

Unfair Labor Practices

By Charlie Estudillo and Michele Nicholas

Introduction

What Is an Unfair Labor Practice?

An Unfair Labor Practice (ULP) is a violation of the union-management relationship as described in 5 U.S.C. 71 (“the statute”). The types of violations that are considered a ULP are specified in 5 U.S.C. 7116. The Federal Labor Relations Authority (FLRA) is the federal agency with responsibility of enforcing the statute to make sure both sides “play by the rules”. Most ULP’s are committed by the agency against the union, but the union can also commit a ULP. This section will mainly address ULP’s filed by the union against the agency. When a violation has been committed, the union files a “Charge Against An Agency” (hereinafter referred to as the “Charge”) on FLRA Form 22 with the regional office of the FLRA. The term ULP can be a little confusing to new representatives: both the violation itself and the “Charge Against an Agency” filed against management are referred to as “ULPs.

Although there may be a tendency for union representatives and employees to refer to injustices in the workplace as unfair labor practices, only the eight types of violations listed under 5 U.S.C. 7116 are Unfair Labor Practices in terms of the statute and this training. Other types of unfair treatment by management in the work place may be grievances, EEO complaints, or other violations.

How is a ULP Different from a Grievance?

A ULP is a violation of a specific section of the statute. Generally, a grievance is filed on a violation of the contract; however a grievance may be filed on any matter except those exclusions cited in Article 24 Section 2D. To confuse things a little, all laws (such as 5 U.S.C. 71), and government-wide rules and regulations are incorporated into the contract. Therefore a grievance can properly be filed when management commits a ULP. Pursuant to 5 U.S.C. 7116 (d), a matter may be raised either under the grievance procedure or under the ULP procedure, *but not under both*. The dilemma union representatives will face is whether to file a ULP or to file a grievance on an incident or event that could be a ULP.

Whichever procedure or forum you file in first is the forum you are limited to. If a grievance is filed, the matter will be decided in arbitration which will cost the union money. In order to be able to make sound decisions and use the ULP process successfully, union representatives need to know something about the applicable case law, how the FLRA works, and how these matters are dealt with in their Local.

Each forum (arbitration or ULP) has its advantages and disadvantages. It will be your responsibility to choose the forum that will achieve the most favorable result given all the factors involved: cost, elapse of time, control over the time the matter is moved to hearing, effect of having the FLRA attorneys come into the office, union time and effort expended in the investigation and hearing, and other factors. Below are some factors to consider in deciding to file a grievance or a ULP:

Advantages of the ULP Process

1. It is cost-free. The union does not have to pay half of an arbitrator's fees and per diem.
2. Once you know something about identifying a good ULP, set up your ULP methodically (such as a refusal to negotiate), know a little FLRA case law, and understand how the system works, you can be very successful at filing ULP's and can win a lot of them, making you an effective union rep.
3. Once the Charge is filed, union time and energy expended is minimal. The union does the initial investigation and fact-finding prior to filing the Charge and the FLRA takes it from there. The union will still have to make an affidavit and work with the witnesses to prepare their statements, and there are ongoing discussions with the FLRA agent, settlement discussions and trial preparation, but overall, the FLRA does most of the work for the union in the ULP process.
4. The FLRA is already familiar with the Statute and the identification of ULP's in the federal sector. Most arbitrators are far more familiar with the private sector, are oriented toward interpreting contracts, and may be hesitant to rule on matters of statute governed by another federal agency like the FLRA.
5. An FLRA attorney investigates the ULP, comes into the office, cannot be interfered with by management in the conduct of the investigation, has authority to obtain evidence, question employees and obtain statements. Most managers really hate having the FLRA (or any outsider for that matter) in their office investigating a violation they committed. The investigation begins only after the FLRA has determined that there is a *prima facie* case that a ULP has occurred.
6. If the ULP goes to hearing, management has to sit on the witness stand and endure the questioning of a trained attorney: this is the FLRA's turf. Management can't be evasive or use the influence of their position to fake their way through the hearing. Many management witnesses have been known to lie on the witness stand. Management witnesses who lie in a ULP hearing are sometimes cut to ribbons by the attorneys or the ALJ. This is not only fun to watch, but it can have an enduring effect on the continuing union-management relationship: many managers don't want to go through that again and will become more reasonable. Others, however, will never learn.
7. The FLRA agent, whose duty is to enforce the statute, can be a welcome addition to the union's arsenal of means to enforce union and employee rights. Many managers do not respect the union representatives, see them as subordinates, and try to obstruct, delay, interfere with, and intimidate them in the conduct of union business. Most managers know not to try these tactics with FLRA agents.
8. The union can take up to 6 months to file the Charge (more on this will be explained later). The union only has 25 working days from an event or occurrence to file a grievance under Article 24 Section 10.

9. If a hearing is held and the agency found guilty of committing a ULP or if a complaint is filed and the parties settle, a posting entitled "Notice To All Employees" can be required in all affected offices for 60 days. These postings can be a great publicity for the union.

Disadvantages to the ULP Process

1. The FLRA is generally very conservative. They interpret the statute much more narrowly than the union. Many violations that we believe are ULP's are withdrawn or dismissed because the FLRA does not see the violation or finds ways not to cite the agency with a complaint.
2. It can take up to two years to get a case to hearing and there is no way that the union can speed up the process.
3. To be successful, the union has to really understand FLRA case law and applicable doctrines like "covered by contract" and be able to distinguish a good grievance from a good ULP. If a Charge is not really on the mark, the FLRA will ask if you want to withdraw or will dismiss. A grievance on the same issue may be successful because arbitrators tend to have a broader view, take more factors into consideration than just the narrow ULP, and may rule on other contract issues that the FLRA will not consider.
4. The FLRA may invoke "prosecutorial discretion," and even though you may have filed a good ULP that is indeed a violation of statute, the FLRA may decide that it is too much trouble to pursue the matter and take it to hearing. An arbitrator will almost never refuse to hear the case in arbitration.

