

# Reclamation Manual

## Directives and Standards

<b>Subject:</b>	Labor-Management Negotiations
<b>Purpose:</b>	To establish processes, procedures and responsibilities for effectively accomplishing labor-management negotiations within the Bureau of Reclamation. The benefit of this Reclamation Manual (RM) Directive and Standard (D&S) is to ensure proper and consistent administration of labor-management negotiations throughout Reclamation.
<b>Authority:</b>	Prevailing Rate Systems Act (PRSA), August 19, 1972 (Pub. L. 92-392); Civil Service Reform Act (CSRA), October 13, 1978 (Pub. L. 95-454); 5 USC, Chapter 71, <i>The Federal Service Labor-Management Relations Statute</i> (FSLMRS); 5 USC, Chapter 53, Subchapter IV, <i>Prevailing Rate Systems</i> ; 5 CFR, Parts 2470-2473, procedures and methods of the Federal Service Impasses Panel (FSIP); Comptroller General (Comp. Gen.) Decision B-183083, 55 Comp. Gen. 162, August 19, 1975; Comp. Gen. Decision B-183083, Unpublished, November 28, 1975; Comp. Gen. Decision B-189782, 58 Comp. Gen. 198, January 5, 1979; Departmental Manual (DM) 370 DM 711, <i>Labor-Management Relations</i> , November 21, 2011; RM <i>Delegations of Authority; Interim Delegations of Authority for Collective Bargaining Agreements (CBAs)</i> memo dated October 31, 2016 (Appendix B)
<b>Approving Official:</b>	Director, Policy and Administration (POLICY)
<b>Contact:</b>	Human Resources (HR) Policy and Programs Division (HRPPD) (84-58000)

1. **Introduction.** Congress stated in the FSLMRS, "...labor organizations and collective bargaining in the civil service are in the public interest." One of the primary functions of the FSLMRS is to provide a framework for employees to participate in labor organizations and collective bargaining. This statute provides both rights to and constraints on collective bargaining. This RM D&S establishes the framework for addressing labor-management negotiations throughout Reclamation, in accordance with the FSLMRS, administrative case law, and Department of the Interior policy, and outlines reporting responsibilities to the Department.
2. **Applicability.** This D&S applies Reclamation-wide where a union holds or is seeking to hold, exclusive recognition. Employees covered are those defined under the FSLMRS, Section 7103(a)(2). It does not apply to vendors having individual contracts with Reclamation that submit invoices for their work and do not receive pay and benefits provided to Federal employees, and those excluded under Section 7112(b) of the FSLMRS.
3. **Definitions.**
  - A. **Agency Head Review.** A statutory requirement contained in the FSLMRS, Section 7114(c), states that negotiated Collective Bargaining Agreements (CBAs) be reviewed for legal sufficiency and conformance with government-wide rules and

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regulations by the head of an agency (or his/her designee), excluding provisions preserved for bargaining under Section 704 of the CSRA and Section 9(b) of the PRSA. The Department, Office of Human Resources (OHR), is responsible for agency head review.

