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Christine Godsil Cooper

Sharon Bauer

FEDERAL SECTOR LABOR RELATIONS REFORM

CHRISTINE GODSIL COOPER*
SHARON BAUER**

On October 13, 1978, President Carter signed into law the Civil Service Reform Act of 1978.[1] The Act has been called "one of the most significant developments in the field of public administration in this century."[2] It was also the first significant change in the Civil Service system since the Pendleton Act of 1883.[3] Since the time of the first Civil Service Act, the total civilian employment in the federal sector has increased from approximately 131,000 to almost 2.9 million.[4] The Civil Service Reform Act was, in part, an attempt by President Carter to fulfill his campaign pledge to reorganize the Civil Service to form a more efficient government.[5]

There are nine titles to the Civil Service Reform Act of 1978.[6] One of these, title VII (Federal Service Labor-Management Relations) was

* B.A., Rosary College; M.A., University of Illinois; J.D., DePaul University School of Law; LL.M., Harvard Law School; Assistant Professor, Loyola University Law School.

** B.A., University of Dayton; M.S., Wright State University; J.D., Loyola University Law School; Labor Relations Specialist, Federal Labor Relations Authority, Region V, Chicago, Illinois. The authors thank Nancy Tuohy and Vivian Yamagachi for their research assistance.

1. 92 Stat. 1192, 5 U.S.C. §§ 7101-7135 (1978) [hereinafter referred to as the Act or the CSRA].

2. Frazier, *Labor Management Relations in the Federal Government*, 30 LAB. L.J. 131, 131 (1979) [hereinafter cited as Frazier]. Mr. Frazier is a member of the Federal Labor Relations Authority, the body established by title VII to administer the new federal labor relations program.

3. H.R. REP. NO. 1043, 95th Cong., 2d Sess. 1, *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS 2723, 2724. The Pendleton Act established the Civil Service Commission, which was charged with implementing the merit principle in federal personnel practices. Moreover, Congress was to determine the conditions of employment for federal employees. Civil Service Act of 1883, Act of January 16, 1883, ch. 27, 22 Stat. 403. *See generally* E. HAGBURG & M. LEVINE, LABOR RELATIONS: AN INTEGRATED PERSPECTIVE, 164-90 (1978) [hereinafter cited as HAGBURG & LEVINE].

4. H.R. REP. NO. 1043, 95th Cong., 2d Sess. 1, *reprinted in* [1978] U.S. CODE. CONG. & AD. NEWS 2724.

5. President Carter stated that: "I consider civil service reform to be absolutely vital. Worked out with civil servants themselves, this reorganization will restore the merit principle to a system that has grown into a bureaucratic maze." President Carter's State of the Union Message, 1978 PUB. PAPERS 90 (January 19, 1978). *See ABA Committee Report on Federal Government Employee Relations*, [1978] 61 GOV'T EMPL. REL. REP. (BNA) 151, 153 [hereinafter referred to as *ABA Report*].

6. The nine titles of the CSRA are: I—Merit System Principles; II—Civil Service Functions, Performance Appraisal, Adverse Action; III—Staffing; IV—Senior Executive Service; V—Merit Pay; VI—Research, Demonstration, and Other Programs; VII—Federal Service Labor-Management Relations; VIII—Grade and Pay Retention; IX—Miscellaneous.

enacted in haste with little debate.[7] This title, which became effective on January 11, 1979, is now the basic law governing federal employee labor relations.[8] Title VII will have a significant impact on the rights of federal employees to organize and bargain collectively.

This article will present a survey of the history of federal employee labor relations, along with an analysis of the most recent developments embodied in the Civil Service Reform Act. The appendices to this article present a comprehensive view of the legislative history of the reform bill and provide a convenient comparison of three sources of labor law: the most recent executive order applicable to the federal sector; its successor, title VII of the Civil Service Reform Act of 1978; and the National Labor Relations Act, the most significant body of labor law covering the private sector. The appendices invite the reader to consider the present state and future development of federal labor relations.

UNIONIZATION IN THE FEDERAL SECTOR

Unionism among government employees began in the 1830's when the federal skilled craftsmen joined the private sector unions.[9] These workers found a great deal of resistance from the federal departments and military heads.[10] In the following years, benefits secured by federal employees generally resulted from the gains private sector unions had achieved in industry.[11] Unionization in the public sector progressed slowly; it was not until the 1960's that organized public employees became prominent as a national labor force.[12] By 1968, one out of every ten union members in the United States was a government

7. *See, e.g.*, 124 CONG. REC. S14,266-326 (daily ed. Aug. 24, 1978); CONG. REC. H11,820-827 (daily ed. Oct. 6, 1978); CONG. REC. S17,084 (daily ed. Oct. 4, 1978).

8. Frazier, *supra* note 2, at 131.

9. *Project: Collective Bargaining and Politics in Public Employment*, 19 U.C.L.A. L. REV. 887, 893 (1972) [hereinafter referred to as *Collective Bargaining Project*]. *See also* HAGBURG & LEVINE, *supra* note 3, at 165. For example, approximately one-fourth of all private sector employees are represented by labor organizations, whereas approximately one-half of all federal employees are so represented. *Id., citing* Cohany & Dervey, *Union Membership Among Government Employees*, 93 MONTHLY LAB. REV. 16 (1970). This union dominance in the federal sector is particularly striking in view of the unavailability of union security clauses in the federal sector. *See* App. 3. However, in 1976 union organizing activity in the federal sector declined somewhat. *ABA Report*, *supra* note 5, at 152-53. *See also* text accompanying notes 83-86 *infra*.

10. *Collective Bargaining Project*, *supra* note 9, at 2.

11. *Id.* For example, in 1840 President Van Buren issued an election-eve executive order "awarding government employees the ten-hour day with no reduction in wages." HAGBURG & LEVINE, *supra* note 3, at 165. Federal employees continued to press for pay and benefits comparable to those in the private sector. By 1868, federal laborers and mechanics were the beneficiaries of "prevailing wage" statutes. *Id.*

12. *See Collective Bargaining Project*, *supra* note 9, at 3.

employee.[13] Today, union membership in the public sector has far outpaced that in the private sector.[14]

Unionization of federal employees has historically been an unpopular political subject. Presidents Theodore Roosevelt and William Howard Taft issued the "gag rule" which deprived government employees of the right to petition Congress on their own behalf.[15] By 1912, however, organized federal postal employees had persuaded Congress to pass the Lloyd-LaFollette Act,[16] which guaranteed not only the right of federal employees to petition, but also their right to join unions.[17] Shortly thereafter, in 1917, the first union of non-postal federal workers was chartered by the American Federation of Labor.[18]

During the 1930's, Congress supported the right of private sector employees to organize and bargain collectively.[19] However, public sector unionization was considered a separate issue. Even President Franklin D. Roosevelt, who was otherwise friendly to organized labor, sent a now-famous letter to the National Federation of Federal Employees in 1937:

> All government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very na-

13. *Id.*

14. Stieber, *Public Employee Unionism: Structure, Growth, Policy*, in 4 LABOR RELATIONS & SOCIAL PROBLEMS-COLLECTIVE BARGAINING IN PUBLIC EMPLOYMENT 8 (2d ed. 1975).

15. Hart, *Collective Bargaining in the Federal Civil Service*, in 4 LABOR RELATIONS & SOCIAL PROBLEMS-COLLECTIVE BARGAINING IN PUBLIC EMPLOYMENT 5 (2d ed. 1975) [hereinafter referred to as Hart]. This was by way of executive order:

> All officers and employees of the U.S. of every description . . . are hereby forbidden, either directly or indirectly, individually or through associations, to solicit an increase in their pay or influence or attempt to influence in their own interests any other legislation whatever, either before Congress or its committees . . . on penalty of dismissal from the government service.

Id. at 10.

It has been said that the Coolidge presidency was launched by his well-known opposition to public employee strikes. When Coolidge was Governor of Massachusetts, he sent a well-publicized telegram to Samuel Gompers, in which Coolidge inveighed against the Boston police strike. Kennedy & Johnson, *Public and Private Employment—A Double Standard*, 29 FED. B.J. 111 (1969) [hereinafter referred to as Kennedy & Johnson].

16. *See* Hart, *supra* note 15, at 10.

17. HAGBURG & LEVINE, *supra* note 3, at 166. This act, however, permitted federal employees to join only those unions which did not assert the right to strike against the government. *See generally* Hampton, *Federal Labor-Management Relations: A Program in Evolution*, 21 CATH. U.L. REV. 493, 494 (1972) [hereinafter referred to as Hampton].

18. HAGBURG & LEVINE, *supra* note 3, at 166. This was the National Federation of Federal Employees. The relationship between the AFL and the NFEE was short-lived. In 1931, the affiliation with the union was severed because of a dispute over job classifications. The AFL then chartered another union, the American Federation of Government Employees. *Id.*

19. *See* R. GORMAN, LABOR LAW: UNIONIZATION AND COLLECTIVE BARGAINING 4-5 (1976).

> ture and purposes of government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with government employee organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress. Accordingly, administrative officials and employees alike are governed and guided, and in many cases restricted, by laws which establish policies, procedures, or rules in personnel matters.[20]

In 1960, President Eisenhower's attitude was similar, although less restrained:

> That public servants might be so unmindful of the national good as to even entertain thoughts of forcing Congress to bow to their will would be cause for serious alarm. To have evidence that a number of them . . . led by a few, have actually sought to do so is, to say the least shocking.[21]

Although private sector employees were covered by the National Labor Relations Act[22] in 1935, federal sector employees were excluded from its basic protections.[23] The reluctance to provide collective bargaining rights to the public sector stems from a perception of inherent differences between private and public employment.

Several theories have been advanced to support the denial of collective bargaining rights to public employees. The sovereignty theory suggests that the government-employer, as the "ultimate repose of all legitimate societal power," must not be opposed by the power of labor unions.[24] A second approach is that public employees must sacrifice their own interests for the public good.[25] A third concern is that the division of authority among the many governmental agencies presents unique problems; for example, how to determine the level and subject of negotiations. The difficulty of this question is in part due to the various limits on governmental personnel policies levied by Congress.[26] A fourth consideration is the fear that a public employees' strike would seriously cripple the economic and social concerns of this country and

20. HAGBURG & LEVINE, *supra* note 3, at 166.

21. Hart, *supra* note 15, at 13. President Eisenhower was particularly disturbed that government employee unions were exerting political pressures on Congress. *Id.* at 12-13.

22. 49 Stat. 449, 29 U.S.C. §§ 151-169 (1976).

23. 29 U.S.C. § 152(2) (1976). Section 305 of the Taft-Hartley amendments to the NLRA, 61 Stat. 136, 160 (1947), provided for discharge and forfeiture of civil service status and for striking federal employees. This section was repealed by Pub. L. No. 330, 69 Stat. 624 (1955), re-enacted in 5 U.S.C. §§ 118p-118r (1976) which refers to sanctions against government employees.

24. Edwards, *Labor Relations in the Public Sector*, 10 DUQ. L. REV. 357, 359 (1972) [hereinafter referred to as Edwards].

25. *Id.* at 360. *See* United Fed'n of Postal Clerks v. Blount, 325 F. Supp. 879, 883-84 (D.D.C.), *aff'd*, 404 U.S. 802 (1971).

26. Edwards, *supra* note 24, at 361.

even endanger lives.[27] Finally, since the allocation of resources in the public sector is a political as well as an economic choice, it has been argued that full collective bargaining in the public sector would give highly organized groups an unfair advantage in receiving government funds.[28]

Although these issues may require special considerations and provisions in a public sector labor relations program, there are fundamental similarities between private and public organizations: their constituents, the workers, must have some say in the employment policies which govern their lives. The right to decent and just working conditions belongs to all employees, regardless of the character of their employer.[29]

FEDERAL LABOR RELATIONS UNDER EXECUTIVE ORDERS

Viewed against a background of animosity toward public employee collective bargaining, President Kennedy's approach was remarkable.[30] During his presidential campaign, Kennedy asserted his belief in the right of federal employees to deal collectively with their employers.[31] In 1962, President Kennedy issued the first Federal Labor Relations Executive Order, known as Executive Order 10,988,[32] which attempted to assure both the public interest as well as employee rights.[33]

Nonetheless, Executive Order 10,988 assumed fundamental differences between labor relations in the private sector and labor relations

27. *See generally* Comment, *Public Employee Legislation: An Emerging Paradox, Impact, and Opportunity*, 13 SAN DIEGO L. REV. 931, 935-38 (1976). The first reported federal strike occurred in 1835, and was followed by dozens more before the end of the nineteenth century. Hampton, *supra* note 17, at 493. In 1969, federal air controllers delayed flights for three hours by their mass "sick-ins." *See* Kennedy & Johnson, *supra* note 15, at 112.

