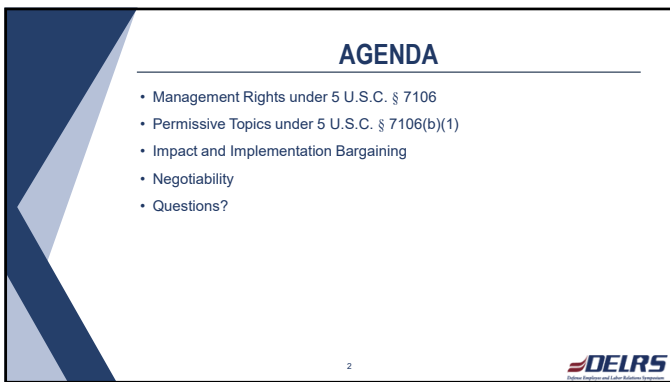
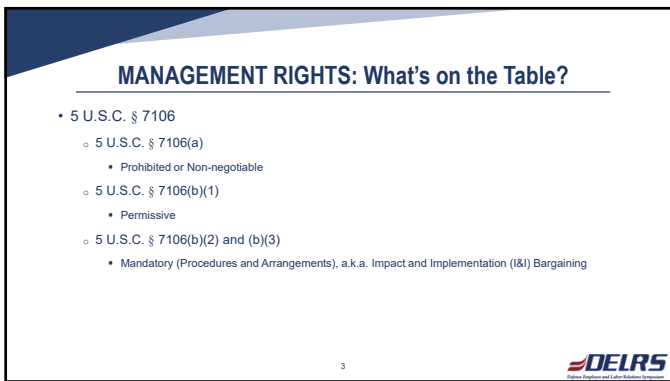




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MANAGEMENT RIGHTS: The Best of § 7106


- 5 U.S.C. § 7106(a) – Prohibited or Non-negotiable
 - "...nothing in this chapter shall affect the authority of any management official of any agency to..."
- 5 U.S.C. § 7106(b)(1) – Permissive
 - "nothing in this section shall preclude any agency and any labor organization from negotiating at the election of the agency..." → **JUST SAY NO!!**
- 5 U.S.C. § 7106(b)(2) and (b)(3) – Mandatory (Procedures and Arrangements)
 - "Procedures which management officials of the agency will observe in exercising any authority"
 - "Appropriate arrangements for employees adversely affected by any authority"



4

MANAGEMENT RIGHTS: 5 U.S.C. § 7106(a)(1)


- The following are prohibited subjects of bargaining (substantively) under 5 U.S.C. § 7106(a)(1)
 - Mission
 - Budget
 - Organization
 - Number of Employees
 - Internal Security Practices



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MANAGEMENT RIGHTS: Mission


- The Agency's right to determine its mission includes the right to establish policies or procedures central to accomplishment, such as setting the hours during which it will be open to the public
- Associated cases:
 - *Social Security Administration (SSA)*, 86 FLRR 1-1709, 22 FLRA 868 (FLRA 1986)



6

MANAGEMENT RIGHTS: Budget


- The term "Budget" is not defined in the statute
- Does not necessarily mean that proposals cannot cost the government money
- Proposals do not infringe on an Agency's right, unless:
 - Proposal expressly prescribes programs/amounts; or,
 - Agency shows increase in cost is significant and is not offset by any benefits



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MANAGEMENT RIGHTS: Organization


- Encompasses the authority to determine how an Agency will structure itself to accomplish its mission and functions, to include:
 - Employee and supervisory structure
 - Geographical location of activities
 - Location of specific positions
- Associated cases:
 - *National Air Traffic Controllers Association and Federal Aviation Administration*, 58 FLRA 175
 - *NY Div of Military and Naval Affairs*, 56 FLRA 444
 - *SSA*, 58 FLRA 273



8

MANAGEMENT RIGHTS: Number of Employees


- The number of employees in § 7106(a) refers to the total number of employees in an Agency, including its personnel ceiling, and/or managerial determinations of how many positions are to be filled within the ceiling
 - This is distinguished from "numbers, types, etc." found in § 7106(b)(1), which is a permissive subject
- Associated cases:
 - *NFFE, Defense Mapping Agency*, 46 FLRA 28 (FLRA 1992)



9

MANAGEMENT RIGHTS: Internal Security Practices


- Includes the right to establish policies and practices designed to protect the Agency's personnel, physical property, or operations against internal and external risks
- Includes the right to implement an alcohol or drug-testing program
- Associated cases:
 - *Professional Airways Systems Specialists and Department of Transportation*, 53 FLRA 104 (FLRA 1998)

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MANAGEMENT RIGHTS: 5 U.S.C. § 7106(a)(2)


- Hire, assign, direct, layoff, and retain employees in the agency
- Suspend, remove, reduce-in-grade or pay
- Discipline
- Assign work
- Make decisions regarding contracting out
- Determine the personnel by which agency operations shall be conducted
- Make selections
- Take action during emergencies

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**MANAGEMENT RIGHTS:
Assign Work / Assign & Direct Employees**

- Includes the right to determine the particular duties to be assigned, when work assignments will occur, and to whom or what position the duties will be assigned
- Includes the right to establish qualifications and necessary skills
- Includes the right to determine the methods used to evaluate and supervise employees
- Associated cases:
 - 29 FLRA No. 43
 - 56 FLRA 1049
 - 16 FLRA No. 82
 - 59 FLRA 481
 - 62 FLRA 15

