**Management Rights**

**Overview**

Specific functions and decisions have been reserved to management by Section 7106(a) of the Federal Service Labor-Management Relations Statute. 5 USC 7106(a). These include an agency's determination of its mission, budget, and organization as well as the overall number of employees it will employ and its internal security practices.

In accordance with applicable laws, the agency also has the right to hire, assign, direct, lay off, and retain employees; to suspend and remove employees; and to take other disciplinary actions. The agency retains the right to assign work, to determine the personnel needed to conduct operations, and to make decisions regarding the contracting out of work. The right to make selections is also exclusive to the agency. Finally, an agency has the right to take whatever actions are necessary in cases of emergency.

The above actions are often referred to as prohibited subjects of bargaining, and generally, they may not be waived.

However, Section 7106 (b) provides that the procedures for exercising management rights are negotiable, as are appropriate arrangements proposed by a union. Subsection (b)(1) provides that an agency may, at its discretion, negotiate some matters that are normally viewed as management rights. Commonly referred to as the permissive scope of bargaining, these are: the numbers, types, and grades of employees assigned to an organizational subdivision, and the technology, methods, and means of performing work.

This guide refers briefly to particular management rights. Several Quick Start Guides address specific management rights in detail. See links below.

The decision in *Environmental Protection Agency*, 110 LRP 57877, 65 FLRA 113 (FLRA 2010) means that the FLRA will no longer apply the excessive interference test to the awards of arbitrators enforcing agreement provisions negotiated as appropriate arrangements. Now, an award will be overturned only if it "abrogates" (waives) a management right. At the [bottom](http://www.cyberfeds.com/CF3/printDoc.jsp?docid=5005&chunkid=186269#Status_unknown) of this Quick Start Guide are rulings where an arbitrator's award affected or excessively interfered with the exercise of a management right. These rulings were issued before the excessive interference test was replaced with the abrogation standard, and are included because it is not known how they would have been resolved if the abrogation standard had been applied (for example, it is possible that the abrogation standard would've been met). The guide will be updated regularly as more decisions are issued applying the abrogation test.