28. Edwards, *supra* note 24, at 363. Edwards discusses and dismisses, at least in part, the assumed greater cross-elasticity of demand in the public sector, which is the primary natural limit to private sector union demands. *Id. See* United Fed'n of Postal Clerks v. Blount, 325 F. Supp. 879, 883-84 (D.D.C.), *aff'd*, 404 U.S. 802 (1971). For a discussion of the issue concerning the effects of strikes in the public sector as a distortion of the political decision making process, *see* Hampton, *supra* note 17, at 496-97; Burton & Krider, *The Role and Consequences of Strikes by Public Employees*, 79 YALE L.J. 418 (1970); Wellington & Winter, *The Limits of Collective Bargaining in Public Employment*, 78 YALE L.J. 1107 (1969).

29. Edwards, *supra* note 24, at 364.

30. President Kennedy's position was in large part attributable to the growing political strength and vigorous efforts of organized labor. *See* HAGBURG & LEVINE, *supra* note 3, at 167-68.

31. *Id.* at 168.

32. Exec. Order No. 10,988, 3 C.F.R. 861 (1962) (revoked 1969).

33. U.S. FEDERAL LABOR RELATIONS COUNCIL, LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE 63 (1975) [hereinafter referred to in text and notes as LABOR RELATIONS COUNCIL].

in the public sector. The distinctions were thought to require different degrees of union recognition. Employee organizations in the federal sector could be recognized in one of three ways: exclusive, formal, or informal.[34] Each type of recognition conveyed a different degree of rights.[35] To be accorded exclusive recognition, an employee organization would have to show it had been selected by a majority of employees.[36] Once so recognized, the exclusive representative would be able to act for and negotiate agreements for covered employees.[37] The governmental agency was required to meet and confer with such organizations at reasonable times on personnel policies and matters affecting working conditions.[38] If the employee organization could not show a majority interest but evidenced ten percent employee membership, it would be afforded formal recognition.[39] This type of recognition required the agency to consult from time to time on the formulation of personnel policies.[40] Any organization ineligible for exclusive or formal recognition could still be granted informal recognition.[41] However, an informal organization was permitted only to present its views on matters of concern to its members.[42] There was no obligation placed on the agency to confer or consult on the formulation of personnel policies, or to negotiate on any matter.[43]

Executive Order 10,988 authorized negotiations between governmental agencies and exclusive employee organizations.[44] However, in marked contrast to the private sector, grievance arbitration was to be advisory in nature, and it could extend only to the interpretation of the agreement. Moreover, it could be invoked only with the approval of the aggrieved employee.[45] Management rights to direct, hire, fire, promote, and suspend employees as well as determine the method and means to carry out the mission of the agency were maintained.[46] Administration was dispersed: the heads of the executive departments and

34. Exec. Order No. 10,988 §§ 3(a), 4(a), 5(a), 6(a), 3 C.F.R. 861 (1962) (revoked 1969). In the federal sector, labor organizations were given proportional representation rights, in contrast to the exclusive rights granted the private sector counterpart.
35. *Id.* §§ 4(b).
36. *Id.* § 6(a).
37. *Id.* § 6(b).
38. *Id.*
39. *Id.* § 5(a).
40. *Id.* § 5(b).
41. *Id.* § 4(a).
42. *Id.* § 4(b).
43. *Id.*
44. *Id.* §§ 6(b), 7, 8(a).
45. *Id.* §§ 8(b)(1), (2), (3). *See generally* Kagel, *Grievance Arbitration in the Federal Service: How Final and Binding?* 51 ORE. L. REV. 134 (1971) [hereinafter referred to as Kagel].
46. Exec. Order No. 10,988 § 7(2), 3 C.F.R. 861 (1962) (revoked 1969).

agencies, with assistance from the Civil Service Commission, were responsible for maintaining the program and carrying out the objectives of the order.[47] Executive Order 10,988 continued unchanged as the labor relations policy for the federal sector for seven years.

A study of Executive Order 10,988 was made by a committee in 1969. The researchers reviewed the status of the executive order program and recommended changes.[48] The committee reported that while the 1962 order was beneficial to agencies and employees, it failed to adjust to changing conditions.[49] With the growth of union representation,[50] significant changes were deemed necessary to continue a constructive labor relations program.[51] The committee recommended, *inter alia*, the establishment of a central body to administer the program,[52] expansion of the scope of negotiations,[53] and recourse to a disinterested third party to resolve unfair labor practice complaints.[54]

The committee report and recommendations eventually led to the issuance of Executive Order 11,491[55] signed by President Nixon in 1969. The order established a Federal Labor Relations Council,[56] consisting of the Secretary of Labor, the Chairman of the Civil Service Commission, the Director of the Office of Management and Budget, and other officials of the executive branch as designated by the President.[57] The FLRC was to administer and interpret the order, decide

47. *Id.* § 12.

48. LABOR RELATIONS COUNCIL, *supra* note 33, at 63.

49. *Id.*

50. *Id.* During the seven years of Executive Order 10,988 (1962-69), unionization in the federal sector had grown from twenty-nine exclusive units representing 19,000 employees in the Department of Interior and the TVA to 2,305 exclusive units covering 1,416,073 employees in thirty-five federal agencies. Fifty-two percent of the total federal workforce subject to the order was represented by employee organizations which had achieved exclusive representation status. There were, in addition, approximately 2,000 units which had gained formal or informal recognition. *Id.*

51. *Id.*

52. *Id.* There were administrative difficulties in maintaining appropriate distinctions in the three types of recognition and in dealing fairly with disputes. The committee recommended establishment of a Federal Labor Relations Council consisting of the Secretary of Labor, Chairman of the Civil Service Commission, an official of the executive office, and other officials as the President may choose to oversee the program, decide issues, hear appeals, and make recommendations for program improvement. *Id.* at 64.

53. *Id.* at 70. It was recommended that the scope of bargaining be expanded to include negotiation of arrangements for employees adversely affected by realignment of the workforce or technological change. Agencies were encouraged to increase their delegations of authority to local managers to permit a broader scope of negotiations. *Id.*

54. *Id.* at 68-69. It was recommended that the Assistant Secretary of Labor for Labor-Management Relations be assigned the responsibility of handling unfair labor practice complaints, supervising elections, and determining unit and representation disputes. *Id.* at 69.

55. 34 Fed. Reg. 17,605 (1969).

56. Hereinafter referred to as the FLRC.

57. Exec. Order No. 11,491 § 4(a), 3 C.F.R. 194 (1969).

major policy issues, prescribe regulations, and make recommendations to the President on program improvements.[58] Executive Order 11,491 provided for exclusive recognition only, to be determined by the vote of a majority of employees in an appropriate unit.[59] The order provided that such a recognized organization had the right to meet with the agency at reasonable times to confer in good faith with respect to personnel policies, practices, and matters affecting working conditions.[60] National consultation rights, similar to those previously granted to formally recognized unions, were to be accorded any organization representing a substantial number of employees.[61]

The order devised a system to settle negotiation disputes. Since federal labor organizations were not allowed to call, engage in, or condone either a strike, work stoppage or slow-down, or to picket an agency,[62] some procedure was required to resolve an impasse that would develop during contract negotiations. In the public sector, strike substitutes have long been considered essential. The Federal Mediation and Conciliation Service, available to the private sector, was required to extend its services to federal agencies.[63] When the FMCS mediation services failed, the parties could invoke the services of the Federal Services Impasses Panel,[64] which was empowered to settle the impasse by "appropriate action."[65] The parties could resort to arbitration or other third party fact finding only upon the authorization of the FSIP.[66] Under the order, the Assistant Secretary of Labor for Labor Management Relations was responsible for deciding appropriate bargaining units, supervising elections, deciding unfair labor practice complaints, and determing questions as to whether a grievance is subject to

58. *Id.* § 4(b). The FLRC was also given authority to decide appeals on negotiability issues, exceptions to arbitration awards, and other matters it may deem appropriate. *Id.* § 4(c).

59. *Id.* §§ 7(a), 7(f), 10(a). An election was not necessary "where the appropriate unit is established through the consolidation of existing exclusively recognized units represented by that organization." *Id.* § 10(a).

60. *Id.* § 11.

61. *Id.* § 9.

62. *Id.* § 19(b)(4).

63. *Id.* § 16. The Federal Mediation and Conciliation Service is hereinafter referred to as FMCS. Section 158 of the National Labor Relations Act requires the party seeking to terminate or modify the bargaining agreement to give notice to the FMCS within thirty days after initial notice to the other party. 29 U.S.C. § 158(d)(3) (1976).

64. Hereinafter referred to as the FSIP.

65. Exec. Order No. 11,491 § 17, 3 C.F.R. 201 (1969). The order established the FSIP as an agency within the FLRC. It consists of at least three members appointed by the President who are to consider negotiation impasses, take necessary action to settle impasses, and prescribe administrative regulations. *Id.* § 5.

66. *Id.* § 17.

a negotiated grievance procedure.[67] The Civil Service Commission was required to provide training and guidance to management officials and review the program operations.[68]

In contrast to the one administrative agency governing private sector labor relations,[69] five organizations were involved in the administration of the federal program: the Federal Labor Relations Council (FLRC), the Federal Mediation and Conciliation Service (FMCS), the Federal Services Impasses Panel (FSIP), the Assistant Secretary of Labor for Labor Management Relations, and the Civil Service Commission.

One year later, in 1970, the FLRC conducted an intensive study as directed by President Nixon. Their report recommended that the order be revised.[70] President Nixon signed Executive Orders 11,616[71] and 11,636[72] as amendments to the original order.[73] The amendments provided that every negotiated agreement contain a grievance procedure to cover the interpretation and application of the agreement.[74] In the past, the inclusion of a grievance procedure was permitted but not required. The amendments further provided that labor and management could negotiate the use of official time for union contract negotiations.[75] Finally, a provision was made for the withholding of union dues by the agency.[76]

The FLRC again assessed the status of the Federal Labor Relations Program in January, 1975.[77] Their report and recommendations provided the impetus for Executive Order 11,838[78] signed by President Ford in 1975. This order provided that the coverage and scope of a grievance procedure would be, for the most part, negotiable between the parties, and removed the limitation to restrict usage to interpretation of the agreement.[79] The 1975 order also opened up agency regula-

67. *Id* § 6.
68. *Id.* § 25.
69. The National Labor Relations Board was established by section 3 of the National Labor Relations Act, 29 U.S.C. § 153 (1976). However, the services of the FMCS are available for negotiation disputes and are mandatory in national emergency disputes. 29 U.S.C. §§ 176-180 (1976).
70. LABOR RELATIONS COUNCIL, *supra* note 33, at 55.
71. 36 Fed. Reg. 17,319 (1971).
72. *Id.* at 24,901.
73. LABOR RELATIONS COUNCIL, *supra* note 33, at 5.
74. Exec. Order No. 11,491, *as amended by* Exec. Order No. 11,616 § 13, 3 C.F.R. 191 (1971). *See* 36 Fed. Reg. 17,319 (1971).
75. Exec. Order No. 11,616 § 20, 3 C.F.R. 204 (1971). However, the amount of official time was limited to a maximum of forty hours by the executive order.
76. *Id.* § 21.
77. LABOR RELATIONS COUNCIL, *supra* note 33, at 27-52.
78. 40 Fed. Reg. 5,743 (1975).
79. Exec. Order No. 11,616 § 13, 3 C.F.R. 203 (1971). There were still some matters excluded

tions to the bargaining process under the compelling need doctrine. Formerly, various levels of governmental agencies would prescribe internal regulations on personnel policies and working conditions.[80] These regulations limited negotiations on the issues. Executive Order 11,838 provided that such agency regulations would not bar negotiations on the same topic unless the agency could present a compelling need for adherence to the regulation.[81]

The Federal Labor Relations Program had evolved through five Presidents and fifteen years of review and reports. Under Executive Order 11,491, an exclusive union representative had the right to act for and negotiate agreements for bargaining unit employees.[82] As in the private sector, an organization accorded exclusive recognition represented the interests of all employees in the unit without regard to union membership.[83] In contrast to the private sector, management was not obligated to meet and confer on all terms and conditions of employment.[84] Items such as positions of employees, tours of duty, or technology of performed work were excluded from federal sector bargaining. Management in the federal government also retained the right to direct employees, hire, promote, transfer, suspend, demote, or discharge, and determine the methods and means to carry out the mission of the agency.[85]

The executive order declared that employees have the right to or-

from grievance coverage. These included matters for which there existed a statutory appeals procedure—removals, discrimination complaints, denial of step increases, unsatisfactory performance ratings, to name a few. *Id.*

80. *Id.* For a discussion of how these regulations limited bargaining and arbitration awards, *see* Kagel *supra* note 45.

81. Exec. Order No. 11,838 § 13, 3A C.F.R. 129 (1975). The final executive order issued in the Federal Labor Relations Program was Exec. Order No. 12,107, issued by President Carter on December 28, 1978. 3 C.F.R. 264 (1978).

