7. Information regarding authorized observers; and
8. Any other information concerning the election process.

The Notice will also contain information regarding the rights of employees and a sample of the ballot for employees to review prior to the election.

Conduct of Election

Through its agents chosen to conduct the election, the Board:

1. Gives all qualified voters the opportunity to participate in a secret ballot election with appropriate due process safeguards;
2. Offers all qualified voters the opportunity to vote for any labor organization on the ballot, or to reject all labor organizations;
3. Permits all parties to appoint observers to observe the conduct of the election;

4. Provides for all parties to challenge the eligibility of any voters, resolves the challenged ballots where possible, and impounds unresolved challenged ballots, subject to later determination of eligibility, if necessary; and
5. Certifies to all parties the results of the election five days after the Tally of Ballots, if no challenges or objections are filed.

Challenged Ballots

A party or the Board may, for good cause, challenge the eligibility of any person to participate in the election prior to the employee voting. An individual whose eligibility to vote is in dispute will be given the opportunity to vote a challenged ballot. The challenged ballot is secret and is sealed in an envelope marked accordingly. If the parties and the Board are unable to resolve the challenged ballot(s) prior to the tally of ballots, the unresolved challenged ballot(s) will be impounded and preserved until a determination can be made, if necessary, by the Board.

Tally of Ballots

When the election is concluded, the parties should attempt to reach agreement as to the eligibility of any voters, if possible, prior to the counting of the ballots. The the Board shall count the ballots, prepare a Tally of Ballots, and serve the Tally of Ballots on the parties. In representation elections, questions concerning representation shall be determined by the majority of the valid ballots cast.

If unresolved challenged ballots are determinative of the outcome of the election, the Board shall investigate and issue a Decision and Order.

Objections to the Election

If objections are filed, they will be resolved at the same time as determinative challenged ballots. Any party may file objections to the procedural conduct of the election or to conduct that may have improperly affected the results of the election.

Objections must be filed with the Clerk of the Board within five (5) working days after the Tally of Ballots is served. The objecting party must serve the objections, without supporting evidence, on all parties. Within ten (10) days of filing the objections, the objecting party must file with the Clerk evidence, including signed statements, documents, and other support establishing clear and concise reasons for the objections. The objecting party bears the burden of proof by a preponderance of the evidence.[6] Upon receipt of objections, the Board will send a letter to the other party, notifying it of objections, naming the objecting party and requesting the position of that party within five (5) days (with supporting evidence). Should the Board need additional evidence to resolve the objections, an investigation may be conducted or a hearing on objections may be held by an administrative judge.

Results of the Election

The Executive Director, or designee, shall then issue a report of the results of the election to the Board. Upon receiving the report, the Board shall:

1. If necessary, rule on the challenges and adjust the results accordingly;

[6] Preponderance of the evidence means that degree of relevant evidence which a reasonable person, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not.

2. Order a runoff or an additional election, if the Board deems it appropriate, where the results of the original election are inconclusive because no choice on the ballot has secured a majority of the valid votes cast. Not more than one additional and one runoff election may be held;
3. Issue an Order announcing the results of the election with either a Certification of the Results of the Election or a Certification of Representative, as appropriate.

Runoff or Additional Election

The Board may order a runoff election where one or more of the labor organizations on the ballot have received the vote of at least 30 percent of the employees eligible to vote, but none has gained a majority of the votes cast. The runoff election will be between the two choices receiving the largest and the second largest number of votes in the original election.

The Board may order an additional election where there is a tie vote between all of the choices on the ballot, or where a runoff election is not feasible because there is a tie between the choices receiving the second most votes in the original election. The additional election will include all the choices that appeared on the original ballot.

Unfair Labor Practice Proceedings

Introduction

The Board has authority under 31 U.S.C. §753(a)(6) to "consider and order corrective or disciplinary action in a case arising from … a matter appealable to the

Board under the labor-management relations program under [31 U.S.C. §] 732(e)(2) including a labor practice prohibited" under § 732(e)(1). The labor-management relations program established by the Comptroller General is required to provide that each employee of GAO has the right to form, join or assist, or not form, join or assist an employee organization, freely and without penalty or reprisal consistent with Chapter 71 of U.S. Code Title 5. Violation of the program established by the Comptroller General may constitute an unfair labor practice (ULP).

