

Labor Management Relations Transcript

Thank you very much. Welcome. Today we are going to be talking about labor and management relations.

I have to say I think we anticipated wrongly that people wouldn't be able to participate today because of the nasty weather that's happened on the east coast. Maybe you're shut-in in your homes and can't leave. You might as well use your time listening to that guy from O.P.M.

I also hope that maybe part of the reason why you are on the line you have questions. And I hope to do my best to answer some of the questions.

We also have Jim Keim on the phone with us, in the meeting with us. He is going to offer some more specific expertise in the area of USDA Rural Development Labor and Management Relations.

So with that being said, if you have a question, if you have a question pertaining to labor and management relations, E.R.L.R. questions, you can go at any time to the q and a button and type in a question and ask. Again, the training -- we only have approximately two hours. This training shouldn't last that long. But we have approximately two hours to teach you-all that you need to know about labor and management relations. That's just not enough time to make a real dent in that.

The rules are very generic. Again, if you are having an issue or there's something -- especially if you come today to this training that you really want to get a specific question answered, please, use the q and a functions. Just type it in. I'll do my best to pass that question on and have Jim answer it. So that you can get that question answered.

Just so you know, reiterate, that everyone gets credit for this training. About within three to four business days. Have some issues sometimes with getting attendance from the Verizon conference line people, but it's not a big deal. But it leads towards delay. Do not get frustrated with Allison. Allison is very efficient. The problems lie on the contractors working, which is me. So again you should get credit for the training within three to four business days.

If you click on the handout list which is, again, the top right part of your screen, the paper, there's two documents. One is a P.D.F. version. There's also a document to link to a video. It's about half an hour video that I cut out the useless part, but it's talking to a man who gave a talk to O.P.M. about what it's like to work on both sides of both the labor and management side of union relations.

It's really -- I found it interesting. We thought about sending it out as pre-work. It's a little dry. I think it's useful. You don't need to watch that now. Can you consume that at another time. I thought that we would start off this training with a happy message.

This is the last training that we have. There will be potentially other things that I'm working with Allison in rural development on, but I thought -- this is actually from yesterday, me and my son, sledding and I thought, actually what happened is I told him that rural development managers would only have to listen to me one more time. He was very happy for you. I do know he looks like the boy from "Christmas story." The big glasses. He was very excited for you-all. You don't need to listen to me anymore. And frankly there hasn't been much, I enjoyed answering the questions.

I want to start off this training -- this discussion with a hypothetical scenario that illustrates the reason why we are having this training. So let's say you are a supervisor and you have 12 direct reports and with this rural development upparticular in -- uptick in hiring, you're going to get four new employees. Of your 12 original employees, only two are bargaining unit employees, and none of the new employees are going to be bargaining union employees.

People are going to be moving their desks around and there's going to be new parking spaces. What is the first thing you need to do as you approach this -- as you approach -- when you're thinking about what am I going to do about the desk situation, the office space situation?

Just let that thought simmer for a little bit. The first thing you need to do is direct the union -- to let the union know, because there are representatives of your bargain unit employees, even if it's only two, let them know that the working conditions of those employees are about to change. And again this is something you let them know.

They will talk to you more as needed, but you have to let them know. Even about innocuous things like that. One of the things you're going to hear today -- really, it's been a theme this whole management, all these management seminars, is an effective use of your time to partner with both your employees and with the union to preemptively mitigate the problems that will otherwise come up. If you don't have an open attitude up front, you are likely to have problems on the back.

I was talking to Jim earlier, and he discussed that in many ways you as a manager, you end up with the union that you deserve. That happens to the just at the management level that you deserve, but really as an organization. When union representatives, leaders, are avoided, they are circumvented, eventually those same people -- they will gum up the works.

It's much more effective to do it on the front en, partner with them as opposed to circumventing them. If you want to mitigate the potential -- we'll say the gumming up of the works that unions can do. Now, in our efforts to give you the information -- this training is designed to give managers, especially new managers, the information that they need so that they can manage their folks well in a unionized environment. So in order to meet that goal, to give you some practical advice and principles, we are going to talk about bargain units, what they are.

We are going to talk about the right of management, employee, and the union. We are going to talk about the three most common areas where federal managers get tripped up. Not only just bring your awareness up of those, but what you need to do about them.

And then in that training we are able to -- unfair labor practices U.L.P., as always we'll have a very important 10 minutes for the blackberry breaks. Talk a little bit about bargaining units and what they are. What you have bargaining unit employees, in your team, those employees are represented by the union. The union has -- the term they use has exclusiveness recognition to be the representative of those employees. Whether you have one employee underneath in the bargaining unit or whether you have 12 employees. -- employees. It is the same. That bargain unit employee has the right to be represented by their union.

Now, many managers get very frustrated with that principle, and they get frustrated especially with union because a little bit they misunderstand a little bit where -- what unions are, where they come from. The unions actually have -- they compete with each other to represent the employees of your agency, and that whole process is navigated and monitored by the flra that's the unit that monitors federal unions.