This executive order was President Carter's implementation of his Reorganization Plan No. 2, 3 C.F.R. 232 (1978). This order aided in the implementation of title VII of the Act, which was signed in October 1978. The order established the Federal Labor Relations Authority and the Office General Council (OGC) to administer the program. Exec. Order No. 12,107 §§ 1-4, 3 C.F.R. 323 (1978). The previous FLRC was abolished. The new Federal Labor Relations Authority was to be a three-member panel appointed by the President with concurrence by the Senate. Reorg. Plan No. 2 § 304(a)(1), 3 C.F.R. 327 (1978).

82. Exec. Order No. 11,491 § 10(e), 3 C.F.R. 192 (1969).

83. *Id.* In the private sector, the duty of fair representation is imposed as a duty correlative to the right of exclusive representation. Vaca v. Sipes, 386 U.S. 171 (1967).

84. Section 9(a) of the National Labor Relations Act provides that a selected representative shall be the exclusive representative of all employees in the bargaining unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. 29 U.S.C. § 158(a)(5) (1976). *Compare* Exec. Order No. 11,491 § 11(b), 3 C.F.R. 198 (1969), *as amended by* Exec. Order No. 11,838 § 11(b), 3A C.F.R. 126 (1975).

85. Exec. Order No. 11,491 §§ 1(a), 11(b), 3 C.F.R. 192, 198 (1969).

ganize,[86] but not to strike. The retained management rights and the prohibition against federal employees' use of concerted economic pressure meant that full collective bargaining rights were not available in the federal sector. Nonetheless, the programs developed under the executive orders had come a long way from the gag rule. Federal employee rights, although limited, were firmly established.[87]

LABOR RELATIONS REFORM

Unionism had grown considerably under the administration of the executive orders. In 1963, 180,000 employees were represented by unions holding exclusive recognition rights.[88] The years between 1964 and 1968 revealed annual percentage gains of twenty-seven percent to forty-five percent.[89] Although the rapid growth of unionism had leveled off by 1976, there were 1.2 million non-postal executive branch employees represented by unions with exclusive representation rights in 1978. This represented sixty percent of the executive branch employee population.[90] Exclusive recognition covered eighty-five percent of general schedule (white collar) employees.[91] Ninety-one percent of all employees under exclusive recognition were covered by negotiated agreements.[92] The AFL-CIO Affiliate, American Federation of Government Employees, represents the largest number of unionized employees — 687,965. The independent National Federation of Federal Employees is second with 138,672 employees represented.[93]

With the large number of federal employees unionized, the time was ripe for labor relations reform. In the past, various members of Congress had introduced legislation on behalf of federal employee labor groups.[94] These proposals failed.[95] In 1977, there was renewed congressional attempt to replace Executive Order 11,491 with a labor

86. *Id.* §§ 1(a), 19(b)(4). Section 7 of the National Labor Relations Act provides the same right with the proviso that the right to refrain from any or all of these activities may be affected by an agreement requiring membership in a labor organization as a condition of employment. This same section allows private sector employees to strike. 29 U.S.C. § 157 (1976).

87. *See* text accompanying note 145 *infra*.

88. OFFICE OF PERSONNEL MANAGEMENT, OFFICE OF LABOR-MANAGEMENT RELATIONS, *Union Recognitions and Agreements in the Federal Government*, FED. PERSONNEL MANUAL BULL. NO. 711-77 (1979).

89. *Id.*

90. This excludes postal employees. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* at 12.

94. Legislation was introduced in the 82d, 84th, and 86th sessions of Congress. 124 CONG. REC. 14,278 (daily ed. Aug. 24, 1978).

95. *Id.*

relations statute. Federal labor union leadership, both AFL-CIO affiliated and independent, felt that successful congressional action was now possible with the Democratic Party in control of both executive and legislative branches of the government.[96]

Major criticism of Executive Order 11,491 concerned its inefficient responses to emergencies and the ill-defined relationship between the five organizations administering the program.[97] The FLRC, the program's primary administrative body, was composed of part-time, management-oriented officials.[98] The Federal Labor Relations Program, established by executive order, was unenforceable in court and subject to unilateral change or termination by the President.[99] Therefore, with growing unionism, increased criticism of the executive order, the President's commitment to reform, and the democratic control of Congress, conditions were propitious for major reform.

Civil Service Reform

It has been said that were it not for the Civil Service Reform Act, of which the Federal Service Labor Management Relations Statute was one title,[100] there would never have been a labor relations statute.[101]

96. *See ABA Report*, *supra* note 5, at 153.

97. R. SMITH, H. EDWARDS, & R. CLARK, LABOR RELATIONS LAW IN THE PUBLIC SECTOR: CASES AND MATERIALS 779 (1974).

98. Exec. Order No. 11,491 § 4(a), 3 C.F.R. 194 (1975). Robert E. Hampton, former Chairman of the Civil Service Commission, believed that the FLRC was intended to be a representative of the President, not an impartial administrator. *See* 17 FED. BAR NEWS 70 (1970).

99. *See* Manhattan-Bronx Postal Union v. Gronowski, 350 F.2d 451 (D.C. Cir. 1965), *cert. denied*, 382 U.S. 978 (1966). *See generally* Kennedy & Johnson, *supra* note 15, at 115-20; Hampton, *supra* note 17, at 499 n.7. The threat of unilateral action on the part of the President was "more imagined than real." Frazier, *supra* note 2, at 133.

The most perceptive criticism of the executive order was levelled by one of its administrators:

> The truth is that there is precious little real collective bargaining in the federal sector—and far too much collective begging.
>
> The truth is that the executive orders, while well intentioned, will one day be replaced by legislation.
>
> The truth is that unions have generally chosen to use their resources where they will do the most good—on Capitol Hill—rather than fritter them away in the frustrating battle against management rights and the sovereignty of government. . . .
>
> The reason there is so little true collective bargaining in the federal sector is because there is so little that can be bargained for.
>
> Congress preempts the economic issues. . . .
>
> Many of the primary noneconomic issues—seniority, job transfers, discipline, promotion, the agency shop, and the union shop, are nonnegotiable—because of a combination of law, regulation, management rights, and the thousands of pages in the Federal Personnel Manual.

Address by W. J. Usery, Jr., Special Assistant to the President and Director, Federal Mediation and Conciliation Service, to the Collective Bargaining Symposium for Labor Relations Executives, Warrenton, Va., July 8, 1974, *printed in* 4 LABOR RELATIONS & SOCIAL PROBLEMS 22 (2 ed. 1975).

100. *See* note 6 *supra*.

The impetus for reform had little to do with the federal labor relations program. Rather, reform of the system was sparked by public opinion that federal employees were underworked and overpaid.[102] Ralph Nader provided reasoned appeal to reform for the public interest:

> The reform of our Federal civil service system is a paramount consumer issue, defined broadly, for millions of people in this country who look to the Federal civil servants to protect them from cancerous additives in food, filth in meat products, defects in cars, radiation in television sets, flammability in clothes, poisons in air and water, and monopoly prices in all goods and services. . . .
>
> People also look to Federal servants to wisely spend 20 or 30 percent of their income which they pay to the Federal Government in taxes. They look to the civil servants to see that their mail is promptly delivered, their bank deposits insured, their energy needs met; in short, effective, efficient, honest, patriotic, committed, hard-working Federal employees are a basic consumer interest in this country.[103]

The reform of the Civil Service structure overshadowed labor relations reform. The chief interests lay in policies concerning hiring, firing, and paying federal employees.[104] The entire Civil Service Reform Act was passed in just one year.[105] Few of the provisions dealing with labor-management relations were debated by either the House or the Senate. There is a dearth of legislative history on the specific meaning of the labor relations provisions.[106]

101. Frazier, *supra* note 2, at 133. Frazier also finds the reverse to be true: were it not for the union support for the labor relations title, there may not have been a Civil Service Reform Act.

102. *See, e.g.*, *Civil Service Reform Act of 1978 and Reorganization Plan No. 2 of 1978: Hearings on S. 2640, S. 2707 & S. 2830 Before the Senate Comm. on Governmental Affairs*, 95th Cong., 2d Sess. 3 (statement of Senator Charles H. Percy), 85 (statement of Alan F. Campbell), 392 (statement of James L. Sundquist), 404 (statement of Ralph Nader) (1978).

103. *Id.* at 403-04.

104. For the relationship of pay and personnel policies to collective bargaining, *see* note 99 *supra*.

105. Rep. J. Hanley, Chairman of the House Post Office and Civil Service Committee (D-N.Y.) caustically criticized the White House for excessive haste in Civil Service Reform. [1979] 818 GOV'T EMPL. REL. REP. (BNA) 5.

106. The newly-created FLRA, however, must find specific meaning in order to fulfill its statutory mandate in deciding representation cases, unfair labor practice cases, negotiability disputes, and arbitration appeals. Frazier, *supra* note 2, at 132-34. Rep. Frazier stated his views of this process:

> How will the Federal Labor Relations Authority carry out its function of determining that the Federal Service Labor-Management Relations Statute means and how it applies to agencies and unions in the federal sector? The FLRA will establish the meaning of the statute, for the most part, on a case-by-case basis, just as the Federal Labor Relations Council and the Assistant Secretary have determined the meaning of the Executive Order and as the National Labor Relations Board and the federal courts have established the meaning of the NLRA since its passage over 40 years ago. . . .
>
> When a dispute arises between an agency and a union over the meaning and application of the statute, the FLRA will resolve that dispute by interpreting the statute and the intent of Congress with respect to the particular provision in dispute. To ascertain congressional intent, the FLRA will attempt to reconstruct the sometimes tortuous path

Presidential Task Force Recommendations

As a first step to reform, President Carter requested and received from Congress the authority to implement changes in the organization of federal agencies, subject only to congressional veto.[107] Under this authority, the President, in June 1977, established the Federal Personnel Management Project to review the federal civil service and make recommendations for reform.[108] The project, staffed primarily by federal civil servants, was completed after five months.[109] The recommendations of the task force on the federal labor relations system took a conservative approach to federal labor-management relations; an approach consistent with the priorities and policies embodied in previous executive orders.[110]

The task force recommended the establishment of one central body to administer the program, instead of five administrative bodies.[111] It also recommended there be no change in the scope of bargaining and impasse procedures.[112] Although not one of the original four areas of concern, the group recommended an "agency shop" arrangement, whereby unions and agencies could negotiate representation fees for employees who were not dues-paying members.[113] This provision was intended to provide union security without requiring employees to join the union. The unions had contended that because of their obligation to represent all employees fairly, they should be able to collect fees from non-members.[114] The task force remained committed to a pro-

> which the particular provision in dispute took through the legislative process. The decision of the FLRA will not depend on what agencies or unions wish Congress had intended or on what agencies or unions think the law ought to be. The FLRA is interested in what the law is.

Id. at 132.

107. *ABA Report*, *supra* note 5, at 153.

108. *Id.*

109. H. REP. NO. 1403, 95th Cong., 2d Sess. 1 *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS 2724. The project was divided into nine functional task forces, one of which was to examine ways to improve the federal labor relations system. 1 PERSONNEL MANAGEMENT PROJECT, THE PRESIDENT'S REORGANIZATION PLAN, FINAL STAFF REPORT [hereinafter referred to as PERSONNEL MANAGEMENT PROJECT]. Under the management of Professor Chester A. Newland of the University of Southern California and his senior consultant, Professor Emeritus Frank McCulloch, former chairman of the National Labor Relations Board, the seven-member task force was asked to examine four areas: central organization for labor relations; organization of the employer and employee/employer relationships; scope of bargaining; and impasse resolution. *ABA Report*, *supra* note 5, at 153. An option paper was published in September 1977 and after outside comment and reaction, the final recommendations were submitted in December 1977. *Id.*

110. *See ABA Report*, *supra* note 5, at 153.

111. *Id.* The five bodies included the FLRC, the FMCS, the FSIP, the Secretary of Labor for Labor-Management Relations, and the Civil Service Commission.

112. *See generally* PERSONNEL MANAGEMENT PROJECT *supra* note 109.

113. *Id.* at 176-77.

