

PART 2063 - EMPLOYEE RELATIONS AND SERVICES

Subpart I - Labor-Management Relations (LR) Program

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Exhibit A -Appendix A, Delegations of Labor Relations Authority

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PART 2063 - EMPLOYEE RELATIONS AND SERVICES

Subpart I - Labor-Management Relations Program

§ 2063.401 General.

The objectives of the Labor-Management Relations Program, herein referred to as the Program, are stated in Executive Order 11491, as amended, "Labor-Management Relations in the Federal Service" (FSL-MRS) and in United States Department of Agriculture (USDA) Departmental Regulation (DR) 4070-711, "Labor Relations".

§ 2063.402 Purpose.

The purposes of the Program are: (1) to insure that USDA Rural Development complies with the Federal Service Labor-Management Relations Statute (FSL-MRS), as amended, with regulations and case law issued by the Federal Labor Relations Authority (FLRA), and with USDA policy, direction and guidance established by the Director, Office of Human Resources Management; and (2) to improve Government efficiency.

§ 2063.403 Definitions.

(a) The following terms are used herein as defined in the FSL-MRS: employee; supervisor; management official; and labor organization.

(b) The following terms are used herein as defined in section 4 of USDA DR 4070-711, "Labor Relations": Agency Head Review; Collaborative Labor Relations Strategy; Compliance Labor Relations Strategy; Exception to Arbitration Award; Federal Service Labor-Management Relations Statute (FSL-MRS); Federal Labor Relations Authority (FLRA); Full-Performance Level Labor Relations Specialist; Level of Recognition; Management; Unfair Labor Practice (ULP); Unions.

(c) As used herein, the term collectively bargained agreement (CBA) includes all agreements, oral or written, between Rural Development and an exclusive representative affecting and/or governing conditions of employment of bargaining unit employees, and any amendments thereto.

(d) As used herein, the term subordinate managers refers to Rural Development managers with supervisory authority at the level of recognition (e.g., the Human Resources Manager for a state, but not the Manager of one of the Programs).

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§ 2063.404 Policy.

(a) Employee rights. Section 7102 of the FSL-MRS creates an enforceable legal right for each employee to form, join, or assist any labor organization, or to refrain from any such activity. This right must be respected and protected. Except as noted in paragraph (b), this right includes taking part in a labor organization's management or being its representative.

(b) Exceptions. Paragraph (a) does not authorize supervisors and management officials or others in the employment of Rural Development whose official duties are incompatible with such activities to participate in the management or representation of a labor organization.

(c) Neutrality. All supervisors and management officials must remain neutral regarding (i) employees' decisions about whether to be represented for collective bargaining, (ii) employees' choices between competing labor organizations, (iii) whether employees choose to acquire or maintain membership in a labor organization, and (iv) whether and how employees choose to participate in a labor organization.

(d) Documents memorializing CBAs. The agreed terms of each CBA shall be embodied in a written document (e.g., term agreement, master agreement, local agreement, mid-term bargaining agreement, memorandum of understanding (MOU), memorandum of agreement (MOA), grievance settlement agreement, ULP settlement agreement, and partnership or collaborative labor-management agreement or charter) and the parties shall take such steps as are necessary to implement the CBA including submission of the document to the agency head for approval pursuant to §7114(c) of the FSL-MRS. Note: All documents will be signed by both the Director, Labor Relations Staff (D-LRS) as well as the line manager involved.

§ 2063.405 Designations and assignments of LR responsibilities.

(a) Assistant Administrator for Human Resources (AAHR). The AAHR is responsible to ensure that supervisors and management officials in Rural Development comply with the Program.

(b) State Director. State Directors are responsible for:

(1) The operation of the Program within their respective jurisdictions.

(2) Keeping the Director, Labor Relations Staff (D-LRS) informed about developments and problems.

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(c) Director, Labor Relations Staff (D-LRS). The D-LRS is a Labor-Management Relations Officer reporting to the AAHR and is responsible for implementing the Program. The duties of the D-LRS include but are not limited to:

- (1) Formulating, promulgating and implementing policy for the conduct of Labor Relations (LR) by Rural Development.
- (2) Providing information and serving as liaison within Rural Development and between Rural Development and external parties regarding the conduct of LR by Rural Development.
- (3) Implementing Rural Development's LR Program.
- (4) Supervising the LR Specialists and any other employees assigned to the LR Staff.