Unfair labor practices (ULPs) are actions taken by GAO or by a union that are defined in GAO Order 2711.1.

Examples of Potential Management Violations

- Interfering with, restraining, or coercing any employee in the employee's exercise of his or her rights under GAO Order 2711.1;
- Encouraging or discouraging membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
- Sponsoring, controlling, or assisting any labor organization, except to provide requested customary and routine facilities for the union's use on an impartial basis;
- Disciplining or otherwise retaliating against an employee because the employee filed a charge, complaint, affidavit, or petition, or gave any information or testimony with respect to labor or management issues;
- Refusing to bargain in good faith with a labor organization as required;

- Failing or refusing to cooperate in impasse procedures and decisions as required;
- Enforcing a rule or order that is in conflict with an applicable collective bargaining agreement; or
- Failing or refusing to comply with any provision of GAO Order 2711.1.

Examples of Potential Union Violations

- Interfering with, restraining, or coercing any employee in the employee's exercise of his or her rights under GAO Order 2711.1;
- Causing or attempting to cause GAO to discriminate against any employee in the employee's exercise of any right under the Order;
- Coercing, disciplining, fining or attempting to coerce a member of a 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;
- Discriminating against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, religion, sex, national origin, age, veterans' preference or non-preference status, disability, political affiliation, marital status, or sexual orientation;
- Breaching the duty of fair representation;
- Refusing to negotiate in good faith with GAO as required;

- Failing or refusing to cooperate in impasse procedures and decisions as required;
- Engaging in illegal picketing or strikes;
- Failing or refusing to comply with any provisions of GAO Order 2711.1.

An allegation that a provision of GAO Order 2711.1 is inconsistent with Chapter 71 of Title 5, United States Code, and thereby denies an employee or labor organization rights comparable to those granted by Chapter 71 of Title 5, United States Code, may also be raised under the unfair labor practice procedure.

Processing Allegations of Unfair Labor Practices

Allegations that unfair labor practices have been committed are generally subject to the procedures appearing in subpart B of the Board's regulations for the filing of charges, the investigation by the PAB/OGC, and the Board's disposition. 4 C.F.R. §28.8 *et seq. See also Guide to Practice Before the Personnel Appeals Board* at the Board's website www.pab.gao.gov. However, the applicable time limitations regarding allegations of unfair labor practices are specific for ULP cases and, therefore, are described below.

An individual, labor organization or the Agency may file an unfair labor practice charge with the PAB/OGC. The PAB/OGC then investigates the charge and makes a determination as to whether there are reasonable grounds to believe that an unfair labor practice was committed. If the PAB General Counsel finds that there are

reasonable grounds to believe a ULP was committed, the General Counsel will then file a Petition with the Board.

Mediation

Upon receipt of a charge, the PAB's General Counsel will notify both the charging party and GAO that mediation is available to resolve their dispute, that mediation may be the most beneficial means of resolving the dispute, and that either party may request mediation within 14 days of the notification. Such request must be in writing and must be filed with the Board's Office of General Counsel within the 14 days.

The Board's General Counsel will forward a request for mediation to the other party, who may accept or decline the request to participate in mediation within 7 days of receipt of the request for mediation. If the parties agree to mediation, the General Counsel will advise them that the period of time for the investigation will be extended for the length of the mediation process up to 30 days. During mediation, the charge will not be investigated.

Once the parties have agreed to mediation, the General Counsel will forward the original written request to the PAB Executive Director (or his or her delegatee) who will designate a mediator within 5 business days of receipt of the written request from the PAB General Counsel.