That's the agency you need to know about when it comes to bargain unit employees. And the principle -- I think -- this is my experience working with managers, I think one of the common misperceptions is that these union leaders, some managers of these union leaders, they are just getting in the way and they are just making my life miserable. I would say in my experience -- I don't have a ton ever experience, but in my experience unionized -- union leaders are not usually not just trying to make the manager's life terrible. I think the key understanding -- you have to understand that unions are political institutions. That in order to become the union and then the union leader, both of those are floated upon. When people -- voted upon.

When people vote, they become constituency, and we are a democracy of political processes make people's behaviors sometimes different than they normally would. Ill he' give you an example. So my grandmother's brother and my grandmother's father were Senators. They were Senators of our country. And I'll tell you this about my family, they have -- they are not big hunters. Some may own guns. I don't know. Family reunions we don't go hunting. They in general avoid the guns.

I'm not meaning this to be a political discussion. But both my father-in-law and especially my great uncle, in order to be elected in the state where they were at, they had to join the N.R.A. and be tsh-take pictures of them holding guns and shooting guns. That was just part of the game that they had to play to get elected. If you're going to be an elected official of a group of people, you have to represent that constituency. And I think in a simpler way, much like a politician, posing for pictures with guns off times are unionized -- our union leaders are posing, because they want -- this isn't always the case.

They are oftentimes working because they are doing what he they think is right to represent the union employees. Sometimes some of the difficulties come when as a political institution sometimes the politics sometimes does run afoul of what a manager wants. When we recognize that the leaders are political leaders, it makes more sense -- tells us not to take it personally. And also realizing so when we circumvent union leaders -- imagine this scenario. You are the elected leader of a group of people and the manager circumvents you and tells your constituency what's going to happen.

Without the union knowing about it. That's to the voters, they look at the union leader, why didn't she or he find out about this before we did? They are clearly not doing their job. I'm going to vote for someone else. When we circumvent leaders, we are creating a breeding ground for more aggressive union people to get more of the way and demand more attention. It's just one of the many factors that we -- where we should be considering partnering with union leaders and not circumventing them. Also one of the common misperceptions of who is in the units, quickly, it's nonsupervisors, non-H.R. employees and nonconfidential employees.

It's articulated in the employee description and the flra, they are the authority on which position, which positions are considered unionized federal workers. So an important fact that you have to know is that just because an employee is part of the bargaining unit doesn't mean that they -- they don't have to pay dues. They can choose not to. But they still are represented in collective bargaining situations. They still are represented by unions. You don't have to pay dues to be represented by the union. Now, because it's a political organization, no doubt paying dues leads to your voice being heard within the organization.

But again paying your dues does not make you -- you are a bargaining unit because your F.L.R.A. is saying your position -- you're not being part of one of these groups, chances are you are a unionized employee. Now, how do you know if you were wondering, well, I don't know whether or not my employees are part of the union. You can check these documents, standard form 50-b, item 37. And then the official form, 8, it's actually O.P.M. description form. You look at item 24 where they have it marked. It's in the remark section where there will be some know tation about whether or not they are a bargaining unit employee or not.

So if you don't know about relative to your new manager, you are unsure, that's where you can go. Again, these employees have a right to be represented by the union in collective bargaining situations. And we'll talk more about that-tsh those aren't the only rights that are involved when we are talking about management, labor relations. In fact, there's three different pools we'll talk about relatively quickly. Management rights, employee rights, and union rights. One of the things you are going to notice is that they are all -- there are a lot more management rights than employee union rights. We are using the word rights, a lot of it is responsibilities.

You as management have a lot of responsibility. And it can be put into three different buckets. Managers have to make -- they have the right to make organizational decisions. Personnel decision, and work assignment decisions. Those are management rights. The buck stops with management. Now, what are some examples of organizational decisions? Management at the frontline level and at the supervisory and executive level, there's tsh-what's the mission structure of their agency at large? What's the structure of their organization? Unions can't force that. They decide what the budget is. They figure out what the numbers of employees they need to have. What sort of security practices -- what work can be contracted out? Again, those organizational decisions ride with management because management, they have been hired for those -- for that skill set.

That's why why the buck stops with management. That is not up to the union or employee. Also management makes personnel decisions. They hire people. They promote, they reward. Management ended behind the reduction in force, that's really an automated process, but in principle, mappers are behind that process. They also -- they assign and reassign duties. We talk a lot about that. And job enrichment and designing jobs so that people feel engaged. That's on managers' plate. And also discipline. Whether it's for conduct, managers discipline their people. It's not the union's job to do that or get involved in it. Jim, did I hear a noise from you? You want to say something? No.

You got it right on that. There are certain kinds of management rights that the union will have a right to bargain about. Primarily about the side effects, call it that. With respect to certain of them, there's just nothing -- nothing that a union will have a voice in.

