



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Thursday, July 5, 2018

MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: DR. JEFF T.H. PON, DIRECTOR

Subject: Guidance for Implementation of Executive Order 13836 - Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining

Note: The guidance within the memorandum below has been rescinded by Executive Order; please refer to OPM's March 5, 2021 memorandum: <https://www.chcoc.gov/content/guidance-implementation-executive-order-14003-protecting-federal-workforce>

Introduction

Approximately 1.2 million Executive Branch employees are represented by labor unions who collectively bargain on behalf of these employees. This represents approximately 57 percent of the Federal Government's non-Postal workforce. The President's Management Agenda (PMA) lays out a long-term vision for modernizing the Federal Government in key areas that will improve the ability of agencies to deliver mission outcomes, provide excellent service, and effectively steward taxpayer dollars on behalf of the American people. Notably, the PMA emphasizes that taxpayer dollars must go to effective programs that produce results efficiently. In 2016, the salaries for union negotiators cost \$16 million. Consistent with the vision of the PMA, Executive Order (EO) 13836, signed by the President on May 25, 2018, calls for executive departments and agencies subject to chapter 71 of title 5, United States Code (agencies) to develop efficient, effective, and cost-reducing approaches to Federal sector collective bargaining. This guidance summarizes key requirements of EO 13836.

Policy

Section 1 of EO 13836 provides that agencies should secure collective bargaining agreements (CBA) that: promote an effective and efficient means of accomplishing agency missions; encourage the highest levels of employee performance and ethical conduct; ensure employees are accountable for their conduct and performance on the job; expand agency flexibility to address operational needs; reduce the cost of agency operations, including with respect to the use of taxpayer-funded union time; are consistent with applicable laws, rules, and regulations; do not cover matters that are not, by law, subject to bargaining; and preserve management rights under section 7106(a) of title 5, United States Code (management rights). The EO further notes that agencies that form part of an effective and efficient Government should not take more than a year to renegotiate CBAs, which would include, if necessary, any mediation and impasse proceedings.

Implementation of EO 13836 and Renegotiation of Collective Bargaining Agreements

Section 4 directs agencies to make every effort to secure a CBA that meets the objective of the EO. Accordingly, when agencies are negotiating a CBA, they must make every effort to secure a CBA that meets objectives that advance the policies set forth in section 1 of the EO. EOs possess the force of government-wide rules. Therefore, provisions of the EO are effective on the date the CBA expires or rolls over, whether or not the CBA is reopened for negotiations. Nonetheless, agencies are encouraged to consult with legal counsel and offices of labor relations on questions relating to appropriate implementation of the EO.

Establishment of an Interagency Labor Relations Working Group

Section 3 of EO 13836 creates an Interagency Labor Relations Working Group (LRG). As noted in the attached EO, the purpose of the LRG is to assist the Director of the Office of Personnel Management (OPM) on matters involving labor-management relations in the executive branch and propose recommendations to the President for improving the organization, structure, and functioning of labor relations programs across agencies.

Agency Responsibilities

Section 3 of EO 13836 specifies that participating agencies shall provide such assistance to the LRG to carry out the responsibilities outlined in the Order.

1. **LRG Participation.** Each agency with at least 1,000 employees represented by a collective bargaining representative pursuant to chapter 71 of title 5, United States Code shall nominate a minimum of one agency representative to participate in the LRG. The EO specifies that representatives of participating agencies are determined by their agency head in consultation with the OPM Director. With this in mind, I believe agency representatives should be assigned to an individual at a very senior level who has the trust of the agency head and serves as an integral part of the leadership team. This does not preclude agency representatives from consulting or coordinating with labor relations practitioners. Agencies with less than 1,000 employees represented by a collective bargaining representative may, at the election of the agency head, nominate agency representatives to participate in the LRG with the concurrence of the OPM Director. These representatives should also be at a very senior level. LRG nominations should be endorsed by the agency head prior to submission to the OPM Director. The LRG nominee form is attached, which lists the information required for nominees and nominating officials. LRG participants are expected to maintain regular participation at LRG meetings, co-chair or participate, or designate a representative to participate, in at least one LRG workgroup. LRG participants have authority to vote on behalf of or identify a proxy to vote on behalf of his/her agency during LRG decision-making activities. Each agency is responsible for determining if they have over 1,000 bargaining unit employees represented by a collective bargaining representative, and thus required to nominate at least one agency representative to serve on the LRG. Each agency head should submit their LRG nominee(s) to OPM by July 13, 2018, at LRG@opm.gov.