Advantages of Using the Grievance/Arbitration Procedure

1. The union has more control over the process. Filing an unfair labor practice resembles calling the police to report a crime: We turn investigation and enforcement over to a third party, the FLRA. The grievance and arbitration process is more like filing a private lawsuit: We get the chance to argue and prove our case before the arbitrator.
2. The union has more control over the time. If the union acts promptly, we can get relief sooner by pushing timeframes and moving the case to arbitration quickly: if the union has the time, money, and available litigators. However, if the union and agency reach a suitable settlement early on, the ULP process may take less time than arbitration.
3. Arbitrators tend to let in more evidence and generally do not restrict the scope of the hearing as much as the ALJ will. The FLRA is looking at whether the statute was violated. Arbitrators, who tend to think more in terms of equity, look at whether the rights of employees and the union were violated. They look at the human issues involved than just whether the law was violated.

Management's Most Common ULP's

ULP's the Union Usually Wins

1. **Interference with, Restraint, or Coercion of any Employee in the Exercise of rights Under the Statute (5 U.S.C. 7116 (a) (1))** An agency interferes with the rights of federal employees to form, join, or assist a labor organization, or to bargain collectively constitutes a violation of this subsection. Examples include
 - statements by management that are critical of the union,
 - threatening employees with reprisal if they exercise their rights under statute,
 - making threatening statements to employees to discourage the filing of a representation petition,
 - conveying the impression that employees' conduct will be closely monitored as a result of filing a ULP, and
 - making threats or implied threats against union representatives for aiding employees in the filing and pursuit of grievances.

All ULP's filed by the union will include this Charge, referred to as an "(a)(1)" charge.

2. **Refusal to Bargain (5 U.S.C. 7116 (a)(1) and (5))** Management
 - refuses to negotiate with the union when there is an impact on employees that is more than *de minimis*,
 - implements their proposal prior to the conclusion of bargaining, or
 - wrongly declares a union proposal to be non-negotiable.
3. **Bypassing the Union (5 U.S.C. 7116 (a)(1) and (5))** Management bypasses the union and directly notifies employees of changes in working conditions.
4. **Refusal to Provide Data (5 U.S.C. 7116 (a)(1), (5), and (8))** Under 5 U.S.C. 7114 (b)(4), the agency is required to provide data requested by the union which is normally maintained by the agency in the regular course of business, is reasonably available and necessary for a grievance, possible ULP, or other legitimate representational matter. Failure to provide this data is a ULP. (Refer to the section entitled "Requests for Information: Particularized Need" for a complete discussion of the requirements and restrictions union representatives face when requesting information.)
5. **Failing or Refusing to Cooperate in Impasse Procedures and Impasse Decisions (5 U.S.C. 7116 (a) (1) and (6))**: Management refuses to participate in impasse procedures or refuses to comply with a final order of the Impasses Panel.

6. **Failure to Afford the Union an Opportunity to be Present at a Formal Discussion (5 U.S.C. 7116. (a)(1) and (8))** Management holds a formal discussion pursuant to 5 U.S.C. 7114 (a)(2)(A) without giving the union reasonable advanced notice and an opportunity to be present. This training book has a whole section on formal discussions.
7. **Failure to Afford the Union an Opportunity to be Present at a Weingarten Interview (5 U.S.C. 7116. (a)(1) and (8))** In any examination in connection with an investigation, a management official (including any agent of the OIG) questions an employee who reasonably believes that disciplinary action may result; the employee requests and is denied union representation. For management or the OIG to order the employee to answer questions without the presence of the requested union representative is a ULP. See the training book section entitled “The Weingarten Right.”

ULP's Less Frequently Won by the Union

1. To Encourage or Discourage Membership in any Labor Organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment (5 U.S.C. 7116. (a)(1) and (2)). These are examples:
 - A union representative is repeatedly passed over for promotions,
 - A union rep is reprimanded, suspended, or written up for a performance issue, or
 - Union members are measurably treated worse than non-members.

This is a tough one to win. To sustain a ULP, the FLRA is looking for something overt and a time nexus, i.e., the incident occurring immediately after or during an event on official time. They look for situations such as the union representative getting suspended the day after filing a grievance or management threatening the union representative during negotiations. This does happen, but usually in a more subtle way. This Charge will be difficult to sustain if the union rep is suspended after having engaged in questionable conduct and without notable union activity (such as the filing of a grievance or ULP) within a day or so. Unless you have a strong case with a direct nexus to union activity, you are probably better off filing a grievance and arguing the matter under the contract and raising the union animus/reprisal issues. The FLRA will only look at whether, in a ULP hearing, they can prove management’s action was due to union activity. If the issue is muddy or other factors are involved, file a grievance. This is a good Charge if the set of facts fits the case law. Consult with your Local officers before filing a grievance or ULP.
2. To discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter 5 U.S.C. 7116 (a)(1) and (4). An employee who testifies in an arbitration hearing or at a ULP hearing or who files a grievance, statement, petition, or affidavit is subsequently is disciplined, reassigned to an undesirable work project or detail, or otherwise punished for exercising the listed protected rights. As in the (a)(2) Charge above, you will need a timing nexus to prevail. If an employee gets suspended a month after

filing a grievance or testifying at an arbitration, you will probably have the best chance of winning by filing a grievance, even if you know the punishment is the result of the employee's engaging in protected activity.

The ULP Process

Setting Up the ULP

Some ULP's are blatant, and all the union representative has to do to have a good chance of winning is to file the Charge. Other ULP's should be set up and developed prior to the filing of the Charge. A denied data request is a good example of a ULP that should be set up properly. Make sure you satisfy the requirement that the union properly explain the particularized need for the data before filing the Charge, even if you have to go back and forth a couple of times before filing. Some potential ULP's may require the requesting of data before the Charge is filed. Make sure you are on solid ground and that the data supports the premise of the Charge. Do all your preparation work and get your data before filing the Charge: once the ULP is filed, the agency will no longer give the union data. When you file the ULP, you want to have it all nicely packaged, have your theory of the case, and make it easy for the FLRA to take it to Complaint.