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MANAGEMENT RIGHTS: Layoff & Retain

- Includes right to conduct a reduction-in-force (RIF) and to exercise discretion as to which positions will be eliminated
- Associated cases:
 - 56 FLRA 660

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MANAGEMENT RIGHTS: Discipline

- Includes right to obtain and use evidence in support of disciplinary actions
- Discipline employees or terminate probationers
- Includes both performance and non-performance related conduct
- Includes choosing the penalty
- Proposals cannot restrict the use of previous offenses
- Associated cases:
 - 61 FLRA 341
 - 56 FLRA 549
 - 36 FLRA 28
 - 42 FLRA No. 68
 - 46 FLRA No. 143

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MANAGEMENT RIGHTS: Contracting Out

- Proposals seeking to establish a time when an Agency may contract out are non-negotiable
- OPM Circular A-76 is a non-negotiable, government-wide regulation making alleged violations not subject to the negotiated grievance procedure
- Associated cases:
 - 55 FLRA 1081
 - 110 S.C.T. 1623
 - 996 F.2d. 1246


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MANAGEMENT RIGHTS: Act In Emergencies

- Includes the right to independently assess whether an emergency exists and to decide what actions are needed to address the emergency
 - High bar
 - COVID?
- Associated cases:
 - 29 FLRA 1174
 - 73 FLRA 339


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MANAGEMENT RIGHTS: 'Fair & Equitable'

- Proposals containing such words as "fair" and "equitable" governing the exercise of a management right place a substantive limitation on the exercise of the right
- Associated cases:
 - National Treasury Employees Union and U.S. Department of the Treasury, Customs Service, Washington, D.C.*, 46 FLRA 696
 - AFGE Local 219 and U.S. Department of the Army, Joint Manufacturing and Technology Center, Rock Island, Illinois*, 72 FLRA No. 140


HOMEWORK!
Search all of your CBAs for these or similar terms!

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PERMISSIVE TOPICS: 5 U.S.C. § 7106(b)(1)


- Agencies **MAY** elect to negotiate:
 - The numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty
 - The technology, methods, and means of performing work
- Generally, you may lawfully refuse to negotiate the topics covered in 5 U.S.C. § 7106(b)(1), **BUT** remember Biden's Executive Order (EO) 14003
- Must negotiate concerning the Impact and Implementation (I&I) of the above topics

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IMPACT AND IMPLEMENTATION


- Upon request by the Union, management has a duty to bargain on the procedures it will follow in implementing its decision, as well as on the appropriate arrangements for employees expected to be adversely affected by the decision
- Management does not have to engage in impact bargaining over a matter that is already "covered by" the labor agreement
- Associated cases:
 - *AFGE and SSA*, 47 FLRA No. 96 (FLRA 1993)



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'I & I' PROCEDURES


- The term "Procedure" is not defined in the statute
- Union proposals concerning procedures which management will observe in exercising their rights under 5 U.S.C. § 7106(a) are negotiable
- A proposed procedure that *directly interferes* with a management right is not a procedure within the meaning of the statute
- Associated cases:
 - *AFGE, DoD, Defense Contract Audit Agency*, 57 FLRA No. 43, May 23, 2001



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'I & I' APPROPRIATE ARRANGEMENTS


- Proposals must mitigate the adverse affects from the exercise of a management right
- Must be tailored to benefit employees suffering from a *reasonably foreseeable* adverse affect
- May limit or infringe on a management right, but cannot *excessively interfere* with its exercise of that right
- Associated cases:
 - *AFGE v. Federal Labor Relations Authority*, 702 F.2d 1183 (D.C. Cir.), March 18, 1983
 - *Kansas Army National Guard (KANG)*, 21 FLRA 24



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NEGOTIABILITY


- Test a proposals negotiability by determining whether the proposal:
 - Is a condition of employment of bargaining unit employees
 - Is excluded from the definition of a condition of employment
 - Is consistent with federal laws, to include management rights, under 5 U.S.C. § 7106(a)
 - Is an exercise of management's rights, but negotiable as a "Procedure" or "Appropriate Arrangement"
 - Is consistent with applicable rules and regulations
 - Is a "Permissive" topic under 5 U.S.C. § 7106(b)(1)

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NEGOTIABILITY: Consistency


- Part of the negotiability test requires that the proposal be consistent with applicable rules and regulations. Rules and Regulations typically include:
 - Government-wide rules and regulations
 - Declarations of policy that are mandatory and binding
 - Those enacted through legislation and promulgated by the Office of Personnel Management (OPM), U.S. General Services Administration (GSA), Department of Labor (DOL), and Government Accountability Office (GAO)
- Subsequently issued government-wide regulations cannot affect the terms of a current agreement (*except under 5 U.S.C. § 2302*)
- A *compelling need* must exist for Agency rules and regulations
- Don't forget 5 U.S.C. § 7106(b)(2) and (3)!

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NEGOTIABILITY: What Prevails?

Which prevails? The CBA or...
Law/Statute
Executive Order
Government-wide (e.g., OPM) rule/regulation
Change to a government-wide rule/regulation
DoD Regulation
Component Regulation (e.g., Army)
Activity/Installation Regulation
Local Policy

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