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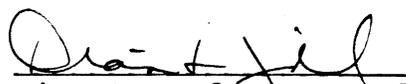
DEPARTMENTAL PERSONNEL MANUAL SYSTEM

DPM BULLETIN NO. 711-5

DATE: APR 15 1987

SUBJECT: Office of Personnel Management Guidance
with respect to Mid-Term Bargaining

Attached is a copy of a memorandum from the Office of Personnel Management (OPM), Labor and Agency Relations Office providing guidance with respect to mid-term bargaining. This Bulletin supplements our earlier request of March 23, 1987, that each administration advise OPM, through the Labor and Employee Relations Division (M-17), of any union-initiated mid-term bargaining proposals it may receive. Any questions you may have regarding this issue may be addressed to Lucy Vargas on 366-9440.



Director of Personnel

Attachment

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OPI: M-17/Labor and Employee Relations Division

INTERAGENCY ADVISORY GROUP

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OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

Secretariat

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March 27, 1987

MEMORANDUM TO DIRECTORS OF PERSONNEL

FROM:  Allan D. Heuerman, Assistant Director
for Employee, Labor and Agency Relations

SUBJECT: Guidance with Respect to Midterm Bargaining

The Court of Appeals for the District of Columbia Circuit recently ruled that agency management has a duty to bargain on union-initiated midterm proposals on matters not covered in the basic agreement. The Department of Justice has filed a petition seeking intervenor status and re-hearing, en banc, of that decision. Thus, the decision is not final at this writing.

In National Treasury Employees Union v. Federal Labor Relations Authority, Nos. 85-1361 and 85-1458 (D.C. Cir. Feb. 3, 1987), the Court reversed the FLRA's holding in IRS 17 FLRA No. 103 and IRS 18 FLRA No. 48. The Authority had concluded that agency management does not have a duty to bargain on union-initiated midterm proposals that are unrelated to any management-proposed changes in conditions of employment.

The main point of difference between the Court and the FLRA concerned the application of private sector precedent under the National Labor Relations Act (NLRA). FLRA had relied on the special nature of the statutory framework for labor relations in the Government, its legislative history, and on bargaining practices under Executive Order 11491, as amended. The Court rejected these arguments and, noting that the statute (5 U.S.C. Chapter 71) itself does not distinguish between types of bargaining, i.e. "term", "midterm" or "union-initiated", the Court concluded that Congress "paid close attention to judicial precedent in private sector labor law when drafting the statute." It found that "there is clear and long-established precedent [under NLRA] that the duty to bargain extends also to midterm proposals initiated by either management or labor, provided the proposals do not conflict with the existing agreement."



(NLRB v. Jacobs Manufacturing Co., 196 F. 2d 680, 684-2d Cir. 1952).
The Court applied this doctrine to the Federal sector.

OPM, in its amicus brief before FLRA, principally argued that the Federal Labor-Management Relations Statute (5 U.S.C. 71) established a framework for negotiations tailored for the special nature and needs of government quite distinct from the NLRA. Congress did not provide for union-initiated midterm bargaining in Chapter 71 in enacting this carefully balanced statutory scheme. We disagree with the Court's extension of Jacobs to the Federal government and are concerned that the Court's decision, if ultimately upheld, will cause reliance on basic agreements to be undermined and encourage fragmentation of the collective bargaining process. We believe that the Court's decision is a prescription for instability and disruption in labor-management relations. The Court's decision is at loggerheads with the congressional directive that the statute be interpreted so as to promote "effective and efficient government."

The Court has remanded these cases to FLRA. Until the Authority acts on the remand, it is uncertain whether it will apply the Court's decision nationwide or will apply it only to cases arising within the jurisdiction of the Court of Appeals for the D.C. Circuit. During this period of uncertainty we request agencies to advise us of any cases that arise which involve this issue. We are preparing guidance to agencies for addressing this issue in the broad context of labor-management relations. Contact the Office of Employee, Labor and Agency Relations, (202) 632-5580.

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