



REFERENCE GUIDE

PRE-DECISIONAL INVOLVEMENT OF UNION REPRESENTATIVES

Purpose

This guide discusses the requirements of Executive Order 13522, Creating Labor-Management Forums to Improve Delivery of Government Services, relative to pre-decisional involvement (PDI) of union representatives in workplace matters impacting bargaining unit employees.

Background

Under Executive Order (E.O.) 13522, management should allow employees and their union representatives to engage pre-decisionally in all workplace matters, to the fullest extent practicable, without regard to whether a bargaining obligation exists under Section 7106 of the Federal Service Labor-Management Relations Statute. This effort can be accomplished by expeditiously sharing adequate information with union representatives where it is not prohibited by law and by making a good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving 5 U.S.C. § 7106(b)(1) subjects. The parties may elect to engage in PDI through Forums/Councils established at the level of recognition in accordance with the E.O., or through other work groups or committees. Finally, management should evaluate and document in consultation with union representatives, efficiencies gained as a result of PDI.

The Nature of PDI

While there is no precise definition of PDI, nor a single way to engage the unions pre-decisionally, there are several points of view that management may want to consider. For example, PDI can be used as a communication tool to share information, ideas, concerns, and opinions early in the process, before decisions are reached, in order to achieve better and more supportable results. It can also be used to provide an opportunity for employees, through their elected representatives, to address problems and craft solutions, identify efficiencies, and improve services in the workplace. In terms of





collective bargaining, PDI may result in resolution of some issues outside the traditional bargaining processes through early collaboration using an interest-based, problem-solving approach.

PDI supplements the rights and obligations of labor and management under the Statute, but does not alter any of these rights. PDI is not negotiation, nor is it intended to obviate collective bargaining. However, if mutual agreement is reached through PDI, a written agreement may result that eliminates the need for further statutory bargaining. PDI is not co-management, but is a valuable tool to provide union input and perspective, so management can make the best decision. Finally, PDI is meant to be a collaborative, interest-based, problem solving approach and not an adversarial one, as the E.O. specifically states that it creates no right to administrative or judicial review. As such, incorporation into the parties' collective bargaining agreement would not be advisable. To do so, would then provide an opportunity for third party review through a grievance/arbitration proceeding or unfair labor practice charge for non-compliance, an outcome not intended or provided for by the President's E.O.

Considerations for Determining When PDI is Appropriate

The E.O. indicates that PDI should be utilized in all workplace matters to the fullest extent practicable. PDI can be most appropriate when management considers exercising their authority under the Statute that would impact a condition of employment or other workplace issue prior to making final decisions; and when new policies, practices, or procedures that impact employees or affect mission accomplishment are being developed. The union may also seek to engage pre-decisionally with management in order to address workplace issues of concern through the Labor Management Forum/Council or other appropriate processes such as work groups, joint committees, study teams, or other ad hoc groups.

There may be circumstances that would render PDI impracticable, such as matters involving national security or emergency situations. Implementation timeframes may also impact whether and how much time can be devoted to PDI. Prior to approaching the union to participate in PDI, management should engage in internal coordination and analysis to determine if the matter is ripe for PDI discussion. There are additional



case-by-case considerations that should be weighed to determine when PDI would be appropriate and the timing of effective pre-decisional involvement. For example:

- Have legal and regulatory concerns been identified/addressed?
- Have the issues that need to be addressed been sufficiently identified?
- Are there sensitive matters being discussed and can such matters be kept confidential until an appropriate time for disclosure?
- Is there flexibility, or a lack thereof, in developing potential options jointly with the union?

What is required for successful PDI

In order to achieve maximum results through the use of the PDI process, the following factors are important contributors:

- The parties should have a common understanding of the issue(s) to be addressed.
- Trust between the parties, including the ability to be open, honest and transparent regarding the issues. Generally, parties with a highly adversarial relationship do not achieve success in the PDI process.
- Willingness by both parties to engage in a problem solving approach based on interest based principles, including respect for each party's interests and concerns.
- Mutual understanding of confidential issues and what must not be disclosed to others.
- Common expectations concerning results (e.g. increased productivity; improved working conditions; better mission accomplishment, improving employee morale).
- Bilateral agreement regarding implementation of decisions or other actions that should occur after PDI involvement has concluded.

- Shared understanding of the relationship between PDI involvement and statutory collective bargaining obligations.

Outcomes of PDI:

PDI outcomes can vary depending on the nature and complexity of the issues being addressed. PDI can result in a consensus decision with recommendations accepted by all parties for implementation. If the union is satisfied with the final outcome, further statutory negotiations may be waived, or at least the scope of such negotiations may be significantly reduced. It may also be appropriate to develop a written document to capture any resulting agreements. A thorough discussion and understanding of the issue without reaching final consensus or acceptance of recommendations for implementation may also result from PDI. In this situation, the parties would still have the discretion to exercise their rights under the labor-management statute and in accordance with the established provisions of their collective bargaining agreement.

Conclusion

PDI is a consensus/recommendation process, which the parties can utilize as a vehicle to create solutions that benefit the organization as a whole. If successful, the potential benefits of PDI include better recommendations/decisions, timely implementation, and greater support of decisions by the parties. Another primary benefit is that the underlying relationship between the parties may be enhanced, resulting in more effective communications, fewer formal disputes, and more efficient dispute resolution. Parties have to be aware that the associated risks of PDI involvement may include occasionally increased costs and investment of time. Further, if the parties fail to reach consensus from the PDI process, collective bargaining under the Statute is still available to resolve issues.

References:

5 USC Chapter 71, Federal Service Labor-Management Relations Statute

E.O. 13522, Creating Labor-Management Forums to Improve Delivery of Government Services