The Hearing Process

Once a ULP Petition has been filed, the Board assigns a Board member as an administrative judge (AJ) to begin the hearing process and allow parties to conduct discovery under the Board regulations.[7] If appropriate, the AJ may require that settlement discussions be conducted. After discovery is completed, the AJ conducts a hearing where both parties may present their evidence. The AJ then issues an initial decision with findings of fact and a determination of whether a ULP occurred. The parties may file exceptions to the initial decision, which are reviewed by the full Board. The Board then reviews the record and issues a final decision. The final decision on a ULP is appealable to the U.S. Court of Appeals for the Federal Circuit.

Time Limitations for Filing Allegations of Unfair Labor Practices

Generally, no Petition may be filed based on any alleged unfair labor practice which occurred more than 6 months before the filing of an unfair labor practice charge with the charged party, as provided in paragraph 15e of GAO Order 2711.1, or more than 9 months before the filing of a charge with the PAB/OGC. Should the Board determine that the charging party was prevented from filing the charge during the 6-month period by reason of:

1. Any failure of the charged party to perform a duty owed to the charging party; or

[7] For more detailed information regarding hearing procedures, please review the Board's *Guide to Practice Before the Personnel Appeals Board,* which is available on the Board's website.

2. Any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the charge will be considered timely filed, provided it was filed with the charged party during the 6-month period beginning on the day of the discovery of the alleged unfair labor practice by the charging party.

Standards of Conduct for Labor Organizations

Standards of Conduct for a Labor Organization Seeking to Represent GAO Employees

GAO accords recognition only to labor organizations that are free from corrupt influences and from influences opposed to basic democratic principles. An organization is not required to prove it is free from such influence if it is subject to governing requirements calling for the maintenance of:

1. Democratic procedures;
2. Freedom from totalitarian influence;
3. Independence on the part of its agents and officers from any business or financial interests which represent conflicts of interest or potential conflicts of interest; and
4. Fiscal integrity.

A labor organization representing employees at GAO must adhere to principles set forth in the regulations issued by the Assistant Secretary of Labor for Employment

Standards regarding standards of conduct for labor organizations in the public sector.[8] 4 C.F.R. §28.123; 29 C.F.R. Parts 457-459. The Department of Labor regulations establish standards of conduct similar to provisions under the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §401 *et seq*. For example, the standards of conduct include a Bill of Rights for Federal sector union members and incorporate reporting and election provisions.

Reports Filed by Labor Organizations

A labor organization that has or seeks recognition as a representative of GAO employees must file with the Board their constitution and bylaws, information reports regarding the organization's structure, practice, and procedures, financial reports which disclose the organization's financial condition for the preceding year and trusteeship reports. 29 C.F.R. Parts 402, 403 and 408. These documents should be filed with the Clerk of the Board with any Petition for Representation or immediately after the labor organization is subject to the Board regulations.

Complaints of violations of this requirement are filed with the Board's Office of General Counsel. The Board may require a labor organization to cease and desist from violations of standards of conduct provisions and may require a labor organization to take such action as the Board considers appropriate to carry out the policies of these provisions.

[8] These standards are consistent with the Labor Management Reporting and Disclosure Act (LMRDA) which governs the private sector and U.S. Postal Service employee organizations and/or unions. Section 7120 of Title VII of the Civil Service Reform Act sets forth the standards of conduct for Federal sector labor organizations. 5 U.S.C. §7120.

Individuals not Allowed to Participate in the Management of a Labor Organization or Act as a Representative of a Labor Organization

The following individuals may not participate in the management of a labor organization or act as a representative of a labor organization: (1) a management official; (2) a supervisor; (3) a confidential employee; or (4) any employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

Participation in a Strike or Certain Picketing

It is considered an unfair labor practice if a labor organization by omission or commission willfully and intentionally calls for or participates in a strike, work stoppage or slowdown, or pickets in a manner which interferes with the operations of a government agency, or condones such activity. If the Board finds that a labor organization has committed this unfair labor practice, the Board will revoke the certification or recognition status of the labor organization or take any other appropriate disciplinary action.

Charging a Labor Organization with Violations of Standards of Conduct

The PAB/OGC may charge a labor organization with violations of standards of conduct. The Board will conduct proceedings with regard to such a charge. Should a violation be found the Board may require a labor organization to take such action as it deems necessary to carry out the policies of these provisions.