Deciding Who to File the Charge Against

Decide who you want to file the ULP against—the manager, the Area Director, or the Regional Commissioner—and name the individual on Form FLRA 22 in box #1. This does not have to be the same management official who actually committed the violation. Who you file the ULP against depends on your strategy. You may want to file the ULP directly against a reasonable-seeming new manager as a way of encouraging a correction in his or her behavior. However, if you believe a new manager will want to fight it out over a long period, maybe you should file the ULP against his or her superior. Do you continually have problems with a certain Area? You may want to dramatize the poor relationship by filing ULP against the Area Director rather than against individual managers. You decide the party to file the Charge against, depending on the history of labor conflict, the responsiveness of management at the different levels, and your strateg—which may change if you find the need to file subsequent ULP's.

When Do you File the Charge?

The FLRA will consider a ULP timely if it is filed within 6 months of the violation, according to 5 U.S.C. 7118(a)(4). If the union finds out after 6 months that a ULP was committed and can show that it did not know and had no ability to know about the violation, the ULP can be filed any time. A ULP is best served fresh, hot, and on the heels of the violation. Do not hurry the filing of the ULP at the expense of missing needed data or setting up the Charge properly, but do not wait until the violation is stale. Waiting too long causes employees to give up hope that the union will come to the rescue. They lose confidence in the union. Filing soon after the violation shows management that the union is not sitting on its rights and causes them to have to answer to the FLRA sooner rather than later after the commission of the ULP.

What to Write on the Charge

Keep your statement brief, crisp, factual, devoid of rhetoric and opinion, and to the point. State the essence of the violation, the name, address, and phone number of the offending management official, and the name, address, and phone number of the union representative who was involved in the charge. Example: “On or about (date), management (name, address, phone number of the agency official causing the violation), failed to give advance notice to the exclusive representative (AFGE representative name, address, phone number) of proposed changes in conditions of employment regarding the establishment of a disability unit. On or about (date), the union requested to negotiate on the proposed change. Management refused to negotiate, unilaterally implementing the change.”

Although it may feel good to write a narrative slamming management, to win the ULP you will have to prove what you say in the Charge. Put on the Charge only what you can prove, no more. Another reason for brevity is that management gets a copy of the ULP and any attachments to the original filing: they know only what is on the face of the Charge if that is all you write. They have to figure the rest out at the hearing if the ULP goes to Complaint. If you put all your facts and opinion on the Charge, management knows your whole case up front, and can prepare a defense. Keep them ignorant and provide the information to the FLRA, the party you are trying to persuade.

Pursuant to 5 C.F.R. Part 2423.4, in summary, a ULP must be filed on the form prescribed by the Authority (FLRA Form 22) and shall contain the following:

1. The name, address and telephone number of the person(s) making the charge;
2. The name address and telephone number of the activity, agency, or labor organization against whom the charge is filed;
3. A clear and concise statement of the facts constituting the alleged unfair labor practice, the section(s) of 5 U.S.C. 71 alleged to have been violated, and the date and place of occurrence of the ULP; and
4. Whether or not the matter has been previously raised under another forum such as the grievance procedure, the FSIP, FMCS, EEOC, or MSPB.
5. The charge shall be in writing and signed, containing a statement that under penalties of the Criminal Code, that its contents are true and correct to the best of your knowledge and belief.

Where to File the ULP and What to Include with the Charge

File the ULP with the Regional office of the FLRA serving your geographic area. Send the original signature copy along with four copies to the FLRA, and send copies to the party listed on the face of the Charge, as well as any other parties you want to serve copies to (Local President, RVP, Executive Board, Local union rep, Regional Commissioner, Area Director).

You must attach a Certificate of Service to the Charge, listing all the parties to whom you have served copies (see copy attached in this section). The top of the page should read “Certificate of Service” and say something like “A copy of the attached Charge against an Agency has been served by regular mail to the following parties.” The statement above your

signature on this page should say something like “Served this xx day of month, year, city and state.”

What the FLRA Does with the Charge

The FLRA receives in the Charge, assigns a number to it, and sends copies of the Charge with the assigned case number back to the filing party and all parties listed in the Certificate of Service with instructions about providing additional data and a list of witnesses. After the union has submitted the list of witnesses, other supporting data, and an explanation of the Charge, if a *prima facie* ULP is indicated, the FLRA will assign an agent/attorney to investigate.

The agent will probably come into the office or may investigate by phone. Give the agent your full cooperation. Inform the employee witnesses you named know about the agent’s visit. You will be asked to make an affidavit. Make sure it is absolutely accurate and says what you want it to say. Do not be afraid to amend or change the affidavit to assure that it is accurate. Statements will be obtained from the other witnesses. Management will probably refuse to talk to the FLRA until the day of the hearing, because they want to keep their options open, i.e., they want to make sure they have no written record to lock them into a position. This leaves them free to testify more creatively on the stand.

The FLRA agent will take all the documentation back to the office and make a presentation to the Regional Director, who will make a decision to find whether a violation has occurred. A Complaint will be filed against the agency if a violation is found. If no violation is found, the FLRA will give the union the opportunity to withdraw the ULP without prejudice or they will issue a dismissal absent withdrawal. Beware: at the end of the month the FLRA likes to clear their tally (just like any federal agency) and will pressure the union representative to withdraw the charge.

Amended Complaint

The FLRA may find that the Charge should to be amended to add or delete something that will assure that the Charge will go to Complaint. Perhaps the union cited multiple violations in the charge and the FLRA found that they will sustain the first and fifth but not the eighth. You may be asked to amend some language to tighten things up or to delete an extraneous statement that is contradictory or that cannot be supported. If the FLRA asks you to amend a charge, it is generally good practice to do so. They will discuss the suggested change in language with you, what you will add to or delete from the original Charge. You will make the changes, initial the changes, write “1st Amended” at the top of the FLRA 22, and sign and date the form at the bottom near the original signature block.

