**Good-Faith Bargaining**

**Overview**

5 USC 7114(b) establishes a general requirement that agencies and unions negotiate in good faith. Specifically, the statute requires the parties to:

* Approach negotiations with a sincere resolve to reach a collective bargaining agreement.
* Be represented at negotiations by authorized representatives prepared to negotiate on any condition of employment.
* Meet at reasonable times and convenient places as frequently as is necessary and avoid unnecessary delays.

Subsection (4) requires the agency to furnish certain information to the union, upon request. A failure to bargain in good faith is an unfair labor practice as defined in Section 7116.

**Key Points**

These key-point summaries cannot reflect every fact or point of law contained within a source document. For the full text, follow the link to the cited source. The references to ***Broida*** in this Quick Start Guide are to federal employment law expert Peter Broida's treatise, *A* *Guide to Federal Labor Relations Authority Law and Practice* (Dewey Publishing Inc.), to which ***cyber*FEDS®** has exclusive Web rights.

**General principles**

* Allegations of bad-faith bargaining are resolved based on the totality of the circumstances. *Waterways Experiment Station, Vicksburg, Miss*., 104 LRP 18180, 59 FLRA 835 (FLRA 2004).
* ***Broida:*** The obligation to bargain arises upon request from the union holding exclusive recognition. The request may be oral. [*Broida Guide to Federal Labor Relations Authority Law and Practice:* Bargaining Failures](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Chapter+08:+Unfair+Labor+Practices,+Subchapter+02:+Management+Violations,+Section+B:+Bargaining+Failures), *citing* *Department of the Air Force, Wright-Patterson AFB*, 101 FLRR 1-1001, 56 FLRA 706 (FLRA 2000).
* Under the statute, the obligation to bargain in good faith includes the obligation to approach negotiations with a "sincere resolve" to reach a bargaining agreement. *Federal Correctional Complex, Oakdale, La.*, 109 LRP 75645, 64 FLRA 288 (FLRA 2009).
* Examining the totality of the circumstances, the FLRA concluded an unwillingness to meet, inflexibility in discussing proposals, and presenting the other party with ultimatums constituted a failure to bargain in good faith. *Geological Survey, Caribbean District Office*, 97 FLRR 1-1150, 53 FLRA 1006 (FLRA 1997).
* ***Broida:*** Proper bargaining is evidenced by a give and take on various proposals, although agreement may not be reached as to all points at issue. [*Broida Guide to Federal Labor Relations Authority Law and Practice:* Refusal or Failure to Conclude Agreement](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Chapter+08:+Unfair+Labor+Practices,+Subchapter+02:+Management+Violations,+Section+B:+Bargaining+Failures,+Subsection+05:+Refusal+or+Failure+to+Conclude+Agreement), *citing* *Social Security Administration, Baltimore*, 84 FLRR 1-1702, 16 FLRA 217 (FLRA 1984).
* A finding that a party repudiated an agreement is a finding that the party failed to negotiate in good faith. *Federal Aviation Administration*, 99 FLRR 1-1141, 55 FLRA 951 (FLRA 1999).
* The wholesale rejection of a union's proposals is a failure to bargain in good faith where one or more of the proposals are negotiable. *Naval Aviation Depot, Jacksonville, Fla*., 109 LRP 31679, 63 FLRA 365 (FLRA 2009).
* Refusal to bargain over a matter that is covered by an existing agreement is not bad-faith bargaining. *Federal Correctional Institution, Fairton, N.J*., 107 LRP 63182, 62 FLRA 187 (FLRA 2007).
* Relying on private sector precedent, the FLRA determined that a party's insistence that a matter be negotiated separate from term bargaining violates the duty to bargain in good faith. *Department of the Treasury, IRS,* 110 LRP 37866, 64 FLRA 934 (FLRA 2010).
* Insisting to impasse to negotiate a matter already covered by an existing agreement constitutes bad-faith bargaining. *Social Security Administration*, 109 LRP 55324, 64 FLRA 17 (FLRA 2009).
* An agency fails to bargain in good faith when it bypasses the union and deals directly with employees concerning conditions of employment. *IRS, Kansas City Service Center, Kansas City, Mo.,* 101 FLRR 1-1117, 57 FLRA 126 (FLRA 2001).
* ***Broida:*** The obligation to bargain over impact is not met by a memo from the agency to the union asking for comments about the changes management desires to make. [*Broida Guide to Federal Labor Relations Authority Law and Practice:* Bargaining Failures](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Chapter+08:+Unfair+Labor+Practices,+Subchapter+02:+Management+Violations,+Section+B:+Bargaining+Failures), *citing Philadelphia Naval Shipyard*, 85 FLRR 1-1250, 18 FLRA 902 (FLRA 1985).
* ***Broida:*** An employer's failure to submit counterproposals is not generally regarded as a per se violation of the duty to bargain in good faith. However, delays by management for over a year in the negotiation process, with insufficient responses to union proposals, followed by unilateral changes in work procedures, can constitute bad-faith bargaining. [*Broida Guide to Federal Labor Relations Authority Law and Practice:* Refusal or Failure to Conclude Agreement](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Chapter+08:+Unfair+Labor+Practices,+Subchapter+02:+Management+Violations,+Section+B:+Bargaining+Failures,+Subsection+05:+Refusal+or+Failure+to+Conclude+Agreement), *citing* *Veterans Administration Medical and Regional Office Center, Fargo, N.D.*, 86 FLRR 1-1835, 24 FLRA 9 (FLRA 1986).
* An agency commits an unfair labor practice when it refuses to bargain over a proposal that is substantively identical to one the FLRA had previously found negotiable. *Department of Veterans Affairs*, 97 FLRR 1-1096, 53 FLRA 236 (FLRA 1997).
* ***Broida:*** A lack of communication or coordination between union and agency does not constitute an unlawful refusal to bargain. As long as the agency's response to an acknowledged duty to bargain does not constitute a direct refusal or dilatory tactics of such a nature as to be tantamount to a refusal to bargain, no ULP occurs. [*Broida Guide to Federal Labor Relations Authority Law and Practice:* Refusal or Failure to Conclude Agreement](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Chapter+08:+Unfair+Labor+Practices,+Subchapter+02:+Management+Violations,+Section+B:+Bargaining+Failures,+Subsection+05:+Refusal+or+Failure+to+Conclude+Agreement), *citing Bureau of Alcohol, Tobacco and Firearms*, 81 FLRR 1-1299, 7 FLRA 431 (FLRA 1981).
* Failure to provide information requested by a union when that information meets the criteria outlined in 5 USC 7114 (b)(4) is a failure to bargain in good faith. *FAA, New England Region*, 91 FLRR 1-1029, 38 FLRA 1623 (FLRA 1991).