- B. **Bargaining Unit.** A grouping of employees that a union represents or seeks to represent and that the Federal Labor Relations Authority (FLRA) finds appropriate for collective bargaining purposes. See 370 DM 711 for more information.
- C. **CBA.** A written document setting forth the terms and conditions of employment, grievance procedures, and any other matters resulting from collective bargaining between the employer and the exclusive representative (union). It includes the basic written agreement, amendments, oral agreements, past practices, and supplements.
  - (1) Amendments are agreements that modify in part, or wholly change, the terms of the agreement.
  - (2) Supplements are agreements that are in addition to the overall agreement.
- D. **Collective Bargaining.** Bargaining (negotiating) between labor organizations and employers. Matters appropriate for bargaining include conditions of employment, procedures that management officials observe in exercising any authority under the FSLMRS, and if applicable, wages and pay matters or practices negotiated pursuant to Section 704 of the CSRA and Section 9(b) of the PRSA.
- E. **Compelling Need.** Except for provisions preserved for bargaining under Section 704 of the CSRA and Section 9(b) of the PRSA, the basis (under the FSLMRS, Section 7117) upon which regulations issued by an agency or a primary national subdivision of an agency may serve as a bar to negotiations with a union.
- F. **Conditions of Employment.** Personnel policies, practices and procedures affecting working conditions. See 370 DM 711 for more information.
- G. **Exclusive Representative.** The union certified to represent a unit of employees either by virtue of having won a representation election or because it had been recognized as the exclusive representative before passage of the FSLMRS.
- H. **FLRA.** The independent agency established by the FSLMRS, responsible for, among other things: deciding questions of representation; adjudicating unfair labor practices; adjudicating negotiability appeals, exceptions to arbitration awards, and compelling need disputes; and prescribing criteria for granting national consultation rights.
- I. **Federal Service Impasses Panel (FSIP).** An entity within the FLRA that resolves bargaining impasses, chiefly by ordering the parties to adopt certain contractual provisions relating to the conditions of employment of bargaining unit employees.

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- J. **FSLMRS.** This is the legal foundation for all Federal sector labor relations programs. It includes the labor relations rights and responsibilities of management, unions, and employees, and it establishes the FLRA and the FSIP to administer its provisions.
- K. **Impasse.** The situation in which the parties (management and union) have reached a point where no progress is possible during a good-faith negotiation (i.e., deadlock or stalemate).
- L. **Labor Organization or Union.** An organization composed in whole or in part of employees, in which employees may participate and pay dues. The organization's purpose is to interact with an agency over grievances and conditions of employment. Pursuant to the requirements of 5 USC 7103(a)(4), an organization that might be certified by the FLRA to exclusively represent bargaining unit employees over matters pertaining to grievances and conditions of employment.
- M. **Level of Recognition.** The organizational level at which the agency and exclusive representative are required to negotiate a collective bargaining agreement. This is the organizational unit(s) of an agency and union for which the union was certified to represent bargaining unit employees.
- N. **Management Official.** An individual who formulates, determines, or influences the policies of the agency.
- O. **Negotiability.** In accordance with the FSLMRS, government-wide policy, local bargaining agreements, and Departmental policy, a determination of whether a given proposal is mandatory (must be bargained over), permissive (may be bargained over at the agency's discretion), or prohibited (may not be negotiated).
- P. **Negotiability Appeal.** An appeal filed by a union in response to a management written statement that a bargaining proposal is non-negotiable under the FMLRS; or those terms and conditions of employment and other employee benefits for prevailing rate employees to whom Section 704 of the CSRA and Section 9(b) of the PRSA applies, which were subject of negotiation in accordance with prevailing rates and practices prior to August 19, 1972.
- Q. **Past Practice.** Existing practices sanctioned by use and acceptance that are not specifically included in basic labor agreements, amendments, or supplements. As a threshold, the practice must involve bargaining unit employees, and the matter must involve a condition of employment. To qualify as an enforceable established practice, the practice must be legal, clear, unchallenged, consistent, long-standing, and known to both management and the union.
- R. **Prevailing Rate Employee.** An individual employed in or under an agency in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled,

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semiskilled, or skilled manual labor occupation, and any other individual in a position having trade, craft, or laboring experience and knowledge as the paramount requirement.