Withdrawal or Dismissal?

If the FLRA will not issue a Complaint, the union representative has the dilemma of withdrawing the Charge or taking a formal written dismissal which will state the reason the Charge did not constitute a ULP. Before taking a dismissal, inexperienced representatives should consult with their Local President or ULP expert. A dismissal can create bad case law that can hurt a similar case that could be won later on. A withdrawal is always a disappointment because we wish we could get a Complaint, but it doesn’t harm any future

ULP. A withdrawal does not establish a record or a decision other than that a ULP was filed. The general rule is that if you want to challenge the case law and feel that the FLRA is wrong on the issue and that the union can successfully prevail on the point on appeal, then a dismissal may be appropriate. If you are considering taking a dismissal, you might want to check with AFGE Field Services for help in filing the appeal or exception.

Alternative Dispute Resolution

The FLRA offers Alternative Dispute Resolution (ADR) that can be entered into any time before or after the filing of the Charge. The ADR process is a no-fault attempt to resolve the dispute without going through the formal process. Both parties have to agree to try ADR, and either party can withdraw at any time if it is not productive. SSA tends not to want to settle any ULP unless a Charge has been filed and the FLRA has issued a Complaint. Before suggesting or agreeing to try the ADR process, determine what your strategy is. Does this manager need a only a nudge to change or does he or she have a history of bad faith and an inability to understand anything but force? The ADR process is new and relatively untested so we cannot recommend its use or non-use. Unless your Local has a policy on using the ADR process, we recommend filing the Charge, getting the Complaint, and negotiating from a position of strength. Whether or not you opt for ADR, the FLRA will try to get you to settle throughout the process.

Settlement Discussions and Postings

At any time beginning with the filing of the Charge, either party may attempt settlement. Settlements can be either informal (between the parties) or formal (under the auspices of the FLRA). The most likely opportunity for settlement is when a Complaint is issued and the FLRA contacts you for language to put on the Posting or "Notice to All Employees". The Notice will be posted for 60 days in all affected offices, and tells the employees that management violated the statute and the union won. If you get to this point, the union is in a fairly good negotiating position. Naturally, the union wants strong language, and management wants watered-down language that includes the statement "Management does not admit to having committed any violation." Do not accept a non-admissions clause in any settlement agreement. It's a bad practice, and if you give it to them once, they will ask for and expect it every time. If they commit the violation, they should be willing to take the finding of fault.

Although the language is usually boilerplate, take your time and make sure the posting is worded as strongly as possible. Standard language orders the agency to cease and desist from the offending conduct. The posting must be signed by the offending management official. Do not allow it to be signed by an underling. Especially at the higher levels, management might try to get by with a subordinate signing the Notice.

Management in many regions will not discuss settlement until the FLRA has issued a Complaint. Even then, management is likely to wait until the day of the hearing to make a settlement offer. This causes a squeeze play because the ALJ will pressure the parties to settle, and the FLRA attorney representing the union a few minutes before will suddenly join in pressuring the union to settle. It is a game of chicken. You have to hold out for what you want, so you might want to have another experienced union official there with you. The

union is a party to the Charge, and the FLRA is the prosecution. If you filed the Charge and will be a witness, you should advise your Local President well in advance of the hearing date. The Local President may decide to send another experienced representative to represent the union at the hearing and in settlement discussions. This will take the burden off a new representative. The hearing and the last minute settlement process can be daunting to experienced representatives as well. The more you know about the strength of your case and the better you know the case law, the better you will fare in this situation.

The Hearing

If settlement cannot be reached, an FLRA Administrative Law Judge will preside over an adversarial hearing. An FLRA attorney will represent the union, and the agency is usually represented by an LMR specialist from SSA Central Office in Baltimore. There will be direct examination and cross examination of both union and management witnesses. The ALJ may ask questions of witnesses. The hearing is fairly formal. The union has the right to have counsel present (usually a Local officer). The union has the right question witnesses, but never does. The FLRA is the guardian of the Statute. By the time the FLRA has gone this far to prosecute the ULP they are prepared and have a strong interest in winning the case. After the hearing, the parties submit post hearing briefs and the ALJ issues a written decision. The FLRA pays for travel and per diem for witnesses to attend the hearing.

Appeals to the General Counsel

If unhappy with the administrative law judge's decision, either party can file an appeal with the FLRA in Washington, D.C. This appeal is called an "exception." The FLRA at this level is referred to as the "Authority". The Authority may affirm or reverse, in whole or in part, the decision of the ALJ. Decisions at his level are precedential and subject to court review. We can also file an appeal if we are dissatisfied with a unilateral informal agreement imposed by the FLRA's Regional Director. Exceptions should be filed only by extremely experienced representatives and in consultation with AFGE Field Services. Actually, Field Services will file the exception for you if you send the material to them sufficiently in advance.

Remedies

When the FLRA's ruling is favorable to the union, one or more of these remedies will be ordered:

A Posting

The most common remedy imposed by the FLRA is a posting, the display of a formal notice stating that the agency committed an unfair labor practice, describing the violation, and ordering the agency to cease and desist the violative conduct.

Status Quo Ante Remedy

When management has unilaterally implemented changes in working conditions without negotiating with the union, the FLRA may order the agency to restore working conditions to the way they were before implementation. This is a remedy the union always

wants for a number of reasons, particularly because it shows management and the employees that the union has the power to stop management and reverse management action. We always hear employees say that “management can do whatever they want.” A *status quo ante* shows that management can be stopped and ordered to reverse its action. The *status quo ante* remedy may include an order to make employees whole. The Authority may require the agency to reinstate an employee with back pay in accordance with 5 U.S.C. §5596.