So when we -- what you're going to find, I think where they get confused -- I think understandably so, the term the government uses, meet our management rights and the buck does stop with them. Like Jim said, it's -- unions are supposed to be made aware when these types of decisions affect the working conditions. A bargaining unit employee.

Especially you see, these work assignment decisions. Evaluating work, determining required personnel, emergency action. Really in the previous one, when new people are being brought onboard, there's a new process for promoting, that affects the working conditions. Bargain unit employees. And that needs to be brought to the table to be discussed with the union. Now, employees have a right -- rights, too. They have the right to form a union, to join a union. Employees can form a union and then union -- they compete with each other to represent those employees. There's actually multiple different federal unions that compete with each other to represent more or less of the federal work force. Even -- and then once they form the union, they can join that union and then an employee can even decide whether or not they want to assist a union.

Even if you're not part of the union, you can, without fear of reprisal, you have the right to assist the union to participate in that. You also have the right an employee, to be represented in a management investigation. We'll talk what that looks like. Also an employee can choose to do none of the above. An employee does not want to be part of the union, that is also their prerogative. But will also say an employee in the position that's a bargaining upet position, they will be represented by the union in a collective bargaining position, even if they choose not to pay dues. The union, the union has rights, to be the exclusive representative of employees.

Now, when it comes to the working conditions, you see that's identify talziesed here. Any time policies change, practices change, that affect the working conditions, a bargaining unit employees, then the union is supposed to act, supposed to get involved and represent their interest. And they also negotiate collective bargaining agreement that happens on a typical basis. But really the union could involve in the general collective bargaining agreement. That's brought up usually on an as needed basis. But then they also bring the -- the union pops up in management when there is a change of working conditions. Of unit employees.

Now, there are three very common labor management issues that you need to be made aware of. There's also a question there that I'm going to get to. What is the process to form a union? How many employees have to be involved to form a union? Brilliant question. Jim, do you have any specific answers to that? How that works?

It's usually referred to as an organizing campaign. And a representative of the union or employee who is interested in having a union goes around and usually gets the signatures of employees on a three by five or four by six card saying basically I want to be represented by such and such a union. They turn the cards in to the federal labor relations authority, along with a completed form which was referred to as a petition, it's an official publication of the flra.

You can find it on their website if you look. Which names the union, names the union's representative, names the agency and the agency's representative. And says who the union wants to represent. The F.L.R.A. then based on looking at the cards will decide whether or not it's worth the government's time to invest time and energy in holding an election or working on this petition. And they require that there be a showing of interest, they call it, from 30% of the employees in the unit. If so, then they will go ahead and either try to negotiate an agreement or he they will hold a hearing and perhaps direct that an election be held.

Jim, as a manager, what's a manager's role in that process? Just not be in the way? Not be antagonistic? What are the best practices? You're a manager who is in a situation where your employees previously worked and are trying to form a union, what would you say is best practice for that manager?

Best thing to do is keep your mouth shut when you are around people who could be bargaining employees. But to report to your supervisor and to the labor relations staff so they know what's going on.

Ok. Keep your mouth shut. I hope that answers -- great question. Any time someone has questions, please use the q and a box. I think that those are some of the most useful things that are going to be shared in trade's training.

Keep your mouth shut phrase a little bit, it's very easy for supervisors to get the agency in trouble. Possibly by the most innocent of statements from the supervisor's point of view. So you want to be advised before you say anything that has anything to do with the situation. That's the long way of saying it. Until you have gotten such advice, best to keep low.

Because a lot of -- what a supervisor says to an employee, is used almost like a verbal contract once it becomes expectations.

The implications can be taken as threatening, primarily. They could either be taken as threatening on the one hand or might be seen on the other hand as trying to eye o the employee not to be interested in a union.

In other words, this is time to shell of -- shelf my New England sarcasm. Because those things are up to interpretation and I might just be saying something fun, at least to me, but if someone could interpret them, as you say, threat. It's a time for clear, deliberate communication.

The best thing to do is let somebody hire up in the agency do communications in writing. And the other thing to say about this is, no matter who you talk to, it is not off the record. I have been in any number of situations where supervisors were in conversations where they wanted to talk to somebody, the family friend, Dutch uncle was the phrase to use one time, wrong one to use, they wanted to have a person-to-person, one-on-one conversation trying to get the employee ignore the fact that he they were in fact a supervisor. And therefore a spokesperson for the agency. That doesn't happen. Whoever you tell in one of these off-the-record conversations, no matter who said it's going to be kept quiet, it will get back to somebody.

Interesting. We have another question, Jim. Before I go on I want to get to that. Someone asked, once a union has been formed, is there a numeric level the number of members can drop to after which the union is no longer viable?

The answer to that is that if the union holds a certificate from the federal labor relations authority that it has been chosen by a majority of the employees in an election to be the employee's representative, the F.L.R.A. will presume that a majority of employees continuing to favor having that union unless there's another election or unless the union walks away and says we are not interested in representing these people anymore.