- S. **Savings Clause.** Section 704 of the CSRA provides that matters pertaining to terms and conditions of employment and pay and pay practices that were subject to bargaining by prevailing rate employees covered under Section 9(b) of the PRSA prior to August 19, 1972, are subject to bargaining. Sections 9(b) and 704 serve to “grandfather-in” bargaining rights for prevailing rate employees with respect to subjects that might otherwise be non-negotiable management rights under the FSLMRS or non-negotiable pay provisions under agency regulations.
- T. **Supervisor.** Under the FSLMRS, an agency employee who has authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances or to effectively recommend such action, if the exercise of such authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment. See 370 DM 711 for additional information.
- U. **Wage Supplement.** Wage adjustments, fixed and adjusted for an agreed-upon period, in accordance with Section 704 of the CSRA and Section 9(b) of the PRSA. These adjustments must be consistent with current industry practice. The union and management may negotiate a methodology for determining current prevailing rates and practices, and thereafter, use and apply the factual data obtained. Effective dates of wage increases are in accordance with appropriate law and Comp. Gen. decisions.
4. **Responsibilities.**
- A. **Directors.** Directors are responsible for:
- (1) implementing this D&S within their respective regions;
  - (2) ensuring managers and supervisors understand and adhere to provisions described in this issuance;
  - (3) supporting the Department’s and Reclamation’s labor relations programs, including labor-management partnership and pre-decisional involvement;
  - (4) delegating authority to management’s representatives (chief negotiator and/or alternate) to negotiate and execute agreements for labor negotiations in accordance with the delegations of authority identified in Appendix B, paragraph (g)(iii), and ensuring management’s representatives have no conflicts of interest that would impair their ability to represent management’s interests; and

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- (5) approving CBAs, amendments, supplements, and stand-alone memorandum of agreements (MOA) in accordance with provisions in this D&S; the delegations of authority identified in Appendix B; and 370 DM 711, paragraph 1.9.

**B. Director, POLICY.** The Director, POLICY, is responsible for:

- (1) establishing procedures to maintain compliance with Reclamation's Labor-Management Negotiations Program;
- (2) administering compliance with this D&S;
- (3) ensuring Reclamation meets Departmental notification and coordination requirements in accordance with provisions outlined in 370 DM 711; and
- (4) overseeing compliance reviews of CBAs, amendments, supplements, and stand-alone MOA prior to agency head review.

**C. Manager, HRPPD.** The Manager, HRPPD, is responsible for:

- (1) adhering to provisions of this D&S and 370 DM 711;
- (2) establishing a point-of-contact for Reclamation labor-management relations (Reclamation Labor Relations Officer (RLRO)); and
- (3) conducting compliance review of negotiation packages submitted by the RLRO to the Director, POLICY.

**D. RLRO.** The RLRO is responsible for:

- (1) collaborating with the local labor relations point of contact (POC) by assisting with review of CBAs, amendments, and supplements upon request from the servicing HR office;
- (2) assisting the servicing HR office, upon request, with preparation of negotiation ground rules, responses to union bargaining proposals, and revisions of management proposals (pre-negotiation consultation);
- (3) reviewing all newly negotiated and re-negotiated CBAs, amendments and supplements to CBAs, and wage supplements (including amendments to such documents), applicable ground rules (if not previously reviewed), to ensure compliance with proper procedures and identification of potential negotiability concerns;
- (4) reviewing regional requests for exceptions to Department-wide rules, regulations, and policies, and in consultation with servicing HR offices, submitting requests to the OHR-Labor Relations, justifying exceptions;

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- (5) reviewing and maintaining regional directors' delegation of management's representatives (including names, telephone numbers, e-mail addresses, and mailing addresses provided by servicing HR offices) and coordinating approval with OHR-Labor Relations prior to the start of negotiations;
- (6) providing notice of Directors' delegation of management's representatives, in accordance with the delegations of authority identified in Appendix B, paragraph (g)(iii), to the RM POC for delegation recording purposes;
- (7) assisting OHR-Labor Relations with review of draft and executed agreements;
- (8) coordinating compliance review packages for review by the Manager, HRPPD, and the Director, POLICY;
- (9) ensuring servicing HR offices meet submission timelines as outlined in this D&S and 370 DM 711; and
- (10) providing bargaining assistance and consultations to servicing HR offices when requested.