Order to Bargain or Other Remedy

The agency may be ordered to bargain with the union. The outcome of the bargaining is not guaranteed, but often by this time a lot of wind has been taken out of management’s sails and they are more reasonable. The FLRA may order “such other action as will carry out the purpose of the Federal Service Labor-Management Relations Statute,” such as ordering the agency to provide the data requested or other remedy.

A Brief Outline of The ULP Process

- The union representative properly identifies the ULP by comparing it to those listed in 5 U.S.C. 7116 (a).
- The union representative files a Charge Against Agency (FLRA 22) with the FLRA Regional Office.
- The FLRA receipts in the Charge, assigns it a number, and serves copies on the filing party and to all parties listed in the Certificate of Service. The include instructions on what they want the representative to do next, such as submit a list of witnesses, an explanation of why the union thinks a ULP was committed, and supporting evidence.
- The FLRA reviews the Charge to determine if there is a prima facie ULP.
- If there is a prima facie ULP, the union representative is contacted by the FLRA agent investigating the Charge to execute an affidavit. The agent also attempts to interview the management official involved, but SSA seldom lets a manager meet with the agent.
- The FLRA encourages settlement discussions throughout the process, up to the day of the hearing. The parties may opt to participate in resolution of the ULP through the ADR process, which could occur even prior to the union filing the ULP.
- If the FLRA believes that no violation has occurred, they give the union the choice of withdrawing the ULP (which would mean there is no written record of a decision on the case) or taking a written dismissal in which the FLRA will explain why the agency’s action was not a violation of statute.
- If it looks like a violation has occurred, the FLRA attempts resolution through settlement discussions. If settlement is reached, the matter is resolved except for the agreed-upon remedy, which could be a posting, a signed agreement, or

something else. The FLRA retains jurisdiction over the remedy to assure that SSA complies with the agreement.

- If the parties cannot reach settlement, the FLRA should issue a “Complaint Against Agency” listing the violations that have occurred causing the ULP. The Complaint contains the date for the hearing at which the FLRA prosecutes the agency for committing the violation. Settlement discussions may continue.
- Unless settled prior to the hearing, a hearing is held, usually at the FLRA office. An ALJ will preside over the hearing. An FLRA attorney will represent the union (the Charging Party). SSA is usually represented by a LMR specialist from Baltimore. Prior to the beginning of the hearing, the ALJ puts strong pressure on both parties to settle.
- The FLRA attorney and the agency representative write briefs supporting the positions they made at the hearing, citing precedential case law.
- The ALJ issues a decision.
- Either party may appeal the decision within the specified time frame.
- The Appeal is reviewed by the FLRA in Washington, D.C. (“the Authority”), and a decision is rendered to uphold the ALJ’s decision, to overturn it, or to modify the decision.
- Either party may appeal to U.S. Circuit Court.

ULP V. Grievance

Based on a training package from the Office of the General Counsel of
the FLRA

ULP	Grievance
Decisions set precedent	Decisions do not set precedent
Remedies may be greater—status quo, TRO broader	Remedies may be narrower to each incident
Expands statutory rights	No impact on statutory rights
FLRA controls ability to go forward	Grievant controls ability to go forward
Have help resolving	Resolve yourself
No cost to filer	Cost shared
Court settlement	Court enforces through ULP process
Process takes at least 90 days, often much longer	Time contractually set
Injunction	No injunction
Must know law	Do not have to know law
FLRA subject to FSLMR Statute	Arbitrator subject to FSLMR Statute

FLRA Regional Offices and Areas Served

The FLRA's Regional Offices serve over 1.9 million employees world-wide. The offices: investigate and settle or prosecute unfair labor practice complaints; ensure compliance with all unfair labor practice orders issued by the Authority; receive and process representation petitions; and provide facilitation, intervention, training and education services to the parties. For more information about any of these services, contact the FLRA Regional Office with jurisdiction over your geographic area.

Atlanta Region

Alabama, Florida, Georgia, Mississippi, South Carolina, and the Virgin Islands.

Marquis Two Tower, Suite 701
285 Peachtree Center Avenue
Atlanta, GA 30303-1270

Telephone: (404) 331-5212

FAX: (404) 331-5280

Boston Region

Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island and Vermont.

99 Summer Street, Suite 1500
Boston, MA 02110-1200

Telephone: (617) 424-5730

FAX: (617) 424-5743

Chicago Region

Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, North Dakota, Ohio, Tennessee and Wisconsin.

55 West Monroe, Suite 1150
Chicago, IL 60603-9729

Telephone: (312) 353-6306

FAX: (312) 886-5977

Dallas Region

Arkansas, Louisiana, New Mexico, Oklahoma, Texas and Panama
(limited FLRA jurisdiction).

Federal Office Building
525 Griffin Street, Suite 926
Dallas, TX 75202-1906
Telephone: (214) 767-4996
FAX: (214) 767-0156

Denver Region

Arizona, Colorado, Kansas, Missouri, Montana, Nebraska, South
Dakota, Utah, and Wyoming.

1244 Speer Blvd., Suite 100
Denver, CO 80204-3581
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San Francisco Region

Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington, and
all land and water areas west of the continents of North and South
America (except coastal islands to longitude. 90° E.).

San Francisco, CA 94103-1791
Telephone: (415) 356-5000
FAX: (415) 356-5017


Washington, D.C. Region

Delaware, District of Columbia, Maryland, North Carolina, Virginia,
West Virginia and all land and water areas east of the continents of
North and South America to long 90° E., except the Virgin Islands,
Panama (limited FLRA jurisdiction), Puerto Rico and coastal islands.