114. 1978 Cong. Q. Almanac 831-32.

gram of relying on executive orders and did not propose legislation.[115]

Clay-Ford Bills: Independent Congressional Attempts

At the same time that the reorganization task force was assessing the federal labor relations program, Congress was actively considering two major pieces of federal employee collective bargaining legislation. In March 1977, the Subcommittee on Civil Service, House Committee on Post Office and Civil Service was reviewing H.R. 13, sponsored by Representative William Clay (D-Missouri) and H.R. 1589, sponsored by Representative William D. Ford (D-Michigan).[116] Both bills represented a significant departure from the policies embodied in the previous executive order. Representative Clay commented "[t]he Federal labor-management relations program is overly management-oriented and places management at an unfair advantage over employees. The program, because it is authorized by Executive Order, is too susceptible to the whims of an incumbent President. The program is too limited in its scope."[117]

Both bills greatly expanded the scope of bargaining compared to Executive Order 11,491. The bills dealt with such matters as pay practices, work hours, promotion and overtime procedures, seniority, discipline, and detail and leave practices.[118] The bills also provided for an "agency shop," wherein the parties could negotiate payment of representation fees as a condition of employment.[119] H.R. 1589 even legalized strikes by federal employees.[120] Action on both bills was halted in June of 1977 at the request of the Carter administration, which was promoting its own task force study group.[121] Interest in the expansive bills was renewed in August 1977 when the House Subcommittee on Civil Service combined both H.R. 13 and H.R. 1589 to form H.R. 9094,[122] known as the Clay-Ford bill. However, subsequent to the subcommittee hearings, no further action was taken on the Clay-Ford bill.

115. *ABA Report*, *supra* note 5, at 155. Note that as a political question consideration of this matter was beyond the scope of the project.

116. *Id.* at 151.

117. *Improved Labor-Management Relations in the Federal Service: Hearings on H.R. 13 & H.R. 1589 Before the House Subcomm. on Civil Service of the Comm. on Post Office and Civil Service*, 95th Cong., 1st Sess., 2 (1977) [hereinafter referred to as *Hearings*].

118. *ABA Report*, *supra* note 5, at 152.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Hearings*, *supra* note 117, at 1. The Subcommittee on Civil Service, House Committee on Post Office and Civil Service has primary responsibility for civil service bills. *ABA Report, supra* note 5, at 151.

President Carter's Legislation

On March 2, 1978, President Carter transmitted to Congress his message on civil service reform, and included his draft of legislation. He explained his purpose in revising labor-management relations:

> The goal . . . will be to make Executive Branch labor relations more comparable to those of private business, while recognizing the special requirements of the Federal government and the paramount public interest in the effective conduct of the public business.
>
> It [the legislation] will permit the establishment through collective bargaining of grievance and arbitration systems, the cost of which will be born largely by the parties to the dispute. Such procedures will largely displace the multiple appeals systems which now exist and which are unanimously perceived as too costly, too cumbersome, and ineffective.[123]

Two months later, on May 10, 1978, the President's proposed labor relations bill was submitted to both the House and Senate.[124] In submitting his plan, the President explained the defects of the existing order:

> The Civil Service Commission has acquired inherently conflicting responsibilities: to help manage the Federal Government and to protect the rights of Federal employees. It has done neither job well . . . .
>
> An Executive Order now vests existing labor-management relations in a part-time Federal Labor Relations Council, comprised of three top government managers . . . . This arrangement is defective because the Council members are part-time, they come exclusively from the ranks of management and their jurisdiction is fragmented.[125]

President Carter's proposed plan centralized administration in the Federal Labor Relations Authority, consisting of three full-time presidential appointees, along with a general counsel to handle unfair labor practice charges.[126]

Title VII, as proposed, did not provide for negotiation of pay practices, work hours, or seniority. However, it did increase the topics subject to negotiation over those negotiable under the executive order. The new legislation included such topics as grievance and arbitration

123. 36 Cong. Q. Weekly 658-61 (1978).

124. *Civil Service Reform Act of 1978: Hearings on S. 2640 Before the Senate Comm. on Governmental Affairs*, 95th Cong., 2d Sess., 84 (1978). The original bill did not contain a section on labor-management relations. The President later proposed an amendment dealing with this subject. The amendment was to be incorporated as title VII of the Civil Service Reform Act and entitled Labor-Management Relations. *Id.*

125. President Carter's May 23, 1978 Message to Congress Accompanying His Plan on Reorganization of the Civil Service Commission, 36 Cong. Q. Weekly 1353 (May 27, 1978). Note that when President Carter was speaking of the existing executive order, he was referring to Exec. Order No. 12,107, 44 Fed. Reg. 1,055 (1978). *See also* note 81 and accompanying text *supra*.

126. *Id.*

procedures, paid time for employee-union representation, work scheduling, assignment of overtime, health and safety programs, union dues withholding, equal employment opportunity policy, and discipline policy.[127]

The House did not approve the President's proposal. On July 10, 1978, after hearings and consideration of amendments,[128] the Committee on Post Office and Civil Service, by a vote of eighteen to seven, substituted an entirely new text for the administration's bill.[129]

The committee believed that the labor-management relations portion of the President's bill was essentially a codification of existing executive orders.[130] The committee agreed that a statutory labor-management relations system for federal employees must be established, but it disagreed with the President's specific proposals.[131] It wanted the labor relations program to be expanded. Mindful of the fate of H.R. 9094, the committee recommended the establishment of a broad new program providing that the employees through their unions "be permitted to bargain with agency management throughout the executive branch on most issues, except that Federal pay will continue to be set in accordance with the pay provisions of title 5,[132] and fringe benefits, including retirement, insurance, and leave will continue to be set by Congress."[133]

The civil service reform legislation came before both the House and Senate between July and September 1978. A broad based support for the House version of civil service reform developed in response to the urgings of the American Federation of Government Employees and independent unions.[134]

On August 24, 1978, by a vote of eighty-seven to one, the Senate passed its version of the Civil Service reform legislation, S. 2640.[135]

127. *Id.*

128. *Id.* The House Committee on Post Office and Civil Service conducted thirteen days of hearings on H.R. 11,280 from March to May 1978. Testimony was given by 203 witnesses representing the federal government, business, and other interest groups. At the conclusion of the hearings, the committee met for ten days during June and July of 1978 to revise H.R. 11,280. Seventy-seven separate amendments were considered. *Id.*

129. *See House Comm. on Post Office and Civil Service, Report on Civil Service Reform Act of 1978*, H.R. REPORT NO. 1403, 95th Cong., 2d Sess. 12 (1978).

130. *Id.*

131. *Id.*

132. 5 U.S.C. §§ 5301-5385 (1976).

133. *Id.* The committee felt that their amended version of title VII of H.R. 11,280 "strikes a proper balance between the public interest and the demands of citizens who are employees of the Federal Government who wish to have a greater voice in the employment policies applicable to them." *Id.*

134. [1978] 770 GOV'T EMPL. REL. REP. (BNA) 4.

135. [1978] 774 GOV'T EMPL. REL. REP. (BNA) 8.

The Senate version more closely resembled the President's original proposal. The Senate version amended the administration's title VII, labor management provision, in several ways. The Senate version required: secret ballot elections prior to the imposition of a bargaining obligation on any agency; decertification of any exclusive representative who fails to take action to prevent a strike or slowdown; that employees hear both sides of the representation question during election campaigns, as long as there are no threats of reprisal of coercive conditions; and, finally, it provided judicial review of FLRA Unfair Labor Practice decisions.[136]

Since the House and Senate versions were incompatible,[137] the measure then moved to the House-Senate Conference Committee. There, most of the House provisions were agreed to, thus expanding the rights of federal employees beyond those contemplated by the executive order.[138] Specifically, the conference committee gave federal employee unions more latitude in negotiations than the Senate had provided. The conference report was presented to the Senate on October 4, 1978, and approved by voice vote.[139] The report was filed with the House and on October 6, by a vote of 365 to 8, the House agreed to the report.[140] Finally, on October 13, 1978, President Carter signed into law the Civil Service Reform Act of 1978.[141] The law became effective January 11, 1979.[142]

FEDERAL SECTOR LABOR RELATIONS: TOWARD THE PRIVATE SECTOR MODEL?

The full impact of federal labor-relations reform will not be revealed until the new law has been defined by its application over time.[143] The consensus of those involved in the reorganization of the federal program is that federal employees deserve the rights granted to private sector employees with only those limitations required by the public interest.[144] However, there is no clear articulation of the content or resolution of these conflicting goals. A comparison of title VII to its

136. 124 CONG. REC. 14,311 (daily ed. Aug. 24, 1978).
137. A comparison of the House and Senate versions of the legislation is set out in App. 2.
138. 36 Cong. Q. Almanac 835 (1978). The conference report became known as No. 95-1272 accompanying S. 2640. *See* [1978] 781 GOV'T EMPL. REL. REP. (BNA) 27.
139. [1978] 780 GOV'T EMPL. REL. REP. (BNA) 6.
140. [1978] 781 GOV'T EMPL. REL. REP. (BNA) 7.
141. 92 Stat. 1192, 5 U.S.C. §§ 7101-7135 (1978).
142. [1978] 781 GOV'T EMPL. REL. REP. (BNA) 7.
143. *See* Apps. 2 and 3.
144. *See, e.g.*, text accompanying note 123 *supra*.

predecessor, Executive Order 11,491, as amended, as well as to its private sector counterpart, may indicate the current balance between federal employee rights and the public interest.[145]

In many significant ways, federal labor relations remains the same as it was under the executive order programs. Management retains the right, both directly and indirectly, through Congress to set rates of pay and to hire and fire. Labor organizations in the federal sector are denied union security rights notwithstanding the expanded duties of the federal union in bargaining and processing grievances. As the legislative history makes clear, the new Act is not to be interpreted as allowing negotiation of an agency shop or a union shop. Federal employees cannot strike. The reform legislation requires federal employees to cooperate in impasse resolution, and each contract must provide for binding arbitration as the final step in the grievance procedure. These provisions emphasize that strikes in the public sector will not be tolerated. But more important, the conservative aspects of the new legislation reflect a public concerned with the fact that the awesome power of unions will be abused in the federal government, all to the detriment of the public interest.

Yet, federal labor relations has moved toward the private sector model. The new program is administered by an impartial Federal Labor Relations Authority. This is a dramatic break from the past, when administration was vested in the FLRC which, as constituted, was management-oriented. Not only is there now impartial administration of the rights and duties contained in the Act, but complaints of unfair labor practices in the federal sector are now investigated and prosecuted by a general counsel, just as it is done in the private sector. Under the old program, the complainant had the burden of prosecuting the unfair practice charge.[146] Since the prosecution function has been vested in the general counsel within the Federal Labor Relations Authority, there is statutory recognition of the fact that the rights declared in title VII of the Civil Service Reform Act constitute national policy. It has long been recognized in the private sphere that declared em-

145. The conclusions reached in this section are supported at App. 3.

146. According to Ronald W. Haughton, the prior program's burden on individual complainants is evidenced by the fact that only fifteen percent of the unfair labor practice charges were filed by individuals, with the remainder filed by labor organizations; whereas in the private sector, up to fifty percent of the charges are filed by individuals. Remarks of Ronald W. Haughton, Chairman, Federal Labor Relations Authority, distributed before the Labor and Employment Law Committee, Chicago Bar Association, Chicago, Illinois, November 14, 1979 [hereinafter referred to as Remarks of Chairman Haughton].

ployee rights are not merely personal rights, but are important public rights as well.

The declaration of employee rights and what constitutes an unfair labor practice in the federal sector mirrors the private sector provisions. However, because of the abhorrence of strikes by the public in the public sector, there are the provisions for strike substitutes, and it is an unfair labor practice for a labor organization representing federal employees to refuse to cooperate in impasse procedures or to participate in or condone a strike.

Most important in the reform act is that employee rights are now enforceable in court, since the rights are based on statute rather than executive order.[147] The FLRA may seek enforcement of its orders in the United States courts of appeals, and any person aggrieved by any final order of the FLRA may likewise seek judicial review. Comparable provisions govern the private sector. Arbitration awards are to be granted a finality similar to that obtained in the private sphere; legislative history makes clear that judicial review of arbitration awards is to be modeled on the narrow scope of review available in the private sector.[148]

Because federal employees can negotiate more topics than were hitherto allowed, the role of the grievance procedure is thereby increased: the more topics included in a contract, the more items requiring interpretation and compliance. Union officials are granted official time for negotiations and dues checkoffs are authorized. Together these provisions expand the duties of the federal union while allowing for only limited union security.

The new Act has firmly established the *Weingarten*[149] concept for federal service employees: a union has the right to be present at any

147. *See* App. 3. *See also* Manhattan-Bronx Postal Union v. Gronowski, 350 F.2d 451 (D.C. Cir. 1965). Back pay and attorneys fees are available under 5 U.S.C. § 5596 (1976) to victims of unjustified personnel actions. Although back pay is a common remedy in private sector unfair labor practice cases, 29 U.S.C. § 160(c) (1976), the award of attorney's fees is rare. *See, e.g.*, Heck's Inc., 215 N.L.R.B. 142 (1974). The new provision in the Civil Service Reform Act, which is not a part of but refers to the labor relations title, applies to both unfair labor practice cases and grievances. Again, back pay is a common private sector arbitration remedy, while the award of attorney's fees is not. *See generally* F. ELKOURI & E. ELKOURI, HOW ARBITRATION WORKS (3d ed. 1973).