**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.

**In general**

* ***Broida:*** Permeating federal sector labor relations is the theme of management rights, expressed in statute and preserved by innumerable negotiability decisions. Management rights are also preserved against what agencies view to be intrusive decisions by arbitrators who either enforce contract clauses that arguably defeat management rights or who interpret benign clauses in a way that management believes defeats those rights. [*Broida Guide to Federal Labor Relations Authority Law and Practice:* Management Rights; Appropriate Arrangements; *BEP*](http://www.cyberfeds.com/CF3/servlet/CFSearchAll?searchstring=%7BBEP%7D+within+doctitle&searchscreen=%2FCF3%2Fadvflrasearch.jsp&destination=index.jsp%3Ftopic%3DLABOR_RELATIONS%26results%3Dyes&db=BROIDA_FLRA&thesaurus=yes&sortorder=document&results=20&doctype=&restrictors=doctype&topic=LABOR_RELATIONS).
* ***Broida:*** 5 USC 7106 removes from the duty to bargain management functions which Congress deemed essential to the effective conduct of agency business. *See* *Overseas Education Association v. FLRA*, 89 FLRR 1-8020, 876 F.2d 960 (D.C. Cir. 1989). However, the management rights clause was intended to be treated as a narrow exception to the obligation to bargain over conditions of employment with only those proposals which directly and integrally go to the specified management right barred from negotiation. [*Broida Guide to Federal Labor Relations Authority Law and Practice:* Specific Management Rights, General Considerations](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Chapter+05:+Subjects+of+Bargaining:+Substantive+Limitations+on+Negotiability+Determinations,+Subchapter+06:+Specific+Management+Rights,+Section+A:+General+Considerations).
* When a union does not contest a management rights assertion in a negotiability appeal, the proposal in question will be ruled outside the duty to bargain. *FAA, Potomac TRACON*, 109 LRP 31630, 63 FLRA 387 (FLRA 2009).
* Proposals prescribing when a management right may be exercised place a substantive limitation on the exercise of that right. *Naval Submarine Base, Groton, Conn.,* 106 LRP 6060, 61 FLRA 480 (FLRA 2006).
* A proposal to delay the exercise of a management right pending negotiations over other unrelated matters is negotiable only at an agency's election. *NTEU v. FLRA*, 105 LRP 32743, 414 F.3d 50 (D.C. Cir. 2005).
* An issue concerning the scope of bargaining is not dispositive of the question of the arbitrability of a grievance. The fact that an award may ultimately interfere with management rights does not render a grievance non-arbitrable. *Border Patrol, El Paso Sector, El Paso, Texas*, 109 LRP 37073, 63 FLRA 465 (FLRA 2009).
* A proposal to delay the exercise of a management right until the completion of the bargaining process is in accordance with law and a negotiable procedure. *National Institutes of Health*, 109 LRP 75588, 64 FLRA 266 (FLRA 2009).
* Proposals requiring an agency to exercise its management rights in accordance with applicable law do not interfere with the exercise of management rights. *National Labor Relations Board*, 108 LRP 29065, 62 FLRA 397 (FLRA 2008).
* ***Broida:*** The statute essentially requires that an arbitrator consider the applicability of federal law, including the management rights provisions of 5 USC 7106, when resolving a grievance under the negotiated grievance procedure. *Air Force Logistics Command*, 32 FLRA 261 (FLRA 1988). [*Broida Guide to Federal Labor Relations Authority Law and Practice:* Management Rights; Appropriate Arrangements; *BEP*](http://www.cyberfeds.com/CF3/servlet/CFSearchAll?searchstring=%7BBEP%7D+within+doctitle&searchscreen=%2FCF3%2Fadvflrasearch.jsp&destination=index.jsp%3Ftopic%3DLABOR_RELATIONS%26results%3Dyes&db=BROIDA_FLRA&thesaurus=yes&sortorder=document&results=20&doctype=&restrictors=doctype&topic=LABOR_RELATIONS).
* Proposals containing such words as "fair" and "equitable" governing the exercise of a management right place a substantive limitation on the exercise of the right. *Department of Housing and Urban Development, Boston Regional Office*, 93 FLRR 1-1202, 48 FLRA 232 (FLRA 1993).
* Proposals requiring that management rights be exercised fairly and equitably may constitute appropriate arrangements. *Office of the Comptroller of the Currency*, 106 LRP 73094, 61 FLRA 871 (FLRA 2003).
* Proposals requiring an agency to "consider" taking certain actions in regard to the exercise of management rights, but do not dictate a particular result, do not interfere with the exercise of management rights. *Court Services and Offender Supervision Agency*, 104 LRP 8787, 59 FLRA 674 (FLRA 2004).
* ***Broida:*** The FLRA has interpreted the term "consider" to mean that management may be required to review certain factors, but it is free to base its exercise of the right on grounds other than those factors. Stated differently, the use of the term in a proposal does not direct a particular result, but preserves management's discretion to decide how to act. [*Broida Guide to Federal Labor Relations Authority Law and Practice:* Specific Management Rights, General Considerations](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Chapter+05:+Subjects+of+Bargaining:+Substantive+Limitations+on+Negotiability+Determinations,+Subchapter+06:+Specific+Management+Rights,+Section+A:+General+Considerations).

**Hire and select**

* Having a union representative sit on a rating panel, whether active or passive, directly affects an agency's right to make selections. *NASA, Marshall Space Flight Center, Ala.,* 94 FLRR 1-1050, 49 FLRA 382 (FLRA 1994).
* A proposal requiring an agency to actually fill vacant positions rather than simply announce such positions or to fill those it chooses interfered with the right to make selections. *USDA Farm Services Agency, Kansas City Management Office, Kansas City, Mo.*, 98 FLRR 1-1156, 54 FLRA 807 (FLRA 1998).
* A union's demand to be present at performance-based selection interviews interfered with the deliberative process involving the exercise of a management right and was therefore nonnegotiable. *DVA Vista Clinic, Vista, Calif.,* 102 LRP 18575, 58 FLRA 8 (FLRA 2002).

**Discipline**

* The management right to discipline employees extends to both performance-related reasons and non-performance-related conduct. *Dover Air Force Base,* *Dover, Del.,* 100 FLRR 1-1128, 56 FLRA 549 (FLRA 2000).
* The right to discipline includes the right to obtain and use evidence in support of disciplinary actions. *Federal Aviation Administration*, 106 LRP 614, 61 FLRA 341 (FLRA 2005).
* Proposals that would restrict management's ability to choose the specific penalty it would impose in a disciplinary action interfere with the right to discipline. *Naval Aviation Depot, Cherry Point*, *N.C.,* 90 FLRR 1-1355, 36 FLRA 28 (FLRA 1990).