2. **LRG Invitations to Additional Participants.** Additional agency representatives may be invited to support the efforts of the LRG and contribute to projects or workgroups, as particular skills and expertise are needed. Agencies must respond to such invitations expeditiously.

Labor Relations Group Activities

Section 3 of EO 13836 requires the LRG to assist the OPM Director on matters involving labor-management relations in the executive branch. LRG Activities will include addressing–

1. **Collection of Information.** It is anticipated that the LRG will assist the OPM Director in making term CBAs publicly accessible on the Internet as soon as practicable. The LRG could also create an inventory of CBA language involving significant subjects of bargaining relevant to more than one agency that have been proposed for inclusion in at least one term CBA. OPM is taking steps to create a collective bargaining database. Additional information will be provided when this database is available to receive CBAs.
2. **Model Ground Rules.** The LRG will develop model ground rules for negotiations which aim to minimize delays, set reasonable parameters for good faith negotiations, and call for timely mediation of disputes and subsequent impasse proceedings, as needed.
3. **Analysis of Term CBA Provisions.** The LRG will analyze term CBA provisions on subjects of bargaining relevant to more than one agency and assess possible effects on statutory management rights and potential impact to efficiency, effectiveness, cost of operations, employee accountability and performance, and other policies set forth in section 1 of the Order.
4. **Executive Branch Labor Relations Information.** The LRG will create an inventory of language on common topics and share information and analysis with agencies to reduce duplication of efforts and encourage common approaches for collective bargaining across the government.
5. **Communications and Agency Outreach.** The LRG will facilitate interagency communications and the sharing of best practices regarding collective bargaining.
6. **Government-wide approaches.** The LRG will assist the OPM Director in developing Government-wide approaches to bargaining issues that advance the policies outlined in section 1 of the Order.
7. **Report to the President.** The LRG Chair will submit a report to the President, through the Office of Management and Budget, within 18 months of the first LRG meeting. The report will propose recommendations for meeting the Order's goals through collective bargaining and for improving the organization, structure, and functioning of labor relations programs across agencies.

Collective Bargaining Objectives

Section 4 of EO 13836 directs agencies, when negotiating with a collective bargaining representative, to: 1) establish collective bargaining objectives that advance the policies of section 1 of the EO; 2) consider the analysis and advice of the LRG in establishing these objectives and when evaluating any collective bargaining proposals; 3) make every effort to secure a CBA that meets these objectives; and 4) ensure management and supervisor participation in the negotiating team representing the agency. Please refer to the EO for complete details on agency requirements related to collective bargaining objectives.

Agency Reporting Requirements for Existing CBAs

1. **CBA Report to OPM.** Section 8 of EO 13836 requires agencies to submit to OPM each term CBA currently in effect and its expiration date. Agencies shall also submit new term CBAs and their expiration dates to the OPM Director within 30 days of each CBA's effective date, and new arbitral awards to the OPM Director within 10 business days of receipt. OPM is required to develop a prescribed format for submitting this information within 90 days of the date of EO 13836 and agencies will have 30 days from the date OPM prescribes the format to make their submissions. In conjunction with development of the collective bargaining database, OPM is developing this prescribed format and method for submission which will be provided at a future date. However, it is anticipated that all documents submitted to OPM will be required to be in optical character recognition text-readable format. It is also anticipated that agencies will need to provide term CBAs in a format compliant with the standards of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794 (d)). This law requires Federal agencies to make their electronic and information technology accessible to people with disabilities. This will facilitate the EO requirement to make term CBAs publicly accessible on the Internet as soon as practicable. Additional guidance will be provided by OPM in the near future regarding reporting format.
2. **CBA Report to Agency Head.** Agencies must prepare and provide each Agency head with a combined report on all operative term CBAs no less than 1 year prior to each CBAs expiration or renewal date. The report shall make recommendations concerning new or revised language the agency could seek that would better support the objectives of the Order.
3. **Discussion of CBA Proposals with LRG.** Agencies must designate a point of contact to work with OPM to provide term CBAs, sample proposal and counter-proposal language on significant matters proposed for inclusion in term CBAs, and analyze and discuss with OPM and the LRG the impact of various CBA provisions on agency effectiveness and efficiency, and otherwise cooperate fully with the LRG in support of its mission. The LRG Point of Contact form is attached.