So, in other words, it's not about the number of members, per se, it's about -- in order to -- someone has to stop the relationship. Either the union has to go away or the employees in the agency have to vote to not be part of the union anymore as a group? And it has to be the whole group. It's not just something like 10 rural development employees in Kansas City. Depends what they are -- 10 of the employees say we don't want to be unionized anymore? They have to be of the same unit that the agency joined the union, that same unit has to unjoin?

There's no secession from the unit so long as employees are properly considered to be members of the unit. If their duties change, they might take a position that's outside the unit. But the positions that are in the unit stay in the unit, and the -- even though the occupants may come and go, and the union continues as the representative of employees until that official action is taken by the unit to walk away or for the employees to say we don't want them anymore, if this is the F.L.R.A. having the election, they run the election and the employees say no.

We had a situation in one of our states where we were down to one dues paying bargaining unit member in about 100 to 150 members in the bargaining unit. When that fellow retired, we went for a couple years dealing with an officer of the union who was a member of another agency. Until we finally got one or two dues paying members again of our agency. And now we deal with them since they volunteered to be officers, even though there's another 97 or 140, however many it is, employees who are not members of the union, and for all we know, don't have anything to do with it.

Interesting. There has to be prerogative taken to be removed from union rolls. Because the number goes down.

It's for employees who have to take that action. We who represent the agency may not do or say anything to encourage employees to do that. That would be an unfair labor practice.

You can't be actively trying to disengage the unit employees from the union. Interesting. Keep the questions coming. They are fantastic. The three most common -- I got bear traps on here. The common issues that managers get -- they get caught up in are implementing changes and conditions of employment, they are called I.N.I. issues. We'll get to them. Also having formal meetings with employees without union representation.

Talk about the consideration that managers need to have when they are having meetings and when does the union need to be there and when do they not need to be there? And also when a manager changes precedent. Change past practices. Union is supposed to be -- they at least need to be notified. They need to be involved in that process. Now, when it comes to issues of impact and implementation, all those rights that we just discussed, the management rights, as Jim said, those management rights are tempered by the responsibility that the union has to bargain hunt.

The impact and implementation of action management makes. And if there is greater than minimal impact on the bargaining unit employee, then that is something that the union is supposed to bargain for. Getting another question. I think what we'll do -- this is a really good question. I'll bring up that question in a few minutes. I'm not ignoring the question. We'll get to it soon. When it comes -- why does the union have this power to work or this right to bargain on issues of impact of limitation of management action. It's because the decision the manager makes affect the working conditions of unit employees.

Here's some very common actions that managers take that should be discussed. Looking at vacancy announcements, overtime assignment, changing work schedules, especially certain employees go to A.W.F., the adjusted work schedule, where some people aren't working on fries. I have seen that blow up in unionized environments for silly reasons. Promotion procedures. It's not necessarily about every time someone gets promoted, it's really the issues are when you implemented a procedure that has impact on people, you need to -- you need to have the right to bargain about those things. When the organization is reorganized where people are moved around after managers, they have different functions, those things are also-tsh need to be bargained with. -- are also -- need to be bargained with. Office moves and desks moving around.

That is something where you should let the union know. It's something that should be discussed. Oftentimes we'll also say that just because the union can doesn't mean he they always will, if you watch that video the lecturer talks about issues that are de minimus. And there are issues that even though the union can ask a question and demand open the bargaining agreement, they don't because for example moving someone's parking space is potentially considered not as worthwhile to really bargain over. But in different unionized environments, they will.

So it's all about -- sometimes the things that take more time are the agency where they have a more complex relationship with their unionized employees. Now, the key is at that agencies must give notice to the union when doing these things. So, again, any time management acts, greater than a minimal impact on employees' working conditions, the union will almost always request bargaining impact and implementation. Now, what are the key ingredients to having less problems related to impact implementation?

It's about you giving the union enough lead time. You have a timely announcement. And you handle employee inquiries in the same manner which Jim described dealing with a new union. You have to be measured and deliberate about your communication about I.N.I. stuff. If you tsh-you have to be very consistent and probably holding off on making official -- answering employees in an official way about things about office moves. It's good to wait until the official decision has been made. When it comes to lead time, the phrase that's used a manager, give reasonable lead time in order -- so that they can inform their folks underneath them.

And a lot of times, there is a required number of days in the bargained agreement. But if there is not, in general, there's still some guidance that, you know, it's two weeks for a minor problem. Just in general. But if you are doing something major like reorganizing your entire subagency or agency, then you should give more than two weeks lead time. There's always what is reasonable changes due to the types of change in working conditions that the bargaining unit employees are facing. Make sure -- a timely announcement. Wait until after bargaining before letting people know.