**Internal security practices**

* The management right to determine internal security practices includes the authority to determine policies and practices designed to safeguard personnel, property, or operations. *Luke Air Force Base,* 109 LRP 18047, 63 FLRA 174 (FLRA 2009).
* To show that a union proposal affecting a policy allegedly designed to safeguard personnel, property, or operations is nonnegotiable, an agency must establish a reasonable link between the policy and the agency's internal security concerns. *Customs and Border Protection, New York*,105 LRP 31784, 61 FLRA 72 (FLRA 2005).
* In order to establish that a union proposal interferes with the management right to determine internal security practices, an agency must only establish that a policy is reasonably linked to security, not that it is the only possible way of preserving security. *NTEU v. FLRA,* 108 LRP 70225, 550 F.3d 1148 (D.C. Cir. 2008).
* When an agency establishes the necessary link between a policy or practice and its internal security, the FLRA will not inquire into the effectiveness of the policy or practice in achieving the internal security objectives. *Customs and Border Protection*, 104 LRP 52957, 60 FLRA 367 (FLRA 2004).

**Assign work, assign and direct employee**

* The right to assign work includes the determination of the particular duties to be assigned to employees or positions and the particular employees to whom those duties will be assigned. *Supervisor of Shipbuilding, Conversion and Repair*, 107 LRP 73689, 62 FLRA 328 (FLRA 2007); *Bureau of the Public Debt*, 80 FLRR 1-1367, 3 FLRA 769 (FLRA 1980).
* The right to assign work includes the right to establish the qualifications and skills necessary to perform the work and to judge whether particular employees meet those requirements. *Federal Prison Camp, Duluth, Minn.*, 103 LRP 56111, 59 FLRA 481 (FLRA 2003).
* An agency's identification of performance elements and standards constitutes an exercise of the management rights to direct employees and assign work. *Naval Submarine Support Facility, Groton, Conn*., 100 FLRR 1-1078, 56 FLRA 268 (FLRA 2000).
* Included in the right to assign work and direct employees is the right to determine the methods used to evaluate and supervise employees. *Alaska Civilian Personnel Advisory Center, Fort Richardson, Alaska*, 107 LRP 7799, 62 FLRA 15 (FLRA 2007).

**Mission, budget, and organization**

* An agency's decision as to when its facilities will be open to the public for the purpose of conducting business is directly tied to the agency's mission. *Seymour-Johnson AFB*, 99 FLRR 1-1011, 55 FLRA 163 (FLRA 1999).
* An agency's right to determine its organization includes the right to determine its administrative and functional structure, including the relationship of personnel through lines of authority. *New York Division of Military and Naval Affairs, Latham, N.Y.*, 100 FLRR 1-1108, 56 FLRA 444 (FLRA 2000).
* The right to determine an agency's organization includes the right to determine the geographical location where the agency will conduct its operations and how responsibilities will be distributed among organizational subdivisions. *Social Security Administration*, 103 LRP 137, 58 FLRA 273 (FLRA 2002).
* The right to determine organization includes the right to determine how the agency will be divided into organizational entities. *Federal Aviation Administration*, 102 LRP 33677, 58 FLRA 175 (FLRA 2002).
* An agency's right to determine its budget is affected when a proposal or award would require the inclusion of a particular program or amount in the budget or it would result in significant and unavoidable increases in cost. *National Labor Relations Board*, 105 LRP 27625, 61 FLRA 41 (FLRA 2005).

**Contract out**

* Proposals seeking to establish a time when an agency may contract out are nonnegotiable. *Fish and Wildlife Service, Hadley, Mass.*, 100 FLRR 1-1007, 55 FLRA 1081 (FLRA 1999).
* OMB Circular A-76 is a nonnegotiable governmentwide regulation. Alleged violations of the circular's requirements are not subject to grievance arbitration because the circular sets forth the exclusive procedure for addressing claims regarding its implementation. *IRS v. FLRA*, 93 FLRR 1-8013, 996 F.2d 1246 (D.C. Cir. 1993).
* OMB Circular A-76 does not preclude arbitrators from resolving grievances over contracting out that allege contractual violations. *Corps of Engineers, Mobile District*, *Mobile, Ala.,* 110 LRP 11392, 64 FLRA 508 (FLRA 2010).

**Lay off and retain**

* The right to lay off employees includes the right to conduct a reduction in force and to exercise discretion as to which positions will be eliminated and retained. *Defense Distribution Depot, Susquehanna, Pa.,* 100 FLRR 1-1148, 56 FLRA 660 (FLRA 2000).
* The right to retain employees involves the right to establish policies or practices designed to encourage or discourage employees to remain employed by an agency. *National Imagery and Mapping Agency, St. Louis*, *Mo.,* 103 LRP 4610, 58 FLRA 344 (FLRA 2003).
* Proposals concerning the filling of vacant positions in a RIF situation may, under certain conditions, constitute negotiable appropriate arrangements. *Philadelphia Naval Shipyard*, 95 FLRR 1-1116, 51 FLRA 451 (FLRA 1995).