148. Chairman Haughton noted that the federal statute may require arbitrators to defer to applicable laws and regulations; arbitrators in the private sector, however, may rule that the internal law of the contract takes precedence over any external law. Remarks of Chairman Haughton *supra* note 146.

149. NLRB v. Weingarten, 420 U.S. 251 (1975), established the right, upon employee's request, to have a union representative present at an investigatory interview which could result in disciplinary action.

investigatory interview if the employee reasonably believes the examination may result in discipline and requests such representation. However, the legislative history is explicit that private sector implementation of *Weingarten* rights is not to be controlling in federal sector implementation of those rights.[150]

Although it is premature to assess the impact of the federal labor-relations reform legislation, it does appear that employee rights have been expanded under the reform act, and at no apparent expense to the public. Further developments under the Act will be eagerly analyzed by scholars, practitioners, bureaucrats, and public employees.

150. Section 7114(a)(2)(B) provides that:

> [A]n exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at any examination of an employee in the unit by a representative of the agency in connection with an investigation if—(i) the employee reasonably believes that the examination my result in disciplinary action against the employee; and (ii) the employee requests representation.

5 U.S.C. § 7114(a)(2)(B) (Supp. 1978). The plain language of this section suggests that the representation right is conferred upon a union as an organizational entity. It has yet to be determined if such right also extends to individual unit employees.

APPENDIX 1

SEQUENCE OF EVENTS

1.	Exec. Order No. 10,988 (Kennedy)	January 17, 1962
2.	Exec. Order No. 11,491 (Nixon)	October 29, 1969
3.	Exec. Order No. 11,616 (Nixon)	August 26, 1971
4.	Exec. Order No. 11,636 (Nixon)	December 17, 1971
5.	Exec. Order No. 11,901 (Ford)	January 30, 1976
6.	H.R. 13 and H.R. 1589 introduced	March 1977
	House Committee consideration (ultimately halted at the request of the Administration)	June 1977
7.	Federal Personnel Management Project established (Carter's review of the Civil Service System)	June 1977
8.	H.R. 9094 considered (combining H.R. 13 and H.R. 1589)	August 1977
9.	Final Report — Task Force, Federal Personnel Management Project	December 1977
10.	President transmits CSC reform legislation to Congress — no labor relations provisions	March 2, 1978
11.	Title VII — Labor Relations Bill added to reform legislation	May 10, 1978
12.	Committee on Governmental Affairs of the Senate hearings on S. 2640	April 6-May 19, 1978
13.	Committee on Post Office and Civil Service of the House hearings on H.R. 11280	March-May 1978
14.	Committee on Governmental Affairs approved S. 2640, vote 11 - 2 (Report 95-696)	June 29, 1978
15.	Committee on Post Office and Civil Service approved H.R. 11280, vote 18 - 7 (Report 95-1403)	July 19, 1978
16.	Senate approves S. 2640, vote 87 - 1	August 24, 1978
17.	House approves H.R. 11280, vote 385 - 10	September 11, 1978
18.	House-Senate Conference Report (Report 95-1272) reported to and approved by Senate (voice vote)	October 4, 1978
19.	House-Senate Conference Report (Report 95-1272) reported to and approved by House, vote 365 - 8	October 6, 1978
20.	President Carter signs S. 2640, Pub. L. No. 95-454	October 13, 1978
21.	Exec. Order No. 12,107 (Carter)	December 28, 1978
22.	Effective date of Pub. L. No. 95-454, 92 Stat. 1192, 5 U.S.C. §§ 7101-35 (1978)	January 11, 1979

APPENDIX 2

COMPARISON OF SELECTED PROVISIONS OF HOUSE BILL, SENATE BILL, AND COMPROMISE BILL

House Bill[1]	*Senate Bill*[2]	*Compromise Bill*[3]
FINDINGS AND PURPOSE		
States that statutory protection of an employee's right to organize, bargain collectively and participate in decisions which affect them through labor organizations of their choosing is in the public interest because "such protection facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment" and because such protection "contributes to the effective conduct of public business." § 7101(a).	States that the "public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government." § 7201(a).	Combines the findings and purpose of both the Senate and the House. § 7101(a).
States that the purpose of the chapter is to "prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Federal Government." § 7101(b).	States that the statutory protection of the rights of employees "to organize, bargain collectively within prescribed limits, and to participate through labor organizations of their own choosing in decisions which affect them (1) may be accomplished with full regard for the public interest (2) contributes to the effective conduct of public business and (3) facilitates and encourages the amicable settlement between employees and their employers of disputes involving personnel policies and practices and matters affecting working conditions." § 7201(b).	Adds that the provisions of the chapter "should be interpreted in a manner consistent with the requirement of an effective and efficient government." § 7101(b).

1. H.R. 11,280, 95th Cong., 2d Sess. (1968).
2. S. 2640, 95th Cong., 2d Sess. (1978).
3. H. & S. CONFERENCE REP. NO. 1272, 95th Cong., 2d Sess. (1978) [hereinafter sometimes referred to in this chart as CR].

FINDINGS AND PURPOSE, *con't*

House Bill	*Senate Bill*	*Compromise Bill*
	States the same purpose as the House Bill § 7101(b) except that the rights and obligations of federal employees prescribed by the chapter are subject to the "paramount interest of the public." § 7201(c).	

EMPLOYEES' RIGHTS

Provides that "each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal," and that each employee shall be "protected in the exercise of such right." § 7102.	Provides in addition that "no employee shall be required by an agreement to become or to remain a member of a labor organization, or to pay money to an organization."	Adopts House Bill § 7102(1) and (2). Conferees emphasize, however, that nothing in the conference report authorizes, or is intended to authorize the negotiation of an agency shop or union shop provision.

DEFINITIONS; APPLICATION

Defines "person," "employee," "agency," "labor organization," "dues," "authority," "panel," "collective bargaining agreement," "grievance," "supervisor," "management official," "collective bargaining," "confidential employee," "conditions of employment," "professional emloyee," "exclusive representative," "firefighter," and "United States." § 7103(a).	Does not define "dues," "collective bargaining agreement," "conditions of employment," "firefighter" or "United States" but otherwise provides generally the same definitions as the House Bill with the following additional definitions: "agency management," "General Counsel," and "Assistant Secretary." § 7202(a).	Adopts House Bill. § 7103(a). Provides the President with the power to issue an order excluding any agency or subdivision thereof from coverage under this chapter under certain circumstances. § 7103(b).

FEDERAL LABOR RELATIONS AUTHORITY (FLRA)

States that the FLRA is comprised of three (3) members, not more than two (2) of whom may be adherents of same political party. No members shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law. § 7104(a).	Same provision as House. § 7203(b).	Adopts House Bill. § 7104.

House Bill	*Senate Bill*	*Compromise Bill*
Members of the authority to be appointed by the President with the advice and consent of the Senate and may be removed by the President only upon notice and hearing and only for misconduct, inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as chairman of the authority. § 7104(b).	Members of the authority to be appointed by the President, by and with the advice and consent of the Senate and shall be eligible for reappointment. The President shall designate one member to serve as Chairman of the authority. Any member of the authority may be removed by the President. § 7203(c).	Adopts House Bill. § 7104(b).
Provides that one of the original members of the authority shall be appointed for a term of one (1) year, one for a term of three (3) years, and the Chairman for a term of five (5) years. Thereafter, each member shall be appointed for a term of five years. § 7104(c)(1). Notwithstanding the above paragraph, the term of any member shall not expire before the earlier of— (1) the date on which the member's successor takes office, or (2) the last day of Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire. § 7104(c)(2).	Provides that the term of office of each member of the authority is five (5) years, except that a member may continue to serve beyond the expiration of the term to which appointed until earlier of— (1) the date on which the member's successor has been appointed and has qualified, or (2) the last day of the session of Congress beginning after the date the member's term of office (but for this sentence) expire. § 7203(d)(1)(2).	Adopts House Bill. § 7104(c)(1)(2).
POWERS AND DUTIES OF THE AUTHORITY		
Authorizes the Authority to delegate to any regional director, its authority to determine whether a group of employees is the appropriate unit; to conduct investigations and to provide for hearings; to determine whether a question of representation exists and to direct an election; and to conduct secret ballot elections and certify secret ballot elections and certify the results thereof. § 7105(3)(1).	Authorizes the Authority to delegate to officers and employees the authority necessary to perform its duties. § 7204(f).	Adopts House language. § 7105(3)(1).

House Bill	*Senate Bill*	*Compromise Bill*
Authorizes the Authority to delegate to any administrative law judge, appointed by the Authority, its power to determine whether any person engage or is engaging in an unfair labor practice. § 7105(e)(2).	The Authority may consider, in accordance with regulations prescribed by it, any: 1) appeal from a decision regarding the negotiability of a proposal; 2) exception to any arbitration award; 3) appeal from any decision of the assistant secretary regarding standards of conduct for labor organizations; 4) exception to any final decision and order of the Federal Service Impasses Panel; and 5) other matters it deems appropriate in order to assure it carries out the purposes of this chapter. § 7204(c).	Adopts House language. § 7105(f)(1)(2).
Authorizes the Authority to review any action taken by a regional director or administrative law judge, who has delegated by the Authority to take such action, upon application by any interested person, filed within 60 days after the date of the action. The review, however, shall not, unless specifically ordered by the Authority, operate as a stay of the action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action within 60 days after the later of: 1) the date of the action; or 2) the date of the filing of any application for review of the action, the action shall become the action of the Authority at the end of such 60-day period. § 7105(f)(1)(2).	States that if a regulation or other policy directive issued by the Office of Personnel Management is at issue in an appeal before the Authority, the Authority shall timely notify the Director, and the Director shall have standing to intervene in the proceeding and shall have all the rights of a party to the proceeding. § 7204(h)(2).	Adopts House language. § 7105(f)(1)(2).
	Authorizes the Director to request that the Authority reopen an appeal and reconsider its decision on the ground that the decision was based on an erroneous interpretation of law or of a controlling regulation or other policy directive issued by the Office of Personnel Management. § 7204(h)(3).	

House Bill	*Senate Bill*	*Compromise Bill*
"Unfair labor practice decisions are appealable as in the Senate. In addition, all other final decisions of the Authority involving an award by an arbitrator and the appropriateness of the unit an organization seeks to represent are also appealable to the courts." § 7123(a).	Makes reviewable in court decisions of the Authority concerning unfair labor practices, including awards of arbitrators relating to unfair labor practices. Otherwise, the Senate bill provides that all decisions of the Authority are final and conclusive, and not subject to further judicial review except for questions arising under the Constitution. §§ 7204(1), 7216(f), 7221(j).	"In the case of arbitrators awards involving adverse actions, the conferees elected to adopt the approach in the Senate bill. The decision of the arbitrator in such matters will be appealable directly to the court of appeals (or court of claims) in the same manner as a decision by MSPB."
		"In the case of those other matters that are appealable to the Authority the conference report authorizes both the agency and the employee to appeal the final decision of the Authority except in two instances where the House recedes to the Senate. As in the private sector, there will be no judicial review of the Authority's determination of the appropriateness of bargaining units, and there will be no judicial review of the Authority's action on those arbitration awards in grievance cases which are appealable to the Authority. The Authority will only be authorized to review the award of the arbitrator on very narrow grounds similar to the scope of judicial review of an arbitrator's award in the private sector." In light of the limited nature of the Authority's review, the conferees determined it would be inappropriate for there to be subsequent review by the court of appeals in such matters. § 7123(a).
No comparable provision.	Authorizes Authority to request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of regulations or other policy directives promulgated by the Office of Personnel Management in connection with a matter before the Authority for adjudication. § 7204(h)(1).	Adopts Senate language. § 7105(i).

House Bill	*Senate Bill*	*Compromise Bill*
No comparable provision.	Provides that all expenses of the Authority (including all necessary travel and subsistence expenses outside the District of Columbia) incurred by members, employees or agents of the Authority, will be allowed and paid on the presentation of itemized vouchers therefor approved by the Authority. § 7204(g).	No comparable provision.
No comparable provision.	No comparable provision.	Authorizes Authority to prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations. Also authorizes Authority to resolve issues relating to the duty to bargain in good faith, to resolve exceptions to arbitrator's awards, and to take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter. § 7105(a)(2).
AREAS EXCLUDED FROM NEGOTIATIONS		
Permits, but does not require, the agency to negotiate on the methods and means by which agency operations are to be conducted. § 7106(b)(1).	"Prohibits negotiations on the methods and means by which agency operations are to be conducted." § 7218(a)(2)(E).	Senate recedes. Conferees emphasize, however, that nothing in the bill is intended to require an agency to negotiate on the methods and means by which agency operations are to be conducted. Conference report fully preserves the right of management to refuse to bargain on "methods and means" and to terminate bargaining at any point on such matters even if it initially agrees to negotiations.
Prohibits negotiations on the issue of the number of employees in an agency under any circumstance. § 7106(a)(1).	Permits the agency in its discretion to negotiate on the "number of employees in an agency." § 7215(d).	Senate recedes. Conference adopts House provision. § 7106(a)(1).
Requires the agency to retain the right to make determinations with respect to contracting out work. § 7106(a)(2)(B).	No comparable wording.	Senate recedes. Conference adopts House provision. § 7106(a)(2)(B).