Very related to that, employees are always asking questions. They are curious. And it's important that we are deliberate and measured about these changes that affect working conditions. We make no verbal agreement, acommom dayeses, angment, anything the employee could conceive of happening, until that announcement has been made. Let the bargaining happen first before we open our mouths. These are really -- if we are not doing this is where managers get in trouble. Well-meaning managers were trying to reassure their employees and help them, and ended up fighting them because the union found out about it and ended up being a problem when they were just trying to help people.

I'm going to -- we are going to get to these questions and take a break. Jim, if you could help me answer these questions. Someone asked, new position descriptions are being used to advertise nonsupervisory jobs. Are the new position descriptions negotiable, or is it just I.N.I. situation negotiable?

This is probably a situation in which -- the position itself is not going to be negotiable, but the union has a right to bring up questions about its accuracy. They'll be in a position also to point out if there are impacts on other employees beyond those that we thought of. That's one of the best sources is they are going to tell you, have you thought about this?

So, in other words, the position description themselves are not negotiable. They are a management right. At the same time unions are some of your best resources in finalizing the documents because they are highly motivated to make sure that the duties in the descriptions reflect the work that's actually being done.

Right. We have another question. In reference to past practices, are managers obligated to hold to the practices that were allowed by former manager? So sounds like we have maybe a newer manager here and they are wondering if they have to continue doing all the things that the previous manager did no matter how effective those practices might be? Jim.

And the subject of past practices is a tortured one. In my experience people think things are past practices that are merely precedent or perhaps exceptions to what has been done in the past. The description of the slides of what -- one of the past practices is accurate, an expected way of responding to a particular kind of situation when that same exact situation arises, it has to have been repeated frequently. It has to have been done over a long period of time. It has to be recognized by both parties. And it can arise to the level of being a contractual obligation. Something very similar to it is the existence of working conditions. When there's no contract. When there's no union, there are working conditions and whatever has been the practice in the past is the working condition.

And before we change those, we are obligated to bargaining when a union comes into the scene. It's very hard to give a firm answer because the closer the practice is to the exercise of a management right, the more right an arbitrator is going to give to the agency to make that change. The farther it is from that into the realm of say strictly employee benefits without any obligation and impact on the way the agency does business, the more an arbitrator or the federal labor relations authority will regard it as not something which is binding on the agency. -- something which is binding on the agency.

I finally in your description of it, I see like a potential hot button topic is telework. Because it's perceived as a benefit, but it's also something done for business reasons. Let's say hypothetical you are a new manager, you take over a team, and you take over a team where everyone teleworks all of the time, even though you all share a centralized location in Kansas City, Missouri. What happens when you're the new manager, comes in, and you're finding that your team isn't potentially as effective as it could be and you want to reduce people's telework for business reasons, but new people have been teleworking for years under a previous manager. Would that be considered a changed past practice?

That would certainly be considered a change in working conditions. It is going to be something about which we would be obligated to give the union notice of our intent and to discuss how we are going to make those decisions. Because there will be questions that may involve competing employee claims. We don't want everybody teleworking on the same day because we want office coverage. We may require that Johnny come into the office while Susie telework. Where Johnny wants to telework in addition to Susie. That's going to be one of the questions as to how do you decide who is going to and when.

We'll get more into that when we get to past practices. Another question, are you talking about disciplinary meetings or regular agency meetings? How do you handle disasters and emergency operations? Do you ask the employees to step aside if they don't agree?

Emergencies are emergencies. When there is a genuine emergency that threatens the operation of the agency, then the agency acts and we talk about it with the union later. The other question was about disciplinary, and I'm not sure what they had in mind or what you were talking about when they composed --

My question is that this employee, on the screen, we'll talk about employee meetings. I think we'll get there. Maybe we'll -- I'll leave that. Come back to it.

Let me cover a distinction here. It's important to get from the outset. The difference between the winegarten situation which has to do with investigative meetings, and a meeting which is ministerial in nature. That is which the supervisor is meeting with an employee to announce to that individual employee a decision that has already been made. There is no union right to be present at such a meeting. Union right to be present is only there when the employee invokes it during the investigatory stage.

Ok. Then the last question, we'll take a break. We have a few more questions. We'll take a break after these questions. These are really useful. Jim, I appreciate -- I'm so glad you are answering this question. After taking a position there was a change in the job description that added managerial duties. Is this allowable?

Short answer is yes. But it is something of which the union should be given notice in advance.

Talk about change in working condition. If you had to take my training because of a surprise change in your duties that should be negotiable? Someone asked, so getting back to the previous question regarding P.D.'s, what the union does point out inaccuracy of the generic position description to the work being performed and variances between the rural development and the generic description and the existing P.D.'s of an employee already hired under a different P.D. How does a union's take handle this when we are required to use these generic P.D.'s?

You get direction from hire up in rural development supervision. You don't make that decision on your own. You let somebody else take the heat.

Right. I hope that person got that message. It's tough for managers to hear because they want the buck to stop at them. They want to be doing the work. They don't want to pass the buck. I think that's a wise answer. It's 2:55 eastern time. We're going to take our 10-minute break. We'll come back and direct this training. We had some great questions. This is going extremely well. But there isn't that much more content. Just, please, continue to ask your questions. And we will come back again in about 10 minutes. At 3:05 p.m. eastern time. Talk to you after the break.