(d) Administrative Program Directors (APDs). These officials are responsible, under the direction of their respective State Directors, for dealings with labor organizations. The duties of APDs include, but are not limited to:

- (1) Maintaining contact with recognized labor organizations.
- (2) Negotiating and administering CBAs.
- (3) Providing copies of CBAs to each supervisor and member of bargaining units.
- (4) Insuring that supervisors receive training in the Program.
- (5) Serving as assistant agency representative in proceedings before the FLRA, Federal Service Impasses Panel (FSIP), and the Assistant Secretary of Labor for Labor-Management Relations.
- (6) Maintaining records related to LR at the level of recognition including, but not limited to copies of all documents related to: FLRA representation proceedings (e.g., petitions, correspondence, formal documents, decisions, certifications); past and current collectively bargained agreements (e.g., memoranda, correspondence, minutes or notes of negotiations, grievance settlements); past and current grievances (e.g., grievance documents, correspondence, decisions by arbitrators, exceptions

filed with the FLRA, and FLRA decisions); past and current ULP charges (e.g., charges, correspondence, responses, settlement agreements, formal documents, hearing transcripts, evidence, decisions, records of compliance); impasse proceedings (e.g., correspondence, responses, agreements, and decisions of the FSIP); negotiability disputes (e.g., agency allegations, petitions, statements of position, and decisions of the FLRA); strategic LR plans, partnership or collaborative labor-management agreements or charters (e.g., minutes or notes of meetings, reports).

(e) Labor Relations Specialist (LR Specialist). Under the direction of the D-LRS, full performance level LR Specialists, and trainees under the direct supervision of the D-LRS or of a full performance level LR Specialist, are responsible to implement the Program. The duties of LR Specialists include, but are not limited to:

- (1) Preparing reports concerning LR.
- (2) Giving instruction, advice and assistance in LR.
- (3) Negotiating CBAs including participation in negotiability disputes, impasse proceedings, following procedures necessary for agency head review, and asserting the existence under 5 USC 7117 and 5 CFR 2424.50 of a "compelling need" for a Rural Development or USDA rule or regulation.
- (4) Representing Rural Development in proceedings related to representation petitions, ULP charges and complaints, and the arbitration of grievances.
- (5) Publishing notices to employees related to LR.

§ 2063.406 Designations and assignments of LR authority.

- (a) AAHR. The AAHR has authority to:
- (1) Conduct and oversee all LR aspects of Rural Development activities, including those of subordinate LR Specialists not supervised by the D-LRS as members of the LR Staff.
 - (2) Delegate the foregoing authority.
 - (3) Supervise the D-LRS.

§ 2063.406 (Con.)

(b) State Director. The State Directors have authority at the level of recognition they oversee to:

(1) Prepare and submit reports concerning LR in Rural Development for use within Rural Development; or delegate such authority to a subordinate manager.

(2) Advise and assist those in Rural Development who have operational responsibility for implementing the Program; or delegate such authority to a subordinate manager, an LR Specialist, Office of the General Counsel (OGC) attorney, or qualified contract counsel.

(3) Represent Rural Development in negotiating and executing CBAs; or delegate such authority to a subordinate manager, an LR Specialist, OGC attorney, or qualified contract counsel provided the D-LRS or an LR Specialist is a member of the negotiating team.

(4) Make negotiability dispute allegations under 5 CFR 2424, Subpart A, that an exclusive representative's proposals are not within Rural Development's duty to bargain, provided (i) the D-LRS or an LR Specialist concurs and (ii) the USDA Program Manager for LR is notified; or delegate such authority to a subordinate manager, an LR Specialist, OGC attorney, or qualified contract counsel.

(5) Represent Rural Development in negotiability disputes under 5 CFR 2424 before the FLRA after both (i) furnishing the D-LRS and the USDA Program Manager for LR a copy of the petition for review at the time of filing and (ii) consulting with the D-LRS and the USDA Program Manager for LR before filing any statement of position and/or response to a statement filed by the labor organization; or delegate such authority to an LR Specialist, OGC attorney, or qualified contract counsel.

(6) Represent Rural Development in impasse proceedings under 5 CFR 2470 before the FSIP provided (i) the representation team includes the D-LRS or an LR Specialist, and (ii) the USDA Program Manager for LR is notified of all requests for assistance; or delegate such authority to an LR Specialist, OGC attorney, or qualified contract counsel.

(7) Submit a copy of each CBA to the D-LRS immediately after execution for transmittal to the USDA Program Manager for LR within five business days of execution for review by the agency head; or delegate such authority to a subordinate manager or an LR Specialist.

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(8) Ask the D-LRS to request the USDA Program Manager for LR to assert the existence of a "compelling need" under 5 USC 7117 and 5 CFR 2424.50 for a Rural Development or USDA rule or regulation; or delegate such authority to a subordinate manager or an LR Specialist.