Timeframes for Future Collective Bargaining

Section 5 of EO 13836 specifies that ground rules for CBAs should take 6 weeks or less to negotiate and term CBAs should take between 4 and 6 months under those ground rules. The EO

states that these time periods should ordinarily be considered reasonable and satisfy the “effective and efficient” goal set forth in section 1 of the EO. The Order further requires that agency heads be notified of any negotiation lasting longer than 6 months and monthly thereafter. The Order also requires agency heads to notify the President through OPM of any negotiations lasting longer than 9 months and specifies that the entire negotiation process should take no longer than 1 year which would include, if necessary, any mediation and impasse proceedings. If an agency was already in negotiations prior to the EO being issued, the notification requirements apply only to time spent in negotiations starting May 25, 2018, (the issuance of the EO) and going forward. However, agencies already in negotiations should devote the necessary time and resources to bring these negotiations to an appropriate conclusion consistent with the policies and objectives of this EO and their obligations to negotiate in good faith. To achieve this, the EO calls on agencies to set reasonable time limits for good-faith negotiations, to call for Federal Mediation and Conciliation Service mediation of disputed issues not resolved within reasonable time limits, and, as appropriate, to promptly bring remaining issues to the Federal Service Impasses Panel for resolution.

Section 5 of EO 13836 also directs agencies, when engaged in negotiations including in ground rules bargaining, to submit written proposals and to request that employee representatives submit written proposals in order to facilitate the resolution of negotiability issues and to permit the assessment of the impact of proposals on Agency operations and management rights. It further states that if agencies have CBAs or other agreements that require bargaining in any manner other than mutual exchange of written proposals, that agencies should take steps to eliminate such agreements at the soonest possible opportunity. This would include elimination of agreements based on now-revoked Executive Order 12871 establishing Labor-Management Partnerships, and Executive Order 13522 creating Labor-Management Forums.

Section 5 of EO 13836 also directs agencies, in the event that bargaining is delayed or impeded because of an employee representative’s failure to comply with the duty to negotiate in good faith, to consider whether to file an unfair labor practice (ULP) with the Federal Labor Relations Authority or to implement a proposed change to conditions of employment. Evidence of failure to engage in good faith bargaining includes refusal to meet to bargain, refusal to meet as frequently as necessary, refusal to submit proposals or counterproposals, undue delays in bargaining, undue delays in submission of proposals or counterproposals, inadequate preparation for bargaining, and other conduct that constitutes bad-faith negotiating.

The attached form, EO 13836 POTUS Report – Status of Collective Bargaining, will be used to collect information regarding negotiations lasting longer than 9 months. Copies should be provided to the LRG by sending to LRG@opm.gov. Please refer to the Order for complete details on all agency requirements related to timeframes and procedures for future collective bargaining.

Permissive Bargaining

Section 6 of EO 13836 specifies that the head of each agency subject to the provisions of chapter 71 of title 5, United States Code, may not negotiate over the substance of the subjects set forth in section 7106(b)(1) of that chapter and directs agency heads to instruct subordinate officials that they may not negotiate over these same subjects.

Questions

Agency headquarters-level human resources offices may contact OPM's Accountability and Workforce Relations office at awr@opm.gov or 202-606-2930. Other agency employees should contact their agency human resources offices for assistance.

5 Attachments:

- [Executive Order 13836](#)
- Interagency Labor Relations Group Nominee Form*
- Interagency Labor Relations Group Point of Contact Form*
- EO 13836 POTUS Report – Status of Collective Bargaining*
- Agency Deadlines*

*See 508-conformant files below

cc: Chief Human Capital Officers and Human Resources Directors