All right. Welcome back. We're going to talk about employee meetings and which are the meetings that employees have a right of union representation at and what are the meetings that do not need representation. Hopefully, we will be able to answer any questions, and I also wanted to again say these questions so far have been fantastic and have led to, I think, a much more robust conversation and a better training than what would have happened if I had just talked. Yes, I had to take out some of the things that I was going to say, but I think this is actually better. So just keep them coming. If you have questions on how to do with specifically if you are a unionized employee, keep them coming.

The union has the responsibility to attend certain meetings and represent the employee there, so when you are having formal meetings, slow down, make sure -- we will talk about what those formal meetings are, and there are investigative meetings. Again, make sure again if the employee says they want -- can they have some union representation, then they get it. Other meetings -- we'll talk about this third pile. A lot of the coaching that you do, and a lot of that is not formal or investigative at all. So what is a formal meeting? Formal meeting is between one or more representatives -- in some ways, the definition is a little circular.

It's formal when you have a formal discussion between you and the bargaining unit, but typical topics include personnel policy or practice, and especially if it is changing, some shift in the general employment conditions. Let's say an employee has a grievance, either probably for the most common reasons have formal meetings between management and the union. A lot of them even go above management. How do you know that the meeting you are in is a formal meeting? If it needs to be scheduled in advance, there is a definite agenda, it's attended by several people on either side, attendance is mandatory and minutes are kept -- these are all indications that the meeting you are attending is a formal meeting and you want to make sure that you have union representation there, or there are going to be serious problems.

Again, at these meetings, the union has a specific role. Just because they are invited does not mean that they get to run the meeting. They have the opportunity to speak or to make comments, but they have no right to take charge of the meeting or to village really -- you know, to be there and get in the way of the meeting being executed. They do not have the right to take charge, and they have to follow rules of reasonableness. There are questions about unions, can they swear at me and all sorts of -- we will call them for stories -- horror stories.

A lot of agencies, that type of interaction is not that uncommon. Just because someone uses profanity does not necessarily mean they are out of -- they are breach. Someone told me that the union swearing can be considered part of reasonable discussion, which made me chuckle. Is that true?

Yes. If you think about your stereotypical negotiations in the private sector between unions and management, you would think that often people get angry and pound their fists, get ready in the face and use words that are not used in polite company, and that is all considered legitimate within the scope of collective bargaining, yes. When the employee or nonemployee is acting as a representative of the union.

Are just -- there were some managers who were taken aback by that kind of behavior and were convinced that that would violate the reasonableness and orderly procedures. As long as they have not taken over charge of the meeting, the meeting was still going forward, using profanity is not a game under -- under.

At that point, you can present them with the choice of do you want to go on like this or act reasonable? If you want to go on like this, then I'm not going to be here anymore.

That's right. That is also a very, very useful thing to have in your back pocket, that phrase and be comfortable using it. Weingarten meetings are meetings where a managers trying to find out more information about an employee that could potentially affect -- could negatively impact their standing in the organization. So, for example, let say the situation where these factors all lead up to an employee asking for union representation. All of these things have to be in place for this to be a Weingarten meeting. What I mean by that is before any employee asks for union representation during a meeting, then it's to be an examination going on that is connected to an investigation.

You have the employee in a room, they are asking the question, and it pertains to an investigation, and that investigation has to be of a unit employee, and it has to be made by a union representative, like a manager, and if the employee thinks that this investigation may lead to discipline , the employee can request union representation. To me, in my mind, if it is similar to the idea -- Jim, you can correct me -- it kind of reminds me of the principle that we have the right not to self-incriminate, and the union acts as one body. If the union speaks , and they think it may lead to discipline of that person or themselves, they can ask for union representation to help them say what they need to say.

That is the principle in place. Oftentimes supervisors are not obligated -- they are not obligated to tell employees on the front end that they have Weingarten rights, and they can ask for union representation. This is not a violation on the run to end. Justice to -- just know that as soon as the employee requests representation, you have three choices -- at that point, you can grant the request and delay the meeting until a union rep can come. You can discontinue the meeting. Or you can give the employee options, kind of similar to what Jim just shared.

Say that we can either stop the meeting entirely, discontinue it, or we can continue it, but we will have to continue it later. What do you want to do? Or we could just continue moving on. Even as a manager, you can let them know. You can say to them that we can either continue the meeting as is, or you can decide to discontinue it. That is OK to give that choice. Again, when the employee asks for representation, as a manager, you still have a choice at that point.

Again, even when there is union representation in the room , much like in formal meetings, the union representation has a distinct role. I would call it a more limited role than with informal meetings. They may not disrupt the meeting. They cannot answer questions for or on behalf of the employee, and they cannot compel the employee, but they can confer with the employee regarding how to answer a question just right. They can help with words to answers, and they can also ask questions of the supervisor and make observations. Jim, where you going to say something?