(9) Represent Rural Development in proceedings under a CBA's negotiated grievance arbitration procedure; or delegate such authority to an LR Specialist, OGC attorney, or qualified contract counsel.

(10) File exceptions to arbitration awards with the FLRA under 5 CFR 7122 and 5 CFR 2425 after consulting with the D-LRS and the USDA Program Manager for LR; or delegate such authority to an LR Specialist, OGC attorney, or qualified contract counsel.

(11) Represent Rural Development in representation proceedings under 5 CFR 2422 before the FLRA; or delegate such authority to an LR Specialist.

(12) Represent Rural Development in ULP proceedings under 5 CFR 2423 before the FLRA; or delegate such authority to an LR Specialist, OGC attorney, or qualified contract counsel.

(13) Ask the D-LRS to consult with the USDA Program Manager for LR about whether to request judicial review of a decision of the FLRA under 5 CFR 7123, and submit written request to Office of Human Resources Management Director; or delegate such authority to a subordinate manager, an LR Specialist, OGC attorney, or qualified contract counsel.

(14) Distribute annual "*Weingarten*" notice, pursuant to 5 USC 7114(a)(3), after the USDA Program Manager for LR issues notice; or delegate such authority to manager at level of recognition.

(c) D-LRS. The D-LRS has authority to:

(1) Formulate, promulgate and implement policy, direction and guidance for the conduct of LR by Rural Development.

(2) Prepare and submit reports concerning LR in Rural Development for use inside and outside Rural Development; or delegate such authority to an LR Specialist.

§ 2063.406(c) (Con.)

- (3) Maintain contact with the Office of the Secretary, USDA and the national offices of labor organizations.
- (4) Advise and assist those in Rural Development who have operational responsibility for implementing the Program; or delegate such authority to an LR Specialist, OGC attorney, or qualified contract counsel.
- (5) Supervise the LR Specialist.
- (6) Represent Rural Development in negotiating and executing CBAs; or delegate such authority to an LR Specialist, OGC attorney, or qualified contract counsel provided an LR Specialist is a member of the negotiating team.
- (7) Make negotiability dispute allegations under 5 CFR 2424, Subpart A, that an exclusive representative's proposals are not within Rural Development's duty to bargain; or delegate such authority to an LR Specialist, OGC attorney, or qualified contract counsel.
- (8) Represent Rural Development in negotiability disputes under 5 CFR 2424 before the FLRA after both (i) furnishing the USDA Program Manager for LR a copy of the petition for review filed with the FLRA at the time of filing, and (ii) consulting with the USDA Program Manager for LR before filing any statement of position and/or response to a statement filed by the labor organization; or delegate such authority to an LR Specialist, OGC attorney, or qualified contract counsel.
- (9) Represent Rural Development in impasse proceedings under 5 CFR 2470 before the FSIP, provided the USDA Program Manager for LR is notified of all requests for assistance; or delegate such authority to an LR Specialist, OGC attorney, or qualified contract counsel.
- (10) Transmit a copy of each CBA to the USDA Program Manager for LR within five business days of execution for review by the agency head.
- (11) Request the USDA Program Manager for LR to assert the existence of a "compelling need" under 5 USC 7117 and 5 CFR 2424.50 for a Rural Development or USDA rule or regulation.

(12) Represent Rural Development in proceedings under a CBA's negotiated grievance arbitration procedure; or delegate such authority to an LR Specialist, OGC attorney, or qualified contract counsel.

(13) File exceptions to arbitration awards with the FLRA under 5 CFR 7122 and 5 CFR 2425 after consulting with the USDA Program Manager for LR; or delegate such authority to an LR Specialist, OGC attorney, or qualified contract counsel.

(14) Represent Rural Development in representation proceedings under 5 CFR 2422 before the FLRA; or delegate such authority to an LR Specialist.

(15) Represent Rural Development in ULP proceedings under 5 CFR 2423 before the FLRA; or delegate such authority to an LR Specialist, OGC attorney or qualified contract counsel.

(16) Consult with the USDA Program Manager for LR about whether to request judicial review of a decision of the FLRA under 5 CFR 7123, and submit written request to Office of Human Resources Management Director; or delegate such authority to an LR Specialist, OGC attorney or qualified contract counsel.

(17) Advise and assist in publishing annual "*Weingarten*" notice, pursuant to 5 USC 7114(a)(3), after the USDA Program Manager for LR issues notice.

(d) (APD). APDs have authority at the level of recognition they oversee to:

(1) Implement policy for the conduct of LR by the state as directed by the State Director.

(2) Prepare reports concerning LR for use within Rural Development; or delegate such authority to a subordinate manager.