Negotiability Determinations

Negotiability Disputes

A negotiability dispute is a disagreement between GAO and a union over whether a contract proposal is subject to negotiation as part of the requirement to bargain in good faith. When GAO claims that a contract proposal made by a union during bargaining involves a subject that is outside the duty to bargain, the union may file a negotiability appeal with the Board.

Appealing Negotiability Disputes to the Board

When a proposal is declared nonnegotiable, the party submitting the proposal gives the other party, before the close of negotiations, a Request for Formal Negotiability Determination, setting forth the proposal in question. Within 10 days, the party declaring the proposal nonnegotiable delivers to the other party a Formal Negotiability Determination stating the basis for the Determination.

A Formal Negotiability Determination may be appealed to the Board within 20 days of its service by filing a negotiability appeal (Petition for Review) with the Clerk of the Board. A complete statement of argument from the Petitioner should accompany the negotiability appeal.

The Board serves the Respondent (the other party) with a copy of the negotiability appeal and accompanying argument. The Respondent then replies to the negotiability appeal within 20 days of its receiving the negotiability appeal.

One or more member(s) of the Board then review(s) the arguments, hold(s) a hearing if necessary, and issue(s) a decision. The decision becomes final in accordance with the Board's Regulations. 4 C.F.R. §28.87. This final decision is appealable to the U.S. Court of Appeals for the Federal Circuit.

BARGAINING IMPASSES

Resolution of Negotiation Impasses

The resolution of negotiation impasses is addressed in paragraph 14 of GAO Order 2711.1.

After representatives of GAO and of an exclusive representative have been engaged in collective bargaining and have been unsuccessful in reaching an agreement, GAO and/or the exclusive representative may petition the Board to form an *ad hoc* committee for a determination that a negotiation impasse exists.

The *ad hoc* joint management-union committee will then be established to determine whether an impasse exists. The committee consists of: (1) three individuals named by GAO; (2) three individuals named by the labor organization which has been accorded exclusive recognition; and (3) the Chair of the Board or the Chair's designee who serves as the chairperson of the committee.

The committee reviews the Petition and determines whether an impasse exists and if the parties have negotiated in good faith for a sufficient period of time. If the committee determines that an impasse exists and that the parties have negotiated in good faith for a sufficient period of time, the committee will so advise the parties. The committee then requires that the parties participate in mediation and:

1. Appoints an individual, not employed by GAO or the exclusive representative to serve as a mediator, to assist GAO and the exclusive representative in resolution of the impasse; or
2. GAO and the exclusive representative may agree on an individual of their choice, not employed by GAO or the exclusive representative, to serve as mediator. In such event, they shall notify the committee of their choice.

If this mediation does not result in agreement after a reasonable period of time to be determined by the committee, GAO and/or the exclusive representative may petition the committee to initiate fact-finding proceedings. After receiving a petition for fact-finding, the committee may appoint an individual not employed by GAO or the exclusive representative to serve as a fact-finder or may submit the impasse for further mediation, similar to the above proceeding. In the alternative, GAO and the exclusive representative may agree on an individual of their choice, not employed by GAO or the exclusive representative, to serve as fact-finder. No individual shall be named as fact-finder who has represented GAO or any labor organization within the preceding 12 months. The fact-finder will have the authority to mediate.

If an agreement is not reached through the fact-finding, the fact-finder shall submit the report to the committee, including findings and recommendations for resolution of the impasse. If agreement is not reached after receipt of the fact-finder's report, the committee makes the fact-finder's recommendations public. If no resolution is reached after the recommendations are made public, the committee may meet with representatives of GAO and of the exclusive representative, conduct formal or informal

conferences, engage in mediation or fact-finding, or take any other step to encourage the reaching of an agreement.

If the committee determines that the process of collective bargaining has been exhausted after the above-outlined steps have been pursued, it will designate the chairperson to arbitrate the dispute. The chairperson will then determine the form of arbitration and arbitration procedures to be used. The decision of the chairperson is binding on GAO and the exclusive representative.