I was going to mention the reasonable leaf of the employee that it might lead to discipline -- the believe has to be reasonable. If there is no basis for the employee to fear, then the employee does not have the right to have union representation present. The supervisor can say, "I'll give it to you in writing -- whatever you say, nothing will be held against you. It cannot result in your discipline." In that case, the employee does not have a Weingarten right.

The second thing to say is if one employee is being interviewed and has Weingarten rights, if the employee reasonably believes that he or she might be disciplined, but if he or she asked that another employee might be disciplined, that does not give that employee the right to have the union present.

I misread the statute there. So if I misled anyone, the key is it does not act as a single body. As a union employee, you can only ask for Weingarten representation when it affects you personally.

That's correct.

Not if there is another member of the union who might be negatively impacted in your part of the investigation.

That's correct.

That's good to know. I misspoke there for sure. There are many meetings that do not require union attendance. It is not an exhaustive list. Just in case you are coming out of the previous, our unions supposed to be at all of my meetings? Managers can have counseling sessions with employees where they talk about performance. The things we talked about in previous sessions, the union does not have to be at every counseling session you have with employees. You can give people their performance appraisal results or discuss their performance appraisals, and again, the union does not have to be present at that discussion.

You can have general staff meetings where the union is not there, and the key is you cannot be at that staff meeting implementing things that change the working conditions for others. You either have to involve the union that have meeting, but again, when you are having a meeting and it is -- you know, sometimes people get hung up. People feel like they are formal meetings because of the way we use the word, but these meetings do not require union attendance. Let's say an employee just dropped by to ask about work. The majority of our meetings with managers are informal like that. Of course the union employee does not have to be there.

If an employee has questions about their health insurance or their enteral version of their 401(k) -- again, for better or for worse, you know, just getting the information from their manager, even if it affects them negatively to find out the truth, their supervisor does not have to call the union to be involved in that discussion. Also, as Jim brought up earlier, the managers doing -- if what the managers doing is giving a reply to a proposed or formal action, the union does not have to be there. If they're just having a meeting to convey a decision that has already been reached, the union does not have to be there if that meeting is just to convey a decision that has already been made. Whenever I hear you, I feel like I have spoken a myth. Is there something you want to add to that?

That was just my whiskers brushing against the telephone. I would go back to general staff meetings and meeting to convey decisions already reached her basically the same thing. If the staff meeting is something in which there may be any give-and-take, any "what do you guys think of this," you'd better have a union representative present.

OK, in other words, if you in your biweekly staff meeting, you as a manager are thinking about your not so sure the telework policy is working and you want to do something, and you're not sure if employees like the Tello policy, even if you want to change it for the better, I think that is one of the cases at least in my experience where managers get caught. They think they are doing something employees will universally approve up and that the union will like because the employees universally approve, but it is still the change in working conditions , and the union needs to be involved with that on the front end before letting people know about it.

Exactly.

I think it is something worth I have seen managers who I think are great managers, get their hands up -- not get their hands up, but they ended up having more contention with the union that they should have because they really were trying to promote partnership and work with their employees , and instead, there ended up being a problem working with an agency who wanted to make sure all of the employees knew about their telework policy and that they wanted to make sure all of their employees not just knew about it but that the managers were implementing it but that they used special practices to make sure that their employees felt engaged and involved, even with the new virtual work environment, and everybody was involved except for the union in a very formal way.

There were unionized employees that were involved. The union was not involved. I as an outside contractor just assumed they had already dotted those Is and crossed those Ts. The union says you're talking about something that will potentially impact our oaks, and we were not involved, so we need you to discuss this with us before moving further, and we had to put the whole project on hold, even though it is something that every employee wanted. We had to put the whole project on hold to make sure that all parties understood we were not going to be changing any best practices in any sort of way, that the training I was giving was just going to be reporting on what that agency was doing. Essentially publicizing their past practices.

Anyway, it is to me an example of even well-intentioned efforts -- I mean, the key is when we circumvent -- even mistakenly when we circumvent the union, we cause problems because again, the union does not to find out -- union leaders don't want to find out about a change from their union folks. They want to find out from you, the managers. The converse is also true, just so you know. Just if you are part of a unionized group does not mean that managers should only rely on their union to get out information. They should still send messages down their management chain. So past practices, we tackled it a little bit already. Past practices are a historical response to a certain work situation. Often, it can be an unwritten rule based on a standard pattern .

So, for a past practice to be binding, there needs to be -- it needs to clearly relate to a condition of employment. He needs to be clear, but it needs to be consistently followed. There cannot be a haphazard application. It needs to be a solid, consistent principle even if it is not in writing, and it needs to be consistent with rules. It cannot be an illegal best practice. That can be changed at any time. Also, they should have been followed for a reasonable time without being challenged by anyone. If you can check off all these boxes, you have a past practice on your hands.