**E. Servicing HR Offices.** Servicing HR offices are responsible for:

- (1) adhering to provisions of this D&S and 370 DM 711;
- (2) providing labor-relations bargaining guidance and training to managers and supervisors;
- (3) negotiating with their exclusive representative(s) (i.e., union) in accordance with written, established ground rules, delegations, and responsibilities;
- (4) simultaneously notifying the RLRO and OHR-Labor Relations when negotiations are anticipated and before commencement of a new or modified agreement;
- (5) reviewing CBAs prior to commencement of the open period to determine if there are conflicts between current provisions and applicable laws, executive orders, government-wide regulations, Departmental policy issued after execution of the contract (except for provisions for bargaining under Section 704 of the CSRA and Section 9(b) of the PRSA), and/or language identified by management as being impractical, burdensome, or written in some way as to create difficulty in administering and/or interpreting;
- (6) certifying in writing to the RLRO that rollover agreements (agreements with automatic renewal clauses) do not contain conflicts or contract language that creates difficulty in administering and/or interpreting;

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- (7) submitting all negotiated agreements (new and re-negotiated, including ground rules) requiring agency head review simultaneously to the RLRO and the Department in accordance with 370 DM 711 and this D&S;
- (8) establishing procedures to ensure the prompt submission of information, reports, and correspondence requiring the attention of Reclamation;
- (9) implementing policies, regulations, and guidance in accordance with local bargaining obligations;
- (10) engaging in pre-negotiation consultation with the RLRO and Department as appropriate;
- (11) providing the RLRO a list of management's representatives with contact information (name, telephone number, e-mail address, physical address) and submitting changes to the RLRO; and
- (12) verifying that management's representatives have no conflict(s) of interest making them ineligible to participate on the management negotiation team.

**F. Managers and Supervisors.** Managers and supervisors are responsible for:

- (1) understanding and following the requirements included in this D&S;
- (2) meeting their bargaining obligations under the FSLMRS;
- (3) notifying their servicing HR office of any situation or condition that might affect established negotiated agreements (e.g., creation of an unauthorized past practice); and
- (4) consulting with and receiving advisory services offered by their servicing HR office.

**5. Labor-Management Bargaining (Negotiations) Process: CBAs, Amendments, Supplements, and Stand-Alone MOAs.**

**A. Pre-Negotiation Review, Consultation, and Notification.**

- (1) **Review of Agreements.** The servicing HR office will review CBAs, amendments, and supplements at least 60 calendar days prior to commencement of the open period to determine if there are conflicts between current provisions and applicable laws, executive orders, government-wide regulations, Departmental policies issued after execution of the contract (except for provisions for bargaining under Section 704 of the CSRA and Section 9(b) of the PRSA), and/or language identified by management as being impractical, burdensome, or written in some way as to create difficulty in administering and/or interpreting the

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agreement(s). The Servicing HR Office is encouraged to collaborate with the RLRO should questions or concerns arise during the review process.

- (2) **New CBAs, Re-negotiated CBAs, Amendments, Supplements, and Other Stand-Alone Agreements.** At least 60 calendar days (or as soon after notification from the exclusive representative) prior to commencing negotiations, the servicing HR office simultaneously notifies the RLRO and OHR-Labor Relations. The servicing HR office shall provide the following to the RLRO and the OHR-Labor Relations:
  - (a) Any changes to the names and/or contact information of the management representatives as delegated in writing by the Director in accordance with the delegations of authority identified in Appendix B, paragraph (g)(iii) . The RLRO ensures that OHR-Labor Relations approves the negotiator(s) before bargaining begins and ensures the RM POC receives a copy of the written delegations for delegation recording purposes.
  - (b) A copy of the applicable agreement and a description of all subjects that the office expects difficulty negotiating with the exclusive representative. (This does not preclude the servicing HR office from addressing, with the RLRO, bargaining problems that arise during the course of negotiations).
  - (c) If there are bargaining provisions in the current agreement that were negotiated under Section 704 of the CSRA and Section 9(b) of the PRSA, the servicing HR office shall highlight such bargaining language, and include a copy of the pre-August 1972 CBA; if the applicable CBA is unavailable, providing written documentation to justify their authority to include such language.
  - (d) A copy of the agreed-upon ground rules, if accomplished; if an agreement has not yet been reached, copies of management's and union's proposed ground rules.
- (3) **Rollover Agreements (CBAs With Automatic Renewal Clauses).**
  - (a) If the servicing HR office finds that a rollover agreement does not contain conflicts with law, executive order(s), government-wide regulations, Departmental policies issued after execution of the contract (except for provisions under the CSRA, Section 704, and the PRSA, Section 9(b)), or language identified by management as difficult to administer and/or interpret, they shall certify that finding in writing to the RLRO.
  - (b) Multiple year approved negotiated wage schedules do not require additional approvals in the years those wage schedules are effective.