Review of Arbitration Awards

Introduction

Either the labor organization or the Agency may invoke arbitration to resolve grievances pursuant to a grievance procedure under a collective bargaining agreement. If arbitration is invoked, an arbitrator is selected pursuant to the collective bargaining agreement's provisions to issue an award resolving the grievance submitted to arbitration. If either party disagrees with the arbitrator's award, it may challenge the award by filing an exception to the award with the Clerk of the Board.

Time Limits

The time limit for filing an exception to an arbitration award is 30 days from the service of the award on the filing party. A copy of the exception must be served on the other party when it is filed with the Board.

An opposition to the exception may be filed by a party within 30 days after the service of the exception. A copy of the opposition must be served on the other party at the same time.

Contents of an Exception

An exception must be a dated, self-contained document which sets forth the following in full:

1. A statement of the grounds on which review is requested;
2. Evidence or rulings bearing on the issues before the Board;
3. Arguments in support of the stated grounds, together with specific reference to the pertinent documents and citations of authorities;
4. A legible copy of the award of the arbitrator and legible copies of other pertinent documents; and
5. The name and address of the arbitrator.

Grounds for Review of an Arbitrator's Award

The Board will review an arbitrator's award to which an exception has been filed to determine if the award is deficient—

1. Because it is contrary to any law, rule or regulation (including GAO Orders); or
2. On other grounds similar to those applied by Federal courts in private sector labor-management relation disputes.

When the Board will not Consider an Exception to an Arbitration Award

The Board will not consider an exception where:

1. The award relates to an action based on unacceptable performance covered under 5 U.S.C. §4303;
2. The award relates to a removal, suspension for more than 14 days, reduction in grade, reduction in pay, or furlough of 30 days or less covered under 5 U.S.C. §7512; or
3. The exception is based on a GAO rule which was not introduced into the record submitted to the arbitrator.

Board's Decision and Order on Exceptions

In the decision and order, the Board will take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

GLOSSARY

Appropriate Unit (or **bargaining unit**) – A group of employees which a labor union seeks to represent and which has (1) a clear and identifiable community of interest; (2) promotes effective dealings with the agency; and (3) ensures efficiency of the operations of the Agency, for collective bargaining purposes. 5 U.S.C. § 7112(a).

Arbitrator – An impartial third party to whom the parties to an agreement refer their disputes for resolution.

Bargaining Impasse – When the parties have reached a deadlock in negotiations they are said to have reached an impasse in negotiations. The parties may then submit the impasse to the ad hoc committee under paragraph 14 of GAO Order 2711.1.

Bargaining Unit – A group of eligible employees certified by the Personnel Appeals Board as sharing a sufficient community of interest to comprise an appropriate group to be represented by a labor organization for purposes of collective bargaining.

Binding Arbitration – The law requires that collective bargaining agreements contain a negotiated grievance procedure that terminates in binding arbitration of unresolved grievances.

Certification – The determination by the PAB of the results of an election or the recognition of the labor organization by the PAB as the exclusive representative based on the mandatory procedure for determining such a representative.

Challenged ballots – Ballots that are challenged by election observers on the ground that the person casting the ballot is not eligible to vote because, *e.g.*, he or she is not included in the bargaining unit, or is a management official, supervisor, confidential employee or engaged in personnel work.

After tallying the uncontested ballots, if it is determined that there are enough challenged ballots to affect the outcome of the election, the Board, or designee, will rule on each challenged ballot to see whether it should be counted.

Collective bargaining agreement – A written agreement between an employer and a labor organization, usually for a definite length of time, defining terms and conditions of employment, rights of employees and labor organizations, and procedures to be followed in settling disputes or resolving issues that arise during the life of the agreement.

Confidential employee – An employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.

Decertification – PAB withdrawal of a labor organization's recognition as an exclusive representative. An agency or the employees in the bargaining unit can initiate a request for decertification.