**Bargaining strategies and tactics**

* A party's insistence on making negotiating progress by e-mail before meeting face-to-face constituted a failure to bargain in good faith. *Executive Office for Immigration Review, New York, N.Y*., 106 LRP 6049, 61 FLRA 460 (FLRA 2006).
* Misrepresentations made during the course of negotiations may rise to the level of bad-faith bargaining. *VA Medical Center, Leavenworth, Kan*., 88 FLRR 1-1292, 32 FLRA 855 (FLRA 1988).
* Delaying tactics are an indicator of bad faith. *Air Force Logistics Command*, 90 FLRR 1-1412, 36 FLRA 524 (FLRA 1990).
* Insisting on recording negotiation sessions over the objection of the other party is an indicator of bad-faith bargaining. *Air Force Flight Test Center*, 96 FLRR 1-1121, 52 FLRA 339 (FLRA 1996).

**Bargaining ground rules**

* Because the obligation to bargain ground rules is inseparable from the obligation to bargain in good faith, a party may not insist on bargaining ground rules that will not enable the parties to fulfill their mutual bargaining obligations. *Customs Service*, 104 LRP 9090, 59 FLRA 703 (FLRA 2004).
* Refusal to continue bargaining until a party abides by the agreed-upon ground rules is not bad faith. *Army Finance and Accounting Center, Indianapolis, Ind.*, 91 FLRR 1-1167, 39 FLRA 1586 (FLRA 1991).
* An indicia of bad-faith bargaining is insisting on ground rules that indicate an intent to avoid the bargaining process. *Internal Revenue Service*, 110 LRP 7993, 64 FLRA 426 (FLRA 2010).
* In negotiating ground rules for bargaining a new agreement, there is no requirement that a party give specific notice of the changes it intends to propose for the new agreement. *Internal Revenue Service*, 110 LRP 7993, 64 FLRA 426 (FLRA 2010).

**Authority of negotiators**

* Failure to send representatives to the bargaining table fully authorized to make formal and final agreements, in the absence of mutual consent, constitutes bad-faith bargaining. *IRS, Brooklyn District*, 86 FLRR 1-1732, 23 FLRA 63 (FLRA 1986).
* Where agency negotiators informed the union they lacked full authority to finalize an agreement and the union acquiesced, the agency did not fail to negotiate in good faith. *Federal Aviation Administration,* 103 LRP 56872, 59 FLRA 491 (FLRA 2003).
* Where a past practice existed under which negotiators for both parties were authorized only to negotiate tentative agreements, the FLRA concluded the union waived its right to bargain with agency negotiators fully empowered to reach a final agreement. *Portsmouth Naval Shipyard, N.H.,* 92 FLRR 1-1074, 44 FLRA 205 (FLRA 1992).
* Withdrawing from tentative agreements is not a per se act of bad-faith bargaining, particularly when the party provides reasons and is otherwise cooperative. *Eglin Air Force Base*, 83 FLRR 1-1343, 13 FLRA 492 (FLRA 1983).
* A series of discussions between a manager and union representative concerning the physical layout of work space constituted collective bargaining and the manager's refusal to sign a MOU was a failure to negotiate in good faith. *Standiford Air Traffic Control Tower, Louisville, Ky.,* 97 FLRR 1-1106, 53 FLRA 312 (FLRA 1997).
* A union has the right to demand further bargaining when its membership fails to ratify an agreement. *Griffiss Air Force Base*, 87 FLRR 1-1044, 25 FLRA 579 (FLRA 1987).
* An agency's refusal to resume impact bargaining after the membership refused to ratify the agreement constituted a failure to bargain in good faith. *Social Security Administration*, 93 FLRR 1-1037, 46 FLRA 1404 (FLRA 1993).

**Non-mandatory subjects**

* A party's withdrawal from negotiation over a non-mandatory subject of bargaining, before an agreement is reached, is not a failure to negotiate in good faith. *Social Security Administration*, 96 FLRR 1-1154, 52 FLRA 677 (FLRA 1996).
* It is an unfair labor practice to insist on bargaining to impasse on a non-mandatory subject. *FDA, Northeast and Mid-Atlantic Regions*, 98 FLRR 1-1023, 53 FLRA 1269 (FLRA 1998); *reconsideration denied,* 98 FLRR 1-1143, 54 FLRA 630 (FLRA 1998).