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- (c) If a conflict (or conflicts) exists, the servicing HR office in consultation with the RLRO will take appropriate steps to re-open the agreement and address the identified conflicts. If the servicing HR office does not re-open the agreement, it will prepare a memorandum with the regional director's signature addressed to the RLRO; Director, POLICY; and Director-OHR, clearly articulating why the servicing HR office did not re-open the agreement.
- (d) If the servicing HR office re-opens and completes the agreement, it must forward that agreement to the Department for agency head review (and submit a copy to the RLRO) in accordance with this D&S and 370 DM 711.

### B. Draft Agreements.

- (1) The servicing HR office shall concurrently notify the RLRO and OHR-Labor Relations when negotiations are nearing execution, and shall submit simultaneously (electronic submissions are preferable) to both offices an advance draft of the agreement for review and include a list of any items that may be of concern during agency head review or possibly result in an impasse and/or a negotiability appeal.
- (2) Supporting documentation includes, but is not limited to:
  - (a) a signed/dated transmittal memorandum;
  - (b) pertinent case decisions (arbitrations, mediation agreements, FSIP decisions, unfair labor practice complaint decisions or settlements, FLRA decisions, Comp. Gen. decisions, etc.);
  - (c) the supplement with management and union negotiating team agreement, regional director approval (in accordance with delegations of authority identified in Appendix B), and Director, POLICY, compliance signature blocks (to include printed name, title, and date);
  - (d) the superseded supplement;
  - (e) wage survey results and methodology including comparative company information (e.g., mission, location, employee numbers);
  - (f) a copy of excerpts of applicable basic agreement and/or supplementary labor-management agreement provisions, including provisions specifying the effective date of the wage increase, unless these documents are included with the wage supplement – for example, as a newly negotiated CBA, non-wage supplement, and wage supplement;

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- (g) a narrative explaining any conflicts between language in the basic labor agreement, supplements, and wage methodology agreements; and
- (h) additional information that the region believes is appropriate (to include documentation of any applicable savings clauses).

### C. Executed Agreements.

- (1) **Agency Head Review.** All negotiated agreements are subject to agency head review. These include newly negotiated or re-negotiated CBAs, amended agreements, supplemental agreements however designated (supplements, MOA, MOU, letter of agreement, etc.), provisions imposed on the parties by the FSIP or FSIP-appointed arbitrator, and final proposals before submission to voluntary binding arbitration not directed by the FSIP.
- (2) **Submission Requirements.**
  - (a) Upon initial agreement (signed by the respective negotiating committees and before the regional director or the Director, POLICY, for the Denver/Washington D.C. Offices), the servicing HR office simultaneously sends a copy to the RLRO and OHR-Labor Relations within 3 business days (electronic submissions are preferable). The original signature page and two copies with “Compliance Review” signature block for the Director, POLICY and an “Agency Head Review” signature block for the Director, OHR shall be sent to the RLRO via overnight or express mail (NOTE: supplemental wage agreements only need a signature block for “Compliance Review” by the Director, POLICY).
  - (b) In its submission to the RLRO and OHR-Labor Relations, the servicing HR office shall include contact information for the union chief negotiator to include name, mailing address, e-mail address, and telephone number. (The servicing HR office need not re-submit management contact information, if that information has not changed.)
  - (c) The RLRO shall conduct a compliance review of the submitted negotiated agreement and supporting documentation to ensure that the servicing HR office followed the proper process. The RLRO certifies through the Manager, HRPPD, to the Director, POLICY, that Reclamation followed proper processes and addressed any negotiability conflicts. The Director, POLICY, must provide written reasons to OHR-Labor Relations if Reclamation cannot accomplish this task.
  - (d) The Director, POLICY, has 20 calendar days after the parties sign the agreement (similar to a union ratification/review process) and before regional director’s approval to make an HR compliance decision. After the Director, POLICY, has made a compliance decision, the RLRO will notify the

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servicing HR office and OHR-Labor Relations of the Director, POLICY's decision, and electronically send the signed decision to both parties. The RLRO shall overnight mail the original signature page with the Director, POLICY's compliance decision to the servicing HR office.