Tech World Plaza
800 K Street, NW, Suite 910
Washington, D.C. 20001
Telephone: (202) 482-6700
FAX: (202) 482-6724

Sample Documents from the ULP Process

Form Govern Under 44 U.S.C. 3512

 <p>UNITED STATES OF AMERICA FEDERAL LABOR RELATIONS AUTHORITY</p> <p>CHARGE AGAINST AN AGENCY</p>	<p>FOR FLRA USE ONLY</p>
	<p>Case No. _____</p> <p>Date Filed _____</p>
<p>Complete instructions are on the back of this form.</p>	
<p>1. Name and address of charged entity or agency</p> <p>Social Security Administration 991 Third St. Holly Hill, Fl. 32117</p>	<p>2. Name and address of charging labor organization or individual</p> <p>AFGE, Local 4056 C/O SSA 2441 U.S. 1 South St. Augustine, Fl. 32086</p>
<p>3. Agency or contact information</p> <p>Name: Ken Chaney Title: Manager Phone: 904-258-8109</p>	<p>4. Labor organization or individual contact information</p> <p>Name: Bill Osmer Title: AFGE Vice President Phone: 904-794-0991 <i>Ext. 217</i></p>
<p>5. Which subsection(s) of 5 U.S.C. 7116 (a) do you believe have been violated? [See reverse] (1) and <u>(2)</u></p>	
<p>6. Tell exactly WHAT the agency (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles.</p> <p style="text-align: center;"><i>Refer to attachment dated 11/18/98</i></p> <p>The agency has been notified that this ULP is being filed. Refer to the attached copy of our memorandum to the State Director, Lonnie Brown.</p>	
<p>7. Have you or anyone else raised the matter in any other procedure? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes if yes, where? [see reverse]</p>	
<p>8. I DECLARE THAT I HAVE READ THIS PETITION AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001.</p>	
<p><u>Bill Osmer</u> Type or Print Your Name</p>	<p><u>Bill Osmer</u> Your Signature</p>
<p><u>11/18/98</u> Date</p>	

FLRA Form 22 (Rev. 7/89)



FEDERAL LABOR RELATIONS AUTHORITY
ATLANTA REGION
Marquis Two Tower, Suite 701
285 Peachtree Center Avenue, Atlanta, GA 30303-1270

DEC 18 1999

NOTICE TO CHARGING PARTY OF RECEIPT OF CHARGE

The attached charge has been assigned Case No. 02-CR-90089

The case has been assigned to: Adam Chandler

Contact the agent/attorney at 404/331-5212, ext. 12; FAX 404/331-5280

REQUEST FOR ADDITIONAL INFORMATION: Please submit the following items within 15 days of your receipt of this notice.

- An amended charge stating the date of occurrence of the alleged unfair labor practice
- A statement of service on the Charged Party
- A copy of the charge with an original signature
- A list of witnesses, their current address and phone numbers
- Documents and evidence supporting your charge
- A copy of the collective bargaining agreement
- Other _____

RETURN THE ATTACHED FLRA FORM 75 IF YOU HAVE A DESIGNATED REPRESENTATIVE.

FAILURE TO TIMELY SUBMIT EVIDENCE MAY LEAD TO DISMISSAL OF YOUR CHARGE. IF YOU HAVE QUESTIONS ABOUT THIS REQUEST FOR EVIDENCE OR IF YOU NEED MORE TIME, YOU SHOULD TELEPHONE THE AGENT/ATTORNEY LISTED ABOVE.

NOTICE TO THE CHARGED PARTY

The enclosed charge has been filed with this office. The agent/attorney named above will contact you regarding the investigation of the charge.

Please submit any evidence or position you have regarding this charge to this office within 15 days of your receipt of this charge. You are encouraged to cooperate in the investigation.

You are encouraged to meet with the Charging Party and discuss settlement of this charge. The agent/attorney named above is available to assist the parties in resolving the charge.

RETURN THE ATTACHED FLRA FORM 75 IF YOU HAVE A DESIGNATED REPRESENTATIVE.

Rev. 10/11/96

UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
ATLANTA REGION

SOCIAL SECURITY ADMINISTRATION)
DAYTONA BEACH DISTRICT OFFICE)
DAYTONA BEACH, FLORIDA)

Respondent

and)

Case No. AT-CA-90089

AMERICAN FEDERATION OF)
GOVERNMENT EMPLOYEES,)
LOCAL 4056)

Charging Party

COMPLAINT AND NOTICE OF HEARING

1. This unfair labor practice Complaint and Notice of Hearing is issued under 5 U.S.C. §§ 7101-7135 and 5 C.F.R. Chapter XIV.
2. The American Federation of Government Employees, Local 4056 (the Union) is a labor organization under 5 U.S.C. §7103(a)(4).
3. The Social Security Administration, Daytona Beach District Office, Daytona Beach, Florida (the Respondent), is an agency under 5 U.S.C. §7103(a)(3).
4. The charge was filed by the Union with the Atlanta Regional Director on November 23, 1998.
5. A copy of the charge was served on the Respondent.
6. During the time period covered by this Complaint, Ken Chaney occupied the position of District Manager for the Daytona Beach District Office.



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

STATEMENT OF STANDARD PROCEDURES IN HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES
OF THE FEDERAL LABOR RELATIONS AUTHORITY IN UNFAIR LABOR PRACTICE
PROCEEDINGS PURSUANT TO SECTION 7118 OF THE FEDERAL SERVICE
LABOR-MANAGEMENT RELATIONS STATUTE (92 Stat. 1111)

The hearing will be conducted by a designated Administrative Law Judge of the Federal Labor Relations Authority at the time and place specified in the Complaint and Notice of Hearing, and in accordance with the provision of Parts 2423 and 2429 of the Rules and Regulations of the Authority and General Counsel. Parties involved in an unfair labor practice hearing should be aware of the following procedures:

POSTPONEMENT OF HEARING. Unless otherwise specifically ordered, the hearing will be held at the date, hour and place specified in the Complaint and Notice of Hearing. Postponement will not be granted unless the following requirements are fully satisfied: (1) An original and two (2) copies of a written motion to postpone the hearing must be filed with the Chief Administrative Law Judge at least five (5) days prior to the opening of the scheduled hearing; (2) Proper cause must be shown and set forth in detail; (3) Alternative dates for rescheduling the hearing must be given; (4) The positions of all other parties must be ascertained in advance by the party making the motion and set forth in the motion; and (5) Copies of the motion must be served on all other parties and a statement of service submitted to the Chief Administrative Law Judge with the original motion.