Election agreement – The agreement entered into by the agency and the union(s) setting forth the terms for a representation election including the scope of the bargaining unit, the eligibility of potential voters, the time(s), date(s) and place(s) of the election, challenged ballot procedures, mail balloting (if used), position on the ballot, payroll period ending date for voter eligibility, election observers, and the like. This agreement is subject to approval by the appropriate PAB official.

Exception to arbitration award – Under 4 C.F.R. §28.124, either party to arbitration may file with the Board an exception (appeal) to an arbitrator's award because 1) the award is contrary to law, rule, or regulation (including GAO orders); or 2) on other grounds similar to those applied by Federal courts in labor-management relations cases.

Exclusive representative – The union that is certified as the exclusive representative of a unit of employees for purposes of collective bargaining.

Grievance – Any complaint by any employee or labor organization relating to the employment of the employee(s). The term includes any complaint concerning the effect or interpretation or claim of breach of a collective bargaining agreement; or any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment.

Grievance arbitration – A third party procedure which may interpret language in a negotiated agreement, or otherwise resolve grievances under the contract. This form of arbitration determines what the rights of the parties are with respect to the negotiated agreement, laws, rules or regulations.

Grievance procedure – A systematic procedure, devised by the parties to the agreement, by which a grievance moves from one level of authority to the next higher level until it is settled, withdrawn, or referred to arbitration. A collective bargaining agreement must contain a grievance procedure terminating in final and binding arbitration.

Impasse – A situation in which the parties are unable to reach a negotiated agreement despite a good faith effort to do so.

Informational Picketing – Demonstrating, usually near the place of employment, to publicize the existence of a labor-management dispute. Informational picketing is directed toward advising the public about the issue in dispute. This is permissible as long as the picketing does not interfere with agency operations, and is conducted outside an employee's established duty hours or the employee is in an approved leave

status. This is not to be confused with a "strike," which is an action prohibited for Federal employees.

Intervention/Intervenor – The action taken by a competing labor organization (intervenor) to place itself as a contender on the ballot for a representation election originally initiated by another party. Non-incumbent intervenors need only produce a 10 per cent showing of interest to be included on the ballot.

Judicial review – The review by the U.S. Court of Appeals for the Federal Circuit instituted by a person aggrieved by certain final orders issued by the PAB. Judicial review may not be invoked regarding most arbitration decisions reviewed by the PAB or regarding appropriate unit determinations.

Labor organization (union) – An organization composed of employees which has as its purpose the dealing with an agency concerning terms and conditions of employment.

Negotiability – Refers to whether a given topic is subject to bargaining between an agency and the union. The PAB makes the final decision regarding whether a subject is negotiable or nonnegotiable. This decision is not appealable.

Negotiability Determination (Petition for Review) – If an agency contends that a union proposal is contrary to law or applicable regulation, or is otherwise nonnegotiable under the statute, it may declare the proposal non-negotiable. Pursuant to 4 C.F.R. §28.122 the union may appeal the agency's declaration of non-negotiability to the PAB.

Negotiated grievance procedure – A contractual procedure agreed to by the negotiating parties for the resolution of grievances of bargaining unit employees.

Objections to election – Objections filed with the PAB contesting election results because of alleged irregularities in the conduct of a representation election. If the objections are sustained, the PAB could set aside the election results and order, *inter alia*, a new election.

Open period – The 45-day period (105-60 days prior to expiration of agreement) when the union holding exclusive recognition is subject to challenge by a rival union or by unit employees who no longer want to be represented by the union. The open period is an exception to the **contract bar** rule.

Ratification – Formal approval of a newly negotiated agreement by vote of the labor organization members affected.

Representation election – Secret-ballot election to determine whether the employees in an appropriate unit shall have a union as their exclusive representative.

Standards of Conduct for Labor Organizations – Standards regarding internal democratic practices, fiscal responsibility, and procedures to which a union must adhere to qualify for recognition.

Strike – A temporary stoppage of work by a group of employees in connection with a labor dispute. Strikes by Federal employees are specifically prohibited by Federal law and constitute an unfair labor practice under GAO Order 2711.1. Work slowdowns, sickouts, picketing if it interferes with the agency operations, and related tactics are also prohibited.