- (e) The servicing HR office will coordinate signature/approval from the regional director, send an electronic copy to the RLRO and OHR-Labor Relations, and overnight the signature page (for all non-wage agreements) to OHR-Labor Relations for final 30-day agency head review. OHR-Labor Relations will coordinate the Director, OHR's signature and provide the original back to the servicing HR office. The servicing HR office will ensure the RLRO receives an electronic copy of the completed signature page(s)
- (f) The RLRO will assist OHR-Labor Relations and the parties whenever statutory deficiencies are identified prior to expiration of the 30-calendar day review period in order to avoid disapproval. If the parties agree to changes that bring the agreement into compliance prior to expiration of the 30-calendar day review period, they shall provide the applicable replacement pages, initialed by both parties, to the RLRO and OHR-Labor Relations.
- (g) The servicing HR office shall provide the RLRO and OHR-Labor Relations a printed copy of approved CBAs within 10 calendar days of printing.
- (h) The negotiated agreement must be dated after ALL necessary signatures are obtained.
- (i) See Appendix A for a flowchart of the negotiations process.

### 6. Exceptions and Compelling Need Assertions.

- A. In accordance with this D&S and 370 DM 711, management must bargain only on rules or regulations issued at or below the level of recognition (except for provisions preserved for bargaining under Section 704 of the CSRA and Section 9(b) of the PRSA).
- B. The test used to determine whether a discretionary agency regulation is a valid limitation on the scope of bargaining is as follows:
  - (1) the regulation is essential to the effective and efficient accomplishment of the mission of the agency;
  - (2) the regulation is necessary to ensure the maintenance of basic merit principles; or
  - (3) the regulation implements a mandate of law or government-wide regulation in an essentially nondiscretionary manner.

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- C. If a servicing HR office wishes to request an exception to Departmental policy, rules, or regulations, the servicing HR office will submit a written request to the Department through the RLRO justifying the need for an exception.

### 7. **Negotiation Impasses.**

- A. If parties are unable to reach agreement on a negotiable proposal, they shall resolve their impasse in accordance with procedures outlined in the FSLMRS, Section 7119, 370 DM 711, and their local CBA(s).
- B. Normally, servicing HR offices are not required to notify the RLRO or OHR-Labor Relations if they are before the FSIP. However, servicing HR offices shall notify the RLRO if the impasse issue(s) has Reclamation and/or Department-wide implications.

### 8. **Negotiability Appeals.**

- A. The servicing HR office shall forward the initial notification of non-negotiability, including the written statement simultaneously to the RLRO and OHR-Labor Relations within 3 business days after issuance.
- B. The servicing HR office shall submit copies of all appeal documents, including union statements, FLRA orders and notices, and documents submitted to the FLRA simultaneously to the RLRO and OHR-Labor Relations within 3 business days of receipt.
- C. The servicing HR office shall consult with the RLRO and OHR-Labor Relations prior to filing position statements or responses to the union.

## RECLAMATION MANUAL TRANSMITTAL SHEET

Effective Date: \_\_\_\_\_

Release No. \_\_\_\_\_

Ensure all employees needing this information are provided a copy of this release.

### Reclamation Manual Release Number and Subject

### Summary of Changes

NOTE: This Reclamation Manual release applies to all Reclamation employees. When an exclusive bargaining unit exists, changes to this release may be subject to the provisions of collective bargaining agreements.

### Filing instructions

Remove Sheets

Insert Sheets

All Reclamation Manual releases are available at <http://www.usbr.gov/recman/>

Filed by: \_\_\_\_\_

Date: \_\_\_\_\_