House Bill	*Senate Bill*	*Compromise Bill*
No comparable wording.	Requires the agency to retain the rights to "maintain the efficiency of the Government operations entrusted to such officials." § 7218(a)(2)(D).	Senate recedes. Conferees do not intend thereby to suggest that agencies may not continue to exercise their lawful prerogatives concerning the efficiency of the Government.
Permits any agency and any labor organization to negotiate 1) procedures which management officials of the agency will observe in exercising their authority to determine the mission, budget, organization, number of employees, and internal security of the agency and 2) appropriate arrangements for employees adversely affected by the exercise of the authority. § 7106(b)(1)(2).	No comparable provision.	Adopts House language. § 7106(b)(2)(3).
RECOGNITION OF LABOR ORGANIZATIONS		
Provides that any person alleging that 30% of the employees in an appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative (if there is not an exclusive representative already) or that 30% of the employees in the unit allege that an exclusive representative is no longer the representative of the majority of the employees in the unit, may file a petition with the Authority to investigate and decide whether a question of representation exists. § 7111(b)(A).	Provides that the Authority can decide questions submitted to it with respect to the appropriate unit for purposes of exclusive recognition and with respect to any related issue. §§ 7204(b)(1); 7214(b). Authorizes elections to be held to determine whether to recognize or replace an exclusive representative. § 7214(c).	Adopts House provision. § 7111(b)(1).
Provides that if after 45-day period (which begins to run on the date the petition was filed) issues concerning the appropriateness of the unit, the eligibility of an employee to vote, etc., remain unresolved, the Authority can direct election by secret ballot. § 7111(2)(A).	No comparable provision.	No comparable provision.

House Bill	*Senate Bill*	*Compromise Bill*
Provides that a labor organization under certain circumstances may intervene with respect to a petition filed for representation by another organization and may be placed on the ballot with respect to organization which filed petition. § 7111(c).	No comparable provision.	Adopts House provision. § 7111(c).
Authorizes runoff election between two choices receiving highest number of votes if no choice on the ballot receives majority of votes cast. § 7111(d)(2).	No comparable provision.	Adopts House provision. § 7111(d)(2).
Provides that a labor organization may be certified as an exclusive representative only after it is determined that majority status was achieved without any unfair labor practices and that no other question of representation exists. § 7111(e).	No comparable provision.	No comparable provision.
Specifies circumstances under which exclusive recognition will not be granted. § 7111(n).	Similar circumstances stated. § 7217(a).	Adopts House language. § 7111(f).
Requires labor organization seeking exclusive recognition to submit to Authority and agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives. § 7111(g).	No comparable provision.	Adopts House language. § 7111(3).
States that nothing in § 7111 is to be construed as prohibiting the waiving of hearings by stipulation for the purpose of a consent election. § 7111(i).		Adopts House language. § 7111(g).

House Bill	*Senate Bill*	*Compromise Bill*
REPRESENTATION RIGHTS AND DUTIES		
Gives a labor organization that "has been certified as the exclusive representative the right to be present at the employee's request at any investigatory interview of an employee by an agency if the employee reasonably believes that the interview may result in disciplinary action against the employee." In addition, the House bill requires the agency to inform the employee of his right of representation at any investigatory interview of an employee concerning 'misconduct' which "could reasonably lead to suspension, reduction in grade or pay, or removal." § 7114(a)(2)(3).	No comparable provision.	Adopts House provision with an amendment deleting the House provision requiring the agency to inform employees before certain investigatory interviews of the right to representation, and substituting a requirement that each agency inform its employees annually of the right to representation. The conferees further amended the provision so as to give the labor representative the right to be present at any examination of an employee by a representative of the agency in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee. The conferees recognized that the right to representation in examinations may evolve differently in the private and Federal sectors, and specifically intended that future court decision interpreting the right in the private sector will not necessarily be determinative for the Federal sector.
WITHHOLDING OF DUES		
Authorizes an agency to deduct dues from the pay of members of a labor organization whenever an employee in the appropriate unit gives the agency a written assignment authorizing the deduction. The House also specifies that the allotment shall be made at no cost to the exclusively recognized labor organization or the employee. § 7115(d).	Prohibits an agreement from requiring an employee to become or to remain a member of a labor organization or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deduction. § 7218(c).	Conference adopts House provision. § 7115(a).
NATIONAL CONSULTATION RIGHTS		
Requires that the agency "consider" the views or recommendations of the organization and that the agency shall provide the labor organization a written statement of the reasons for taking whatever final action it finally adopts. § 7113(b).	Requires that the view of an organization be "carefully considered." § 7213(b).	Adopts House provision with the understanding that the required written statement of reasons need not be detailed. § 7113(b)(2).

House Bill	*Senate Bill*	*Compromise Bill*
UNFAIR LABOR PRACTICES		
Makes it an unfair labor practice for an agency "to prescribe any rule or regulation which restricts the scope of collective bargaining, or which is in conflict with any applicable collective bargaining agreement." § 7116(a)(7).	States that in the administration of all "matters covered by the collective bargaining agreement the officials and employees shall be governed by any future laws and regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual, and any subsequently published agency policies and regulations required by law or by the regulations of appropriate authority." The House amendment does not contain this provision. § 7213(a)(1).	Authorizes, as in Senate bill, the issuance of "government wide rules or regulations which may restrict the scope of collective bargaining which might otherwise be permissible under the provisions of this title. As in the House, however, the Act generally prohibits such government-wide rule or regulation from nullifying the effect of an existing collective bargaining agreement. The exception to this is the issuance of rules or regulations implementing section 2302. Rules or regulations issued under section 2302 may have the effect of requiring negotiation of a revision of the terms of a collective bargaining agreement to the extent that the new rule or regulation increases the protection of the rights of employees. *See* § 7116(a)(7).
GOVERNMENT-WIDE RULES OR REGULATIONS		
Gives any labor organization " 'which is the exclusive representative of a substantial number of employees' national consultation rights with respect to such rules or regulations whenever it affects 'any substantive change in any condition of employment.' The procedures for consultation are similar to those which govern national consultation rights in other areas." § 7117(d).	No comparable provision.	Adopts House provision. § 7117(d)(1).

House Bill	*Senate Bill*	*Compromise Bill*
ILLEGAL STRIKES OR PICKETING		
No comparable provision.	Provides that any labor organization which " 'willfully and intentionally' condones any strike, work stoppage, slowdown, or any picketing of an agency that interferes with an agency's operations shall, upon an appropriate finding by the Authority, have its exclusive recognition status revoked." § 7217(e).	Adopts Senate language with amendment. "As agreed to by the conferees the provision will not apply to instances where the organization was involved in picketing activities. The amendment also specifies that the Authority may impose disciplinary action other than decertification. This is to allow for instances, such as a wildcat strike, where decertification would not be appropriate. In cases where the Authority finds that a person has violated this provision, disciplinary action of some kind must be taken. The Authority may take into account the extent to which the organization made efforts to prevent or stop the illegal activity in deciding whether the organization should be decertified." § 7120(f)(1)(2).
EXPRESSION OF PERSONAL VIEWS		
No comparable provision. House recedes to Senate with amendment specifying in greater detail the types of statements that may be made under this section. The provision authorizes statements encouraging employees to vote in elections, to correct the record where false or misleading statements are made, or to convey the Government's views on labor management relations.	States that the expression of "any personal views, argument, opinion, or the making of any statement shall not constitute an unfair labor practice or invalidate an election if the expression contains no threat of reprisal or force or promise of benefit or undue coercive conditions." § 7216(g).	"The wording of the conference report is intended to reflect the current policy of the Civil Service Commission when advising agencies on what statements they may make during an election, and to codify case law under executive order 11,491, as amended, on the use of statements in any unfair labor practice proceeding." § 7116(e).
GRIEVANCE PROCEDURES		
Does not limit the employee to the negotiated procedures in the case of any type of grievance. § 7121(a).	Provides that, except for certain specified exceptions, an employee covered by a collective bargaining agreement "must follow the negotiated grievance procedures rather than the agency procedures available to other employees not covered by an agreement." § 7221(a).	House recedes. Conference adopts Senate language. § 7121(a)(1).

House Bill	*Senate Bill*	*Compromise Bill*
No comparable requirement.	Establishes procedure the arbitrator must "follow when considering a grievance involving an adverse action otherwise appealable to the MSPB. In these instances the arbitrator must follow the same rules governing burden of proof and standard of proof that govern adverse actions before the Board." § 7221(h).	Adopts Senate provision in order to promote consistency in the resolution of these issues, and to avoid forum shopping. § 7121(e). *See* CR, *supra* note 3, at 157.
Does not authorize the parties to negotiate over the coverage and scope of the grievances that fall within the bill's provisions but prescribes those matters which would have to be submitted, as a matter of law, to the grievance procedure. § 7121(a).	Provides that the scope and coverage of the grievance procedures shall be negotiated by the parties. § 7221(a).	Follows House with an amendment: all matters that under "the provisions of law could be submitted to the grievance procedures shall in fact be within the scope of any grievance procedure negotiated by the parties unless the parties agree as part of the collective bargaining process that certain matters shall not be covered by the grievance procedures." § 7121(a).
"Authorizes any party to a collective bargaining agreement to directly seek a District Court order requiring the other party to proceed to arbitration rather than referring the matter to the Authority." The Senate has no comparable provision. § 7121(c).	No comparable provision.	House recedes. All questions of this matter will be considered at least in the first instance by the Authority. § 7121(b)(c).
ADDITIONAL AMENDMENTS		
No comparable provision.	Authorizes OPM to intervene in Authority proceedings and to request the Authority to reopen and reconsider a decision by the Authority. § 7120(h)(3).	Deleted this provision but stated that such deletion was not intended in any way to reduce the ability of the OPM or any other person to petition for intervention before the Authority or to petition for reconsideration by the Authority of its decisions.

House Bill	*Senate Bill*	*Compromise Bill*
No comparable provision.	Provides that negotiations on procedures governing the exercise of authority reserved to management shall not "unreasonably delay the exercise by management of its authority to act on such matters. Any negotiations on procedures governing matters otherwise reserved to agency discretion by subsection (a) may not have the effect of actually negating the authority as reserved to the agency by subsection (a)." § 7218(b).	Conference deletes this provision but wishes to emphasize that negotiations on such procedures should "not be conducted in a way that prevents the agency from acting at all, or in a way that prevents the exclusive representative from negotiating fully on procedures. Similarly, the parties may not indirectly do what the section prohibits them from doing directly."
States that after voluntary arrangements prove unsuccessful, the parties may agree to a procedure for binding arbitration, rather than to require the services of the Federal Service Impasses Panel, "but only if the procedure is approved by the panel." § 7119(b).	States that arbitration or third party fact finding with recommendations to assist in the resolution of an impasse may be used by the parties only when "authorized or directed by the panel." § 7222(d).	Senate recedes. § 7119(b).
Provides that if no exception to an arbitrator's award is filed within the specified time, the award is "final and binding." § 7122(b). Intent of House in adopting this provision was to make it clear that the awards of arbitrators, when they become final, are not subject to further review by any other authority or adminstrative body, including the Comptroller General. CR, *supra* note 3, at 158.	No comparable provision.	Adopts House language. § 7122(b).
Other authority or administrative body, including the Comptroller General. CR, *supra* note 3, at 158.		

House Bill	*Senate Bill*	*Compromise Bill*
Authorizes negotiations except to the extent inconsistent with laws, rules and regulations. §§ 7103(a)(12)(14), 7117(a)(1)(2)(3).	Authorizes negotiations except to the extent inconsistent with laws, rules and regulations. §§ 7215(c), 7218(a).	Follows House approach where there are similar differences due to the Senate reference to policies as well as rules and regulations. Conferees specifically intend, however, that the term "rule or regulations" be interpreted as including official declarations of policy of an agency which are binding on officials and agencies to which they apply. The right of labor organizations to enjoy national consultation rights also include such official declarations of policy which are binding on officials or agencies.
No comparable wording.	Specifically states that this includes policies set forth in the Federal Personnel Manual. § 7218(a)(1)(A).	
CERTAIN COLLECTIVE BARGAINING AGREEMENTS		
Provides certain savings clauses for employees principally in agencies under the Department of the Interior and the Department of Energy who have traditionally negotiated contracts in accordance with prevailing rates in the private sector of the economy and who were subject to the savings clauses prescribed in Section 9(b) of Pub. L. No. 92-392 enacted Aug. 19, 1972. § 704(d). CR, *supra* note 3, at 159.	No comparable provision.	Adopts House provison with amendment: "As revised, section 704(d) overrules the decision of the Comptroller General in cases numbered B-L89782 (Feb. 3, 1978) and B-L9L520 (June 6, 1978), relating to certain negotiated contracts applicable to employees under the Department of the Interior and the Department of Energy. This section also provides specific statutory authorization for the negotiation of wages, terms and conditions of employment and other employment benefits traditionally negotiated by these employees in accordance with prevailing practices in the private sector of the economy."