One of the things I would say is that let's say you have -- let's go back to the situation I brought up before where you are taking over a team, and you don't like the telework practices. One of the things to make sure is to check and see that the practice is -- if you really want to change it, even though they've had the same telework policy for a few years, make sure that a lot of times some groups that have been teleworking for a long time are operating under old understandings of the agency regulations, and if you want to change it, that would be your window.

I will say this -- I still -- even if I was going to change it, I still would -- I would be hard-pressed to find a situation where I did not want to let the union no. Even if the old policy is in violation of regulations, I still want to let them know because I want to let them know I am a partner with them. I don't want to get their hackles up so that we have extra misunderstandings in the future. All right, when it comes to grievances, I'm going to hit this relatively quickly, but in any case, employees, unions, and agencies, you can file grievances with the collective bargaining agreement has been violated or when any sort of rule or regulations lead to working conditions also being violated.

It's not just unions that can file grievances, but also agencies can as well. But certain subjects cannot be grieved. Let's say there is an issue someone has violated. As a manager, you take action. The employee cannot grieve that decision. They cannot grieve life insurance, health insurance decisions. That is not within your purview. Any sort of certifications or appointment -- I will say when there is a process that leads into promotion, if there is a process that can be identified in the process can be grieved, but any individual appointment at his outside of grievances, and then, if the classification work is done where the description did not result in a reduction of their grade level, that cannot be grieved. We got a new question. Someone asked if a job advertised advising telework is available and the employee accepts the position and starts, and the manager advises telework is not available until after one year, is that allowable?

It will depend on the agency's practices and policies and the collective bargaining agreement.

In other words, it is something you will need to further investigate. In general, it boils down to is that requirement something that is in the agency policy, or is that something that the manager request? A lot of agencies do have a policy that requires new employees to wait for one year. In some cases, that is part of an agency's new policy that was set up in the last ten or fifteen years. There's a lot more focus on telework, utilizing it. So here is the potential process for unfair labor practices. A ULP allegation is more serious than a grievance. It can lead to action being taken by the FLRA, the agency in charge of federal unions. Let's say the employee charges and agency with a ULP FLRA, the agency in charge of federal unions. and the agency actually investigates the charge. Considerations are made in some ways to keep it from going to court. These considerations made to resolve the issue that is mutually agreed upon. If those charges are not resolved -- resolved, then the charges are then given to the FLRA and they investigate. That can lead to a hearing with an administrative law judge, but that is not automatic.

The FLRA can also -- can be an intermediate stage where there is various solutions that can be brought up. You know, there can be mutual agreement. The FLRA can decide that the charges are not worth pursuing. There are options.

Then again, if the FLRA decision can be appealed to the U.S. Court of Appeals, so if the bargain unit employee -- the unit -- they don't like -- they disagree with the decision made by the administrative law judge, then they can take that decision and appeal it. Anyway, you can see that this process can escalate. It can take a wild. In order to mitigate your risk with these types of situations, the key is partnering on the front end on the smaller stuff that everyone is going to be in favor of, and that enables you to develop a relationship of trust so that when there is another issue where a potential ULP could be raised and really -- if you have a relationship of trust, you are likely to mitigate the risk of losing time . The agencies also can file ULPs against unions as well.

But the people -- the tables can be turned if you have a union who is violating the title VII , which is the statute that guides work with agencies. You also can file a ULP. I'm going to open this up for questions. Remember that unions are political organizations. In general almost universally, they want the agency to succeed. It's very rare for a union to act with attempt to harm the agency. It's very, very rare. They want the agency to succeed because it's good for their union and good for their employees. When in doubt, err on the side of including the union and covering with them as opposed to circumventing them, getting around them, avoiding them. I'm not talking about letting them know about everything that you do. That's ridiculous.

But if you are not sure, I think in general -- you can always reach out and contact him, but in general, in the moment, including them, I would err on the side of being transparent as opposed to being cagey, and just be on the lookout , supervisors not informing the union about changing the employee working conditions, they mistakenly do not involve the union informal meetings as they should, especially were working conditions are being discussed, and also, a manager changes best practices without realizing they're supposed to be part of the bargaining process.

Anyway, I feel that we have learned a lot. Jim is going to stay on the line, but we are going to open up the phone line. You can either text questions to the Q&A or ask them out loud if you so choose. Kristol, can you take everyone off mute so we can have our Q&A.

Absolutely. All lines are now open. And interactive. Thank you.

Are there any questions? Well, people are typing, but no one is yet asking questions. I will take the pregnant pause as meaning there are no questions. If I do not get to talk to you again, it has been my pleasure getting to know your agency, and answer questions to the best of my ability. It will take three to four business days to process to give you credit for the training. Thank you again, Jim. Thank you so much for helping us out today.

My pleasure.

All right. Thank you so much. Have a great day.

Thank you. That concludes today's conference. Thank you for your participation. You may disconnect at this time.