BURDEN OF PROOF. The General Counsel shall have the responsibility of presenting the evidence in support of the complaint and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

RIGHTS OF THE PARTIES. Parties have the right to appear in person, by counsel, or by other representative, and have the right to examine and cross-examine witnesses and to introduce into the record documentary or other relevant evidence, and to submit rebuttal evidence, except that the participation of any party shall be limited to the extent prescribed by the Administrative Law Judge. Two (2) copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

OFFICIAL TRANSCRIPT. An official reporter makes the only official transcript of the proceedings, and all citations in briefs must refer to the official transcript. All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Administrative Law Judge.

Copies of the official transcript may be examined in the appropriate regional office during normal working hours. Requests by parties for copies of transcripts should be made to the official hearing reporter.

MOTIONS AND OBJECTIONS. An original and two (2) copies of all motions made prior to a hearing and any response thereto, except motions to postpone the hearing, shall be made in writing, filed with the Regional Director, served on all parties and accompanied by a statement of such service. Regional Directors may rule on such motions or may refer them to the Administrative Law Judge.

Motions made after the hearing opens may be made in writing to the Administrative Law Judge or stated orally on the record. Any objection with respect to the conduct of the hearing including any objection to the introduction of evidence, may also be stated orally or in writing. A short statement of grounds should accompany any objection and be included in the record. Formal exceptions to adverse rulings are unnecessary. Objections shall not stay the conduct of the hearing, nor will further participation in the hearing waive such objections. Automatic exceptions will be allowed to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning. Any objection not made before the Administrative Law Judge shall be deemed waived.

ORAL ARGUMENT. Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing. The Administrative Law Judge may also request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof.

SETTLEMENT. Settlements which effectuate the policies of the Federal Service Labor-Management Relations Statute reduce government expenditures and promote amity in Federal service labor relations. Even after the issuance of a complaint, the Authority and the General Counsel favor the settlement of issues. Upon consent of the parties, or upon the Judge's own motion, Administrative Law Judges will hold conferences prior to the hearing and afford reasonable opportunity during the hearing for the settlement or simplification of the issues.

SUBPENAS. A person, as defined in 5 USC 7103 (a)(1), may file a written request with the Regional Director for a subpoena requiring the attendance and testimony of witnesses and/or the production of documentary or other evidence not less than fifteen (15) days prior to the opening of the hearing, or with the Administrative Law Judge during the hearing. Such requests must name and identify, with sufficient particularity, the witnesses or documents sought and state the reasons therefore. No subpoena shall be issued which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management. Where the parties are in agreement that the appearance of witnesses or the production of documents is necessary, and such witnesses agree to appear, no such subpoena need be sought.

Any person served with a subpoena who does not intend to comply, shall, within five (5) days after service, file a petition in writing to revoke the subpoena with the Regional Director prior to the opening of the hearing, or with the Administrative Law Judge during the hearing. A copy of any such petition to revoke must be served on the party on whose behalf the subpoena was issued and a written statement of such service must accompany the filing of the petition. The petition to revoke, any answer thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

OFFICIAL TIME. If the participation of any employee in an unfair labor practice hearing is deemed necessary by the Authority, such employee shall be granted official time for such participation, including necessary travel time, as occurs during the employee's regular work hours and when the employee would otherwise be in a work or paid leave status. Necessary transportation and per diem expenses shall also be paid by the employing activity or agency.

WITNESS FEES. Witnesses (except those who are employed by the Federal Government and receive official time and necessary transportation and per diem expenses), whether appearing voluntarily, or under a subpoena, shall be paid the fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States by the party at whose instance the witnesses appear.

FILING OF BRIEFS. Any party desiring to submit a brief to the Administrative Law Judge shall file the original and two (2) copies within a reasonable time fixed by the Administrative Law Judge, but not an excess of thirty (30) days from the close of the hearing, serve a copy of the brief on all other parties and file a statement of such service with the Administrative Law Judge. Requests for additional time in which to file a brief shall be made in writing to the Chief Administrative Law Judge and must be received not later than five (5) days before the date such brief is due. Copies of such requests must be served on the other parties and a statement of such service must be furnished. No reply brief may be filed except by special permission of the Administrative Law Judge.

ADMINISTRATIVE LAW JUDGE'S DECISION. After the close of the hearing, and the receipt of briefs, if any, the Administrative Law Judge shall prepare the decision expeditiously and shall cause the decision to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall transmit the case to the Authority including the Judge's decision and the record.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
ATLANTA REGION

SOCIAL SECURITY ADMINISTRATION)
DAYTONA BEACH DISTRICT OFFICE)
DAYTONA BEACH, FLORIDA)
)
 Respondent)
)
 and)
)
)
 AMERICAN FEDERATION OF)
 GOVERNMENT EMPLOYEES,)
 LOCAL 4056)
)
 Charging Party)

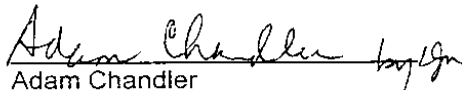
Case No. AT-CA-90089

MOTION FOR PREHEARING CONFERENCE

On March 24, 1999, the Atlanta Regional Director issued a Complaint and Notice of Hearing in this matter. The hearing is scheduled for **June 10, 1999, at 9:00 a.m.**, at the **5th District Court of Appeal, 300 S. Beach Street, Daytona Beach, Florida.**

Counsel for the General Counsel moves pursuant to § 2423.23(d) of the Regulations that a prehearing conference be held at least seven days prior to the hearing date and within a reasonable time subsequent to the prehearing disclosure mandated in § 2423.23.