House Bill	*Senate Bill*	*Compromise Bill*
No comparable provision.	No comparable provision.	"Section 704(d)(1) authorizes and requires the agencies to negotiate on any terms and conditions of employment which were the subject of negotiations prior to August 19, 1972, the date of enactment of Public Law 92-392. Section 704(d)(1) may not be construed to nullify, curtail or otherwise impair the right or duty of any party to negotiate for the renewal, extension, modification, or improvements of benefits negotiated." "Section 704(d)(2) requires the negotiation of pay and pay practices in accordance with prevailing pay and pay practices without regard to chapter 71 (as amended by this conference report), subchapter IV of chapter 53, or subchapter V of chapter 55, of title 5, United States Code, in accordance with prevailing practices in the industry."

APPENDIX 3

COMPARISON OF SELECTED PROVISIONS OF EXEC. ORDER NO. 11,491, TITLE VII OF THE CSRA, AND THE NLRA

Exec. Order No. 11,491, *as amended*[1]	*Title VII, CSRA*[2]	*NLRA*[3]
PURPOSE		
Efficiency of Government is improved by employee participation in the formulation of personnel policies. Preamble.	Collective bargaining safeguards public interest, contributes to effective business, and facilitates settlement of disputes. § 7101(a). The Act is to be interpreted "in a manner consistent with the requirement of an effective and efficient Government." § 7101(b).	It is the policy of the U.S. to eliminate obstructions to the free flow of commerce by encouraging collective bargaining and protecting self-organization of workers for negotiating terms and conditions of their employment. § 1.
EMPLOYEE RIGHTS		
1. Employees have the right to form, join, and assist any unions, or refrain therefrom, without the fear of reprisal. § 1(a).	1. Employees have the right to form, join, and assist any unions, or refrain, without the fear of reprisal. This right includes collective bargaining. § 7101(b).	1. Employees have the right to form, join, or assist labor organizations, to bargain collectively, and to engage in concerted activities, or to refrain therefrom; however, such rights may be affected by a union security agreement. § 7. The right to strike is both recognized and regulated. § 8(b).
UNFAIR LABOR PRACTICES		
1. Management shall not:	1. It is an agency ULP to:	1. It is an employer ULP to:
(a) interfere with, restrain, or coerce employee rights. § 19(a)(1).	(a) same or comparable provision. § 7116(a)(1).	(a) same or comparable provision. § 8(a)(1).
(b) discriminate in condi-	(b) same or comparable	(b) same or comparable

1. Oct. 29, 1969, 34 Fed. Reg. 17,605, as amended by Exec. Order No. 11,616, Aug. 26, 1971, 36 Fed. Reg. No. 17,819; Exec. Order No. 11,636, Dec. 17, 1971, 36 Fed. Reg. 24,901; Exec. Order No. 11,838, Feb. 6, 1975, 40 Fed. Reg. 5743, 7391; Exec. Order No. 11,901, Jan. 30, 1976, 41 Fed. Reg. 4807; Exec. Order No. 12,027, Dec. 5, 1977, 42 Fed. Reg. 61,581. This analysis does not include Exec. Order No. 12,107, Dec. 28, 1978, 44 Fed. Reg. 1055, because this last executive order, as part of President Carter's reorganization plan, anticipates and incorporates many of the provisions of Title VII of the Civil Service Reform Act.

2. Civil Services Reform Act, 5 U.S.C. §§ 7101-7135 (1977).

3. National Labor Relations Act, 29 U.S.C. §§ 151-169 (1977), [references are to sections of the Act]. When appropriate, references are made to Labor Management Relations Act, 29 U.S.C. §§ 141-167, 171-197 [abbreviated as LMRA] and to the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 401-531 (1977) [abbreviated as LMRDA].

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tions of employment to encourage or discourage union membership. § 19(a)(2).	provision. § 7116(a)(2).	provision, except that union security agreements are allowed, subject to § 14(b). § 8(a)(3).
(c) control or assist a union, except for routine provision of service on an impartial basis. § 19(a)(3).	(c) same or comparable provision. § 7116(a)(3).	(c) comparable provision. § 8(a)(2).
(d) retaliate for complaint or testimony. § 19(a)(4).	(d) same or comparable provision. § 7116(a)(4).	(d) comparable provision. § 8(a)(4).
(e) refuse to accord appropriate recognition to a qualified union. § 19(a)(5).	(e) comparable provision, but not specifically set forth as a ULP. §§ 7116(a)(8), 7111, 7113.	(e) comparable provision, but exclusive representation only. §§ 9(a), 8(a)(5).
(f) refuse to consult with a labor organization holding national consultation rights. §§ 19(a)(6), 19(a)(9).	(f) same or comparable provision. §§ 7116(a)(5), 7113.	(f) exclusive representation only. §§ 9(a), 8(a)(5).
(g) refuse to negotiate with a labor organization accorded exclusive recognition.	(g) same or comparable provision. §§ 7116(a)(5), 7111.	(g) comparable provision. § 8(a)(5).
(h) no comparable provision.	(h) to fail to cooperate in impasse resolution. § 7116(a)(6).	(h) no comparable provision. Strike alternative available to private sector.
(i) employers are governed by existing and future laws and regulations. § 12(a).	(i) to enforce a regulation conflicting with a preexisting collective bargaining agreement. § 7116(a)(7).	(i) no comparable provision because of the private nature of the employer.
(j) no comparable provision.	(j) "otherwise fail or refuse to comply with any provision" of title VII. § 7116(a)(8).	(j) no comparable provision.
2. A labor organization shall not:	2. It is an ULP for a labor organization to:	2. It is a ULP for a labor organization to:
(a) interfere with, restrain, or coerce employee rights.	(a) same or comparable provision. § 7116(b)(1).	(a) restrain or coerce employees in their exercise of § 7 rights, with a proviso for union security. § 8(b)(1).
(b) attempt to induce management to coerce	(b) same or comparable provision.	(b) cause an employer to discriminate on the

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an employee in the exercise of such rights § 19(b)(2).	§ 7116(b)(2).	basis of union activity or for nonmembership in a labor organization (except for failure to pay fees). § 8(b)(2).
(c) retaliate against an employee by interfering with work. § 19(b)(3).	(c) same or comparable provision. § 7116(b)(3).	(c) no comparable provision.
(d) call, engage in, or condone a strike, slowdown, or picketing. § 19(b)(4). However, first amendment right to peacefully picket recognized in National Treasury Employee Union v. Fasser, 428 F. Supp. 295 (D.D.C. 1976).	(d) call, participate, or condone a strike, slow-down, or picketing "if such picketing interferes with an agency's operation." § 7116(b)(7). Non-interfering informational picketing allowed. § 7116(b).	(d) engage in organizational picketing in certain contexts, as well as recognitional strikes against a certified union. Also forbids secondary boycotts and hot cargo provisions. §§ 8(b)(4), (7), and (e).
(e) engage in race, sex, age or national origin discrimination. § 19(b)(5).	(e) comparable provision, but adds "preferential or non-preferential civil service status, political affiliation, marital status, or handicapping condition." § 7116(b)(4).	(e) no comparable provision. However, judicially imposed. *See* Rubber Workers, Local 12 v. NLRB, 368 F.2d 12 (5th Cir. 1966).
(f) refuse to consult, confer or negotiate with an agency. § 19(b)(6).	(f) comparable provision. § 7116(b)(5).	(f) refuse to bargain collectively with an employer, when the union is the bargaining representative. § 8(b)(3).
(g) no comparable provision.	(g) fail to cooperate in impasse resolution. § 7116(b)(6).	(g) no comparable provision. Strike available to private sector.
(h) no comparable provision.	(h) to otherwise fail to comply with title VII. § 7116(b)(8).	(h) no comparable provision.
(i) same or comparable provision. § 19(c).	(i) to deny membership except for failure to meet occupational standard or to tender dues. § 7116(c).	(i) no comparable provision, although excessive or discriminatory fees are prohibited. § 8(b)(5).
3. No comparable provision.	3. Free speech proviso: non-threatening expression of opinion (1) publicizing a representa-	3. Free speech proviso: non-threatening expression of opinion "shall not constitute nor

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	tion election, (2) correcting a false or misleading statement, or (3) informing employees of the government's labor relations policy shall not "(A) constitute an ULP . . . or (B) . . . grounds for the setting aside of any election. . . ." § 7116(e).	be evidence of an unfair labor practice." § 8(c).
ADMINISTRATION		
1. Federal Labor Relations Council (FLRC): consists of (part-time) the Chairman of the Civil Service Commission, Secretary of Labor, Director of the Office of Management and Budget, and any other official appointed by the President, to administer and interpret the order, decide policy issues, hear appeals to arbitration awards, negotiability issues, and other matters it deems appropriate. § 4.	1. Federal Labor Relations Authority (FLRA): 3 full-time members, bipartisan, appointed by the President with Senate advice and consent, to be removed only for cause, serving 5 year staggered terms; to administer the law, determine appropriate units, supervise elections, decide ULP cases, prevent ULP's, determine national consultation rights, determine "compelling need," determine official time for union representation, and resolve exceptions to arbitrator's awards. §§ 7104(a)-(e), 7105(a), 7131(c).	1. National Labor Relations Board (NLRB): appointed by the President with Senate consent, for staggered 5 year terms, to be removed only for cause, neglect of duty, or malfeasance; to determine appropriate units and otherwise supervise elections, decide ULP cases, prevent ULP's, and administer the Act. §§ 3(a), (b), 9, 10.
(a) No comparable provision.	(a) General Counsel, within the FLRA, appointed by the President with Senate consent, serves for a 5 year term, at the pleasure of the President; investigates and prosecutes unfair labor practice complaints. § 7104(f).	(a) General Counsel appointed by the President, with Senate consent for a 4 year term, investigates and prosecutes ULP's. § 3(d).
RECOGNITION		
1. Exclusive recognition granted to labor organization winning majority vote in secret ballot election. No election is required where units are combining/consolidating. § 10.	1. Exclusive recognition granted by a secret ballot election with a majority of employees. § 7111.	1. Representatives are "selected" by the majority of employees in the unit. Selection may be by secret ballot election or by informal recognition by employer of a union demonstrating majority support. § 9(a).

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2. National consultation rights accorded when the organization represents a substantial number of employees, under criteria developed by the FLRC. § 9(a).	2. Comparable provision, but criteria developed by FLRA, § 7113.	2. No comparable provision; exclusive representation only is allowed in the private sector. § 9(a).
3. Exclusive recognition does not preclude employees from choosing their own representative in a grievance or appeal action, except when a grievance is covered by a negotiated grievance procedure. § 7(d)(1).	3. Same or comparable provision. § 7114(a)(5).	3. No comparable provision although individuals may present their own grievance without the intervention of the union, provided the union has been given the opportunity to be present. § 9(a).
4. A unit may be established which will ensure an identifiable community of interest and promote effective dealings and operations. § 10(b).	4. The FLRA determines appropriateness of a unit to ensure fullest employee freedom in exercising rights, identifiable community of interest, and promote effective dealings and operations. § 7112.	4. The NLRB determines appropriateness of unit to ensure fullest freedom of the rights guaranteed by the Act. § 9(b). "Community of interest" is an important criterion. *See* Gorman at 69.
5. A unit excludes management officials, supervisors and employees performing non-clerical Federal personnel work. §§ 10(b)(1)-(4).	5. A unit excludes confidential employees, management officials, supervisors, employees performing non-clerical personnel work, and employees in security, audit work, or employees administering a law related to labor relations. § 7112(b).	5. The term "employee" excludes agricultural laborers, domestics, independent contractors, supervisors, public employees, and those subject to the Railway Labor Act. §§ 2(3), (2). Management and confidential employees excluded by common law of the Board. *See* NLRB v. Bell Aerospace Co., 416 U.S. 267 (1974).
REPRESENTATION RIGHTS AND DUTIES		
1. When accorded exclusive recognition, an organization must represent all employees without regard to union membership. § 10(e).	1. Same or comparable provision. § 7114(a)(1).	1. Such a duty construed by the courts as correlative to right of exclusive representation. *See* Vaca v. Sipes, 386 U.S. 171 (1967). However, duty extends to all in unit not only regardless of union membership, but regardless of race or sex or any other reason.
2. No comparable provision.	2. Union right to be present at investigatory interview if the employee reasonably believes the exami-	2. Such a right contained in § 7, according to NLRB v. Weingarten, 416 U.S. 969 (1975). However, the

