**Key Points:**   
**Managers should be aware of unfair labor practices at** [**5 USC 7116**](http://www.cyberfeds.com/CF3/servlet/GetReg?cite=5+USC+7116) **(a)(1)  
Not recognizing** **condition of employment or union's interests can be pitfalls  
Careless comments could be seen as threats to retaliate for union activity**

**Supervisors should watch out for these top three ULPs**

By James Carroll, ***cyber*** **FEDS®** Legal Editor

**LR ADVISOR:** *The list of management unfair labor practices contained in [5 USC 7116](http://www.cyberfeds.com/CF3/servlet/GetReg?cite=5+USC+7116) (a)(1) is rather extensive. If just one hour could be taken from the busy day of first- or second-level supervisors in order to teach them the requirements of the statute -- with the objective of avoiding ULPs -- what points would the Advisor make?*

**And the Advisor says ...**

Unfair labor practice charges can be caused by the actions of top management, agency headquarters, attorneys, and other practitioners who have daily contact with the union, as well as the supervisors who encounter bargaining unit employees every day on the shop or office floor. To prevent ULPs by this final group, let's focus on the three most common mistakes they make.

**1. Unilateral changes in conditions of employment.**

When an agency plans to change the conditions of employment of bargaining unit employees, it has an obligation to notify the union in advance and to engage in bargaining at the union's request. This is probably the most violated statutory requirement occurring regularly at the working level. Supervisors who commit ULPs by making unilateral changes generally do so for two reasons:   
Failure to recognize a condition of employment. COEs come in both big and small packages and it's the small ones that get the supervisor in trouble. Everyone recognizes the big items such as telework and work schedules as important conditions of employment. But how about such things as seating assignments and the timing of breaks and lunches? These are issues that affect employees every day. Change those and you're changing conditions of employment.   
Failure to recognize the union's institutional interests. "It's not a big deal; the employees won't care; heck, most of them want it changed." Versions of this statement have been uttered many times by supervisors having been charged with a ULP. Sure, it might be a minor, even agreeable, change, but the law gives the union the right to be involved and to represent all employees, including those who might not support the change.

**2. Formal discussions.**

Supervisors meet with employees just about every day, either as individuals or groups. When the purpose of the meeting is to discuss work, generally there's no problem. However, if the meeting is held to discuss conditions of employment, or if it evolves into such a discussion, a statutory right of the union kicks in. Under Section 7114(a), the union has the right to be notified of this "formal discussion." Whether a meeting meets the definition depends largely on the subject matter.

A supervisor might say, "We're going to expand the teleworking program and I want to see how my employees feel this office should do it. Common sense simply says to get them together and ask." There's no doubt this get-together involves a condition of employment. Again, the institutional role of the union must be honored. It has the right to be notified in advance of such a meeting and it has the right to attend and to express its own views. This is a statutory right and a supervisor can't wait until some employee requests union presence.

**3. Careless statements.**

Some examples of careless statements could be "Mary, your work would be better and your appraisal higher if you didn't spend so much time on union business," or "John, the employees who move ahead are those who avoid creating waves with grievances."

These may be well-intentioned pieces of advice doled out to employees by a caring supervisor, but to the casual observer -- and probably to the employees receiving such words of wisdom -- they are threats to retaliate for the exercise of statutory rights. Statements such as these are more likely than not ULPs.

Previous LR Advisor columns:   
[Number of management representatives is procedural matter](http://www.cyberfeds.com/CF3/index.jsp?contentId=19158949) (05/18/11)   
[Arbitrators must use some independent judgment](http://www.cyberfeds.com/CF3/index.jsp?contentId=19000393) (04/20/11)   
[RIF implicates management rights, but unions may still get to table](http://www.cyberfeds.com/CF3/index.jsp?contentId=18780618) (03/16/11)

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