(3) Submit a copy of each CBA to the D-LRS immediately after execution for transmittal to the USDA Program Manager for LR within five business days of execution for agency head review; or delegate such authority to a subordinate manager.

(4) Distribute annual "*Weingarten*" notice, pursuant to 5 USC 7114(a)(3), after the USDA Program Manager for LR issues notice, or delegate such authority to a subordinate manager.

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(e) LR Specialist. Full performance level LR Specialists have authority to:

- (1) Prepare reports concerning LR within Rural Development.
 - (2) Advise and assist those in Rural Development who have operational responsibility for implementing the Program.
 - (3) Represent Rural Development in negotiating and executing CBAs.
 - (4) Make negotiability dispute allegations under 5 CFR 2424, Subpart A, that an exclusive representative's proposals are not within Rural Development's duty to bargain, and notify the D-LRS.
 - (5) Represent Rural Development in negotiability disputes under 5 CFR 2424 before the FLRA after both (i) furnishing the D-LRS and the USDA Program Manager for LR a copy of the petition for review filed with the FLRA at the time of filing and (ii) consulting with the D-LRS and the USDA Program Manager for LR before filing any statement of position and/or response to a statement filed by the labor organization.
 - (6) Represent Rural Development in impasse proceedings under 5 CFR 2470 before the FSIP, provided the D-LRS and USDA Program Manager for LR are notified of all requests for assistance.
- Submit a copy of each CBA to the D-LRS immediately after execution for transmittal to the USDA Program Manager for LR within five business days of execution for review by the agency head.
- (8) Ask the D-LRS to request the USDA Program Manager for LR to assert the existence of a "compelling need" under 5 USC 7117 and 5 CFR 2424.50 for a Rural Development or USDA rule or regulation.
 - (9) Represent Rural Development in proceedings under a CBA's negotiated grievance arbitration procedure.
 - (10) File exceptions to arbitration awards with the FLRA under 5 CFR 7122 and 5 CFR 2425 after consulting with the D-LRS and the USDA Program Manager for LR.
 - (11) Represent Rural Development in representation proceedings under 5 CFR 2422 before the FLRA.

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(12) Represent Rural Development in ULP proceedings under 5 CFR 2423 before the FLRA.

(13) Ask the D-LRS to consult with the USDA Program Manager for LR about whether to request judicial review of a decision of the FLRA under 5 CFR 7123, and submit written request to Office of Human Resources Management Director.

(14) Advise and assist in publishing annual "*Weingarten*" notice, pursuant to 5 USC 7114(a)(3), after the USDA Program Manager for LR issues notice.

§§ 2063.407 - 2063.450 [Reserved]

Attachment: Exhibit A

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APPENDIX A
 DELEGATIONS OF LABOR RELATIONS AUTHORITY

This table shows the several types of authority to perform LR functions that may/may not be delegated in Rural Development. For more complete guidance, see the relevant text in the body of the Instruction.

In this Appendix, the following abbreviations have these meanings:

USDA PM/LR = Program Manager for Labor Relations, United States Department of Agriculture

AAHR = Assistant Administrator for Human Resources

SDs = State Directors

D-LRS = Director, Labor Relations Staff of Rural Development

APD = Administrative Program Director in a state

LR-Sp = full performance-level Labor Relations Specialist

O = authorized to exercise the listed authority, but the authority may not be re-delegated

X = authorized to perform listed authority, and the authority may be further re-delegated to a Rural Development manager with supervisory authority at the level of recognition or to the D-LRS or member of the LRS

<u>LR Function and Authority</u>	<u>AAHR</u>	<u>SDs</u>	<u>D-LRS</u>	<u>APD</u>	<u>LR-Sp</u>	<u>Conditions</u>
1. Supervise the D-LRS	O					
2. Establish LR policy, direction and guidance for Rural Development.	X		O			
3. Prepare and submit internal reports about LR in Rural Development.	X	X	X	X	O	
4. Prepare and submit for external use reports about LR in Rural Development.	X		X			
5. Maintain contact with the Secretary of Agriculture and labor organization national offices.	X		O			

<u>LR Function and Authority</u>	<u>AAHR</u>	<u>SDs</u>	<u>D-LRS</u>	<u>APD</u>	<u>LR-Sp</u>	<u>Conditions</u>
6. Assist those in Rural Development having operational responsibility for LR.	X	X	X		O	
7. Supervise LR Specialists under their direction.	X		O			
8. Negotiate and execute CBAs between Rural Development and certified exclusive representatives.	X	X	X		O	Negotiation teams must include the D-LRS or an LR Specialist when Rural Development is not represented by manager at the level of recognition (see DR 4070-711, App. A, #3).
9. Make negotiability dispute allegations under 5 CFR 2424, Subpart A, that an exclusive representative's proposals are not within Rural Development's duty to bargain.	X	X	X		O	The D-LRS or an LR-Sp must concur and the USDA PM/LR must be notified (see DR 4070-711, §10 and App. A, #4).