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	nation may result in discipline and requests representation. § 7114(2)(B). The agency must inform employees of this right annually. § 7114(3).	private sector right accrues to the individual, not to the union; moreover, there is no duty to annually so inform employees.
DUTY TO BARGAIN		
1. An agency and exclusive union must meet at reasonable times and confer in good faith on personnel policies, practices, and working conditions, "so far as . . . appropriate under applicable laws and regulations." § 11.	1. An agency and exclusive union shall meet and negotiate in good faith for the purpose of arriving at a collective bargaining agreement. § 7114(a)(4).	1. Employer and bargaining representative must "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." §§ 8(a)(5), (b)(3), and (d).
2. The obligation to meet and confer does not include certain topics: mission; budget; organization; number of employees; number, types, and grades of position; tour of duty; technology; security; or higher level regulations where there has been demonstrated a compelling need to maintain such agency policies and regulations. §§ 11(a), (b), 12(b).	2. Management retains the right to determine the mission, budget, organization, number of employees, security practices; to hire, assign, lay off, retain, suspend, remove, reduce in grade or pay, discipline, assign work, fill positions, and take any action "necessary to carry out the agency mission during emergencies." Negotiations are not required on higher level regulations where there has been demonstrated a compelling need to maintain them. An agency may, at its option, negotiate number, types, and grades of employees; work projects; tour of duty; or technology or manner of performing work. § 7106. There is no duty to reach agreement. § 7103(a)(12).	2. No comparable provision. Management rights are generally left to the bargaining process. There is no duty to reach an agreement. § 8(d).
3. Each agreement is governed by existing or future laws and regulations. § 12(a).	3. Agreement shall not be inconsistent with Federal law or Government-wide rules or regulations for which there is a compelling need. § 7117.	3. No comparable provision because of the private nature of the employer.
4. No agreement could require union membership or involuntary dues. § 12(c).	4. Employee rights include the right to refrain from joining a union. § 7102.	4. An agreement could make membership a condition of employment, subject to state right to

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		work laws. §§ 7, 8(b)(1), 14(b).
GRIEVANCE AND ARBITRATION		
1. An agreement must contain an exclusive grievance procedure, scope and coverage of which are to be negotiated, but not include matters for which statutory appeal procedures exist. It may provide for arbitration, which can be requested only by the agency or union. §§ 13(a), (b).	1. An agreement must contain an exclusive negotiated grievance procedure, scope and coverage of which are to be negotiated; it can include statutory appeals matters. It must not include grievances over political activity, insurance, retirement, national security suspension, appointment process, or classification of grade. The grievance procedure must provide for binding arbitration which may be invoked by management or the union. Employees retain the right to choose either the negotiated grievance procedure or an applicable statutory appeals procedure, but not both. § 7121.	1. No comparable provision. "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method of settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. . . ." § 203(d), LMRA. Contractual clauses establishing a grievance and arbitration procedure are ubiquitous, as a matter of voluntary agreement. Management agrees to such clauses as the quid pro quo for the union's agreement not to strike for the duration of the contract. *See* Local 174, Internat'l Bhd. of Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962).
2. Arbitrator's awards appealable to the FLRC "under regulations prescribed by the Council." § 13(a). Under the regulations, awards were to be sustained "on grounds similar to those applied by the courts in [the] private sector. . . ." 5 C.F.R. 2411. 18(d).	2. Arbitrator's awards appealable to the FLRA on the ground that it is contrary to law, rule, or regulation, or "on other grounds similar to those applied by Federal courts in [the] private sector. . . ." § 7122(a).	2. No comparable provision. Arbitration awards judicially reviewed on very narrow grounds only. Judicial deference to an award "so long as it draws its essence from the collective bargaining agreement." United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).
DISPUTES AND IMPASSE		
1. The Federal Mediation and Conciliation Service (FMCS) provides assistance in mediating negotiation disputes. § 17.	1. Same or comparable provision. § 7119(a).	1. Any party seeking to terminate or modify a contract must give notice to FMCS; any employee striking within the notice period loses employee status. FMCS notified and involved in national emergency disputes. Health care employees must give notice before any strike or picketing, and FMCS required to

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		act in health care disputes. §§ 8(d), (g); §§ 206-210, 213, LMRA.
2. Upon failure of FMCS resolution, the Federal Service Impasses Panel (FSIP), at the request of either party, may settle negotiation impasses by action it deems appropriate. §§ 5(b), 17.	2. Same or comparable provision. § 7119(b).	2. No comparable provision.
LABOR ORGANIZATIONS: INTERNAL AFFAIRS		
1. Internal democracy, fiscal integrity and disclosure, and freedom from corrupt influence. §§ 7(b), 18(a), (c).	1. Comparable provision. §§ 7111(f), 7120(a), (b), (c).	1. Comparable provisions in LMRDA.
2. Freedom from communist control and advocacy of overthrow of U.S. government. §§ 2(e)(3), 18(a).	2. Comparable provision. §§ 7103(a)(4)(B), 7120(a)(2).	2. No comparable provision.
3. No comparable provision.	3. Assistant Secretary of Labor for Labor Management Relations to prescribe regulations conforming generally to those in the private sector. § 7120(d).	3. No comparable provision.
ADMINISTRATION		
1. Federal Labor Relations Council (FLRC): consists of (part-time) the Chairman of the Civil Service Commission, Secretary of Labor, Director of the Office of Management and Budget, and any other official appointed by the President, to administer and interpret the order, decide policy issues, hear appeals to arbitration awards, negotiability issues, and other matters it deems appropriate. § 4.	1. Federal Labor Relations Authority (FLRA): 3 full-time members, bipartisan, appointed by the President with Senate advice and consent, to be removed only for cause, serving 5 year staggered terms; to administer the law, determine appropriate units, supervise elections, decide ULP cases, prevent ULP's, determine national consultation rights, determine "compelling need," determine official time for union representation, and resolve exceptions to arbitrator's awards. §§ 7104(a)-(e), 7105(a), 7131(c).	1. National Labor Relations Board (NLRB): appointed by the President with Senate consent, for staggered 5 year terms, to be removed only for cause, neglect of duty, or malfeasance; to determine appropriate units and otherwise supervise elections, decide ULP cases, prevent ULP's, and administer the Act. §§ 3(a), (b), 9, 10.

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(a) No comparable provision.	(a) General Counsel, within the FLRA, appointed by the President with Senate consent, serves for a 5 year term, at the pleasure of the President; investigates and prosecutes unfair labor practice complaints. § 7104(f).	(a) General Counsel appointed by the President, with Senate consent for a 4 year term, investigates and prosecutes ULP's. § 3(d).
(b) Federal Service Impasse Panel (FSIP): 3 members appointed by the President, to take action to settle impasses. § 5.	(b) Federal Service Impasse Panel: Enlarged to 6 members, appointed by the President for 5 year terms, takes action in negotiating impasses.	(b) No comparable provision because of the right to strike in the private sector. §§ 7, 13.
2. Assistant Secretary of Labor for Labor-Management Relations: to determine appropriate units, supervise representation elections, determine national consultation rights, decide unfair labor practice complaints, and decide whether a grievance is subject to a negotiated grievance procedure or arbitration. § 6.	2. *See* FLRA *supra*.	2. *See* NLRB *supra*.
PROCEDURES		
1. No comparable provision. Complaints decided by the Assistant Secretary of Labor for Labor-Management Relations, § 6(a)(4). 29 C.F.R. 20315 (1979).	1. Complaints prosecuted by General Counsel. § 7118(a).	1. Comparable provision. § 3(d).
2. No comparable provision.	2. Six month statute of limitations for filing charge with FLRA. § 7118(a)(4)(A). Contains discovery exception and exception for negligence of agent. § 7118(a)(4)(B).	2. Comparable provision, but sole exception relates to military service. § 10(b).
3. No comparable provision.	3. General Counsel investigates the charge and may issue a complaint. § 7118(a)(1).	3. Same or comparable provision § 10(b).

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4. No comparable provision.	4. If the General Counsel does not issue a complaint "because the charge fails to state an ULP," the GC must provide the claimant with a reason for not issuing the complaint. § 7118(a)(1).	4. If the complaint is to be dismissed, the Board shall state its findings of fact. § 10(c).
5. No comparable provision.	5. Charges may be resolved informally before the issuance of a complaint. § 7118(a)(5).	5. Comparable provision. § 10(k).
6. No comparable provision.	6. Hearings not conducted according to the rules of evidence. § 7118(a)(6).	6. Hearings conducted according to the rules of evidence. § 10(b).
7. No comparable provision.	7. Transcript to be kept of the hearing. § 7118(a)(6).	7. Comparable provision. § 10(c).
8. No comparable provision.	8. FLRA or designated member shall decide case on a preponderance of the evidence. § 7118(a)(7).	8. Comparable provision. § 10(c).
9. No comparable provision.	9. When hearing examiner finds that no ULP has been committed, such findings of fact shall be written and the complaint dismissed. § 7118(c)(8).	9. Comparable provision. § 10(c).
OFFICIAL TIME; CHECK-OFF		
1. Agency and union may agree that employee representatives may negotiate on official time up to 40 hours or one-half of actual time in negotiation. The number of employee representatives covered shall not exceed the number of management representatives. Internal union affairs are off company time. § 20.	1. Employees representing exclusive representatives are to be granted official time for negotiations, including impasse, in the same numbers as are representing management. But internal union affairs are to be managed off company time. § 7131.	1. No comparable provision; left to the bargaining process.
2. Exclusive union; agency and union may negotiate dues withholding upon employee's authorization, which can be revoked at 6 mo. intervals. § 21.	2. Exclusive union: agency must deduct union dues at no cost to union if so authorized in writing by an employee; authorizations can be revoked only at 1 year intervals. § 7115(a).	2. No comparable provision; left to the bargaining process.

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3. No comparable provision.	3. Where there is no exclusive union, but one with 10% employee membership; if the FLRA certifies the petition, the agency must negotiate with the union solely concerning the deduction of dues. § 7115(c).	3. No comparable provision.
REMEDIES		
1. Where appropriate in a ULP case, the Assistant Secretary of Labor-Management Relations may require the violator (a) to cease and desist, or (b) "to take such affirmative action as he considers appropriate to effectuate the policies of the order." § 6(b).	1. Where appropriate in ULP cases, FLRA shall a. cease and desist order. § 7118(a)(7)(A). b. order to renegotiate a contract with the new contract given retroactive effect. § 7118(a)(7)(B). c. order of reinstatement with back pay, to be paid by perpetrator of ULP, whether the agency or the union. §§ 7118(a)(7), 7118(a)(7)(C). d. any other order "as will carry out the purpose of this chapter." §§ 7118(a)(7)(D), 7015(g)(3).	1. Where appropriate in ULP cases, the NLRB shall issue a (a) cease and desist order, and (b) shall "take such affirmative action including reinstatement of employees with or without back pay as will effectuate the policies of this Act." Back pay may be required of either the employer or the union. § 10(c).
2. No comparable provision.	2. Upon issuance of complaint, FLRA may petition an appropriate court for temporary relief to prevent ULP. The court shall not grant such relief "if it would interfere with the ability of the agency to carry out its essential functions or if the Authority fails to establish probable cause that an ULP is being committed." § 7123(d).	2. Upon issuance of a complaint, the NLRB may petition an appropriate district court for temporary relief. § 10(j).
3. No comparable provision.	3. No comparable provision.	3. Suits for breach of contracts may be brought in district courts. § 301, LMRA.

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JUDICIAL REVIEW AND ENFORCEMENT		
1. No comparable provision.	1. Final orders of the FLRA are reviewable in the courts of appeals. § 7123(a). a. party entitled to review: (1) any person aggrieved by a final order. § 7123(a). (2) the FLRA when seeking enforcement of its order. § 7123(b). b. however, arbitration awards and unit determinations are not reviewable. §§ 7123(a)(1), (2). c. venue: circuit in which the person aggrieved by the order resides or transacts business, or in the District of Columbia. § 7123(a)(2).	1. Comparable provisions. §§ 10(e), (f). Arbitration awards are reviewable in district courts only on very narrow grounds. Board decisions in election cases are not reviewable directly because they are not final orders. AFL v. NLRB, 308 U.S. 401 (1970).
2. No comparable provision.	2. "The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive." § 7123(c).	2. Comparable provision. §§ 10(e), (f).
3. No comparable provision.	3. Court of Appeals may grant any temporary relief "it considers just and proper." § 7123(c).	3. Comparable provision. §§ 10(f), (h).
4. No comparable provision.	4. Court of Appeals may affirm, modify, or set aside the order of the FLRA. § 7123(c).	4. Comparable provision. § 10(f).
5. No comparable provision.	5. Order of Court of Appeals reviewable in Supreme Court upon certiorari or certification. § 7123(c).	5. Same provision. § 10(e).