Respectfully submitted,



Adam Chandler
Counsel for the General Counsel
FLRA, Atlanta Region
Suite 701, Marquis Two Tower
285 Peachtree Center Ave., NE
Atlanta, Georgia 30303-1270
Phone: 404-331-5212, ext. 12
Fax: 404-331-5280

Dated: March 24, 1999

STATEMENT OF SERVICE

I CERTIFY THAT A COPY OF RESPONDENT'S ANSWER TO COMPLAINT HAS BEEN SERVED UPON THE FOLLOWING PERSONS IN THE MANNER INDICATED;

BY CERTIFIED MAIL

HONORABLE SAMUEL CHAITOVITZ
CHIEF ADMINISTRATIVE LAW JUDGE
FEDERAL LABOR RELATIONS AUTHORITY
607 14 ST., NW, SUITE 440
WASHINGTON, DC 20424-0001

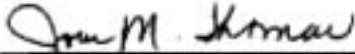
MS. BRENDA M. ROBINSON
REGIONAL DIRECTOR, ATLANTA REGION
FEDERAL LABOR RELATIONS AUTHORITY
MARQUIS TWO TOWER, SUITE 701
285 PEACHTREE CENTER AVENUE
ATLANTA, GEORGIA 30303-1270

BY REGULAR MAIL

MR. JIM CARVER
LABOR RELATIONS SPECIALIST
SOCIAL SECURITY ADMINISTRATION
61 FORSYTH STREET, SW
SUITE 22764
ATLANTA, GEORGIA 30303

MR. BILL OSSMER
EXECUTIVE VICE PRESIDENT
AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 4056
2441 US 1 SOUTH
ST. AUGUSTINE, FL 32086

4/14/99
DATE



JOAN M. THOMAS
LABOR RELATIONS ASSISTANT
SOCIAL SECURITY ADMINISTRATION
OFFICE OF LABOR-MANAGEMENT AND
EMPLOYEE RELATIONS

01-28-99 13:47 FAX 4043310280

FLORIDA-ATLANTA

2003



United States of America
FEDERAL LABOR RELATIONS AUTHORITY

SOCIAL SECURITY ADMINISTRATION
DAYTONA BEACH DISTRICT OFFICE
DAYTONA BEACH, FLORIDA

Agency

CASE NO. AT-CA-90089

and

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 4056

Charging Party

SETTLEMENT AGREEMENT
(AGENCY RESPONDENT)

The undersigned Agency and the undersigned Charging Party in settlement of the above matter, and subject to the approval of the Regional Director on behalf of the Federal Labor Relations Authority, **HEREBY AGREE AS FOLLOWS:**

POSTING OF NOTICE - The Agency will post copies of the Notice to All Employees, attached hereto and made a part hereof, in conspicuous places at the Daytona Beach District Office, including all bulletin boards and other places where notices to employees are customarily posted, for a period of at least sixty (60) days from the date of posting.

OTHER ACTION TO BE TAKEN

The Notice to All Employees will be signed by Kenneth Chaney, District Manager.

COMPLIANCE WITH NOTICE - The Agency will comply with all the terms and provisions of the Notice.

REFUSAL TO ISSUE COMPLAINT - In the event the Charging Party fails or refuses to become a party to this Agreement, and if the Regional Director concludes that it will affirmate the policies of Chapter 71 of Title 5 of the U.S.C., she shall decline to issue a Complaint herein and this Agreement shall be between the Agency and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 2423.11(b)(2) of the Regulations of the Federal Labor Relations Authority if an appeal is filed within twenty-five (25) days thereof. This Agreement is contingent upon the General Counsel sustaining the Regional Director's action in the event of an appeal. Approval of this Agreement by the Regional Director shall constitute withdrawal of the Complaint and Notice of Hearing heretofore issued in this case.

PERFORMANCE - Performance by the Agency of the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director or, in the event the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Agency of advice that no appeal has been filed or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE - The undersigned parties to this Agreement will notify the Regional Director in writing what steps the Agency has taken to comply herewith. Such notification shall be made within five (5) days, and again after sixty (60) days, from the date of the approval of this Agreement, or, in the event the Charging Party does not enter into this Agreement, after the receipt of advice that no appeal has been filed or that the General Counsel has sustained the Regional Director.

COMPLIANCE WITH SETTLEMENT AGREEMENT - Contingent upon compliance with the terms and provisions hereof no further action shall be taken in the above case.

SOCIAL SECURITY ADMINISTRATION
DAYTONA BEACH DISTRICT OFFICE
DAYTONA BEACH, FLORIDA

(Agency)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 4056

(Charging Party)

Printable Name
(Type or print name and title) (Date)

(Signature)

By: Bill Chaney, NICE LP 5/28/99
(Type or print name and title) (Date)

Bill Chaney
(Signature)

Approved: _____
(Date)



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

Marquis Two Tower - Suite 701
285 Peachtree Center Avenue
Atlanta, GA 30303-1270

Telephone 404/331-5212

Fax 404/331-5280

June 2, 1999

Jim Carver
Labor Relations Specialist
Social Security Administration
61 Forsyth Street, SW
Suite 22T64
Atlanta, GA 30303

Re: Social Security Administration
Daytona Beach District Office
Daytona Beach, Florida
Case No. AT-CA-90089

Dear Mr. Carver:

I have approved the Settlement Agreement executed in the captioned case. The Agency should begin to comply with the terms of the Agreement.

A copy of the Agreement and one (1) copy of the Notice to All Employees are enclosed. As specified in the Agreement, copies of the Notice should be posted in conspicuous places, including all bulletin boards and other places where notices to employees represented by the American Federation of Government Employees, Local 4056 are customarily posted, for a period of at least sixty (60) consecutive days from the date of the posting. The Agency must take steps to ensure that the Notice is not altered, defaced, or covered by other material.

Finally, the Agency is required to notify me in writing within five (5) days of your receipt of this letter of the steps taken to comply with the requirements of the Agreement. Upon the expiration of the 60-day posting period, the Agency must certify to me in writing that the requisite posting of the Notice has been completed. The Agency should be served with copies of the notification and the certification.