<u>LR Function and Authority</u>	<u>AAHR</u>	<u>SDs</u>	<u>D-LRS</u>	<u>APD</u>	<u>LR-Sp</u>	<u>Conditions</u>
10. Represent Rural Development in negotiability disputes under 5 CFR 2424, Subpart C & D before the FLRA.	X	X	X		O	USDA PM/LR must be (i) provided a copy of the petition of review when it is submitted, (ii) consulted before any statement of position may be filed, and (iii) provided a copy of any responses by Rural Development to opposing statements (see DR 4070-711, §10 and App. A, #5).
11. Represent Rural Development in impasse proceedings under 5 CFR, Part 2470 before the FSIP.	X	X	X		O	Representation team must include the D-LRS or an LR Specialist and USDA PM/LR must be notified of any request for FSIP assistance (see DR 4070-711, App. A, #6).
12. Submit negotiated CBAs to D-LRS to be transmitted to USDA PM/LR for Agency head review under 5 CFR 7114(c).	X	X		X	O	CBA must be submitted immediately after execution.

LR Function and Authority	AAHR	SDs	D-LRS	APD	LR-Sp	Conditions
13. Transmit negotiated CBAs to USDA PM/LR for Agency head review under 5 CFR 7114(c).	X		O			USDA PM/LR must receive the CBA within 5 business days after execution (see DR 4070-711, App. A, #7).
14. Ask the D-LRS to request the USDA PM/LR assert a "compelling need" under 5 USC 7117 & 5 CFR 2424.50.		X			O	
15. Request that the USDA PM/LR assert a "compelling need" under 5 USC 7117 & 5 CFR 2424.50.	X		O			
16. Represent Rural Development in proceedings under a CBA's negotiated grievance arbitration procedure.	X	X	X		O	Function to be performed by the D-LRS or an LR-Sp, OGC attorney or qualified contract counsel (see DR 4070-711, App. A, #13).
17. Request the D-LRS to consult with the USDA PM/LR before filing exceptions to arbitration awards under 5 USC 7122 & 5 CFR 2425.	X	X			O	
18. Consult with USDA PM/LR prior to filing exceptions to arbitration awards under 5 USC 7122 & 5 CFR 2425.	X		X			

<u>LR Function and Authority</u>	<u>AAHR</u>	<u>SDs</u>	<u>D-LRS</u>	<u>APD</u>	<u>LR-Sp</u>	<u>Conditions</u>
19. File exceptions to arbitration awards under 5 USC 7122 & 5 CFR 2425 with FLRA.	X	X	X		O	Exceptions may be filed only after consulting with USDA PM/LR (see DR 4070-711, §11 and App. A, #9).
20. Represent Rural Development in representation proceedings under 5 CFR Part 2422 before FLRA.	X	X	X		O	Function to be performed by the D-LRS or an LR-Sp (see DR 4070-711, App. A, #10).
21. Represent Rural Development during investigation of ULP charges under 5 CFR 2423 by FLRA Regional Office.	X	X	X		O	Function to be performed by the D-LRS or an LR-Sp, OGC attorney or qualified contract counsel (see DR 4070-711, App. A, #11).
22. Represent Rural Development during formal litigation of ULP Complaints in proceedings under 5 CFR 2423 before ALJs, FLRA and appellate courts.	X	X	X		O	Function to be performed by the D-LRS or an LR-Sp, OGC attorney or qualified contract counsel (see DR 4070-711, App. A, #11).

<u>LR Function and Authority</u>	<u>AAHR</u>	<u>SDs</u>	<u>D-LRS</u>	<u>APD</u>	<u>LR-Sp</u>	<u>Conditions</u>
23. Ask the D-LRS to request to consult with the USDA PM/LR about whether to seek judicial review of FLRA decision under 5 CFR 7123.	X	X			0	Submit to the D-LRS a written draft of arguments and authorities justifying the request.
24. Request the USDA PM/LR to seek judicial review of FLRA decision under 5 CFR 7123 and submit written request to OHRM Director.	X		X			Submit to the USDA PM/LR a written draft of arguments and authorities justifying the request (see DR 4070-711, §11 and App. A, #12).
25. Publish annual "Weingarten" notice.	X	X		X		Distribute after notice issued by USDA PM/LR (see DR 4070-711, App. A, #14).