**Act in cases of emergency**

* An agency's right to act in cases of emergency includes the right to independently assess whether an emergency exists and to decide what actions are needed to address the emergency. *Naval Supply Center, Jacksonville, Fla.,* 87 FLRR 1-1552, 29 FLRA 1174 (FLRA 1987).
* An agency's claim that an emergency required unilateral action is reviewable and the agency must support it determination. *VA Regional Office, St. Petersburg, Fla.,* 103 LRP 22280, 58 FLRA 549 (FLRA 2003).
* 5 USC 7106 (a)(2)(D) allows agencies to take whatever actions it deems necessary in cases of emergency, but a union proposal to define "emergency" is not nonnegotiable per se. *Army Corps of Engineers, St. Louis District*, *Mo.,* 99 FLRR 1-1026, 55 FLRA 243 (FLRA 1999).
* A union proposal identifying the management official who would be authorized to declare an emergency was ruled nonnegotiable. *Norfolk Naval Shipyard*, 88 FLRR 1-1062, 31 FLRA 131 (FLRA 1988).

**Permissive bargaining**

* 5 USC 7106(b)(1) was intended as an exception to the management rights enumerated in Section 7106(a). When a proposal falling within the scope of Subsection (b)(1) also impacts a management right contained in Subsection (a), it will be ruled a permissive subject of bargaining. *Montana ACT v. FLRA*, No. 92-1379 (D.C. Cir 1994).
* Generally, a proposal that concerns a Section 7106(b)(1) matter is negotiable only at the election of the agency. However, if it constitutes an appropriate arrangement under Section 7016(b)(3), the agency is obligated to bargain. *National Weather Service, Alaska Region,* 105 LRP 45617, 61 FLRA 241 (FLRA 2005).
* A proposal dictating the number of employees the agency will employ affects management's Section 7106(a) right to determine number of employees. A proposal addressing the number of employees assigned to various components of the agency is permissibly negotiable under Subsection (b)(1). *Office of Surface Mining, Albuquerque, N.M.,* 97 FLRR 1-1113, 53 FLRA 427 (FLRA 1997).
* An agreement on a permissive matter is not contrary to law and may not be rejected upon agency head review. *FAA, Air Route Traffic Center, Olathe, Kan*., 105 LRP 48959, 61 FLRA 336 (FLRA 2005).

**Procedures**

* A negotiable procedure is one that does not directly interfere with management rights. *Bureau of Land Management v. FLRA*, 89 FLRR 1-8017, 873 F.2d 1505 (D.C. Cir. 1989).
* Proposals to establish committees, with union participation, that are not an integral part of management's decision-making process relative to the exercise of management rights generally are negotiable procedures. *Environmental Protection Agency*, 107 LRP 6280, 62 FLRA 1 (FLRA 2007).

**Appropriate arrangements**

* A proposal or provision that interferes with a management right may constitute an appropriate arrangement if it does not excessively interfere with the exercise of the right. *Customs and Border Protection*, 107 LRP 68561, 62 FLRA 267 (FLRA 2007); *Kansas Army National Guard*, 86 FLRR 1-1492, 21 FLRA 24 (FLRA 1986).
* For the purpose of determining the negotiability of a proposal, the excessive interference test requires a balancing of employee and management interests and a determination of the extent to which a provision or proposal would hamper an agency's ability to perform its core functions in an efficient and effective manner. *ACT, Puerto Rico Army Chapter v. FLRA*, 108 LRP 45687, 07-1422 (D.C. Cir. 2008); *NWESO v. FLRA*, 106 LRP 46076 (D.C. Cir. 2006).

**Management rights in arbitration**

* The excessive interference test is no longer applied to the awards of arbitrators enforcing agreement provisions negotiated as appropriate arrangements. An award will be overturned only if it "abrogates" or "waives" a management right. *Environmental Protection Agency*, 110 LRP 57877, 65 FLRA 113 (FLRA 2010).
* An arbitrator's award requiring the agency to pay employees who did not work overtime because the agency cancelled overtime assignments without the seven day notice required by the agreement, affected the right to assign work, but it did not abrogate the right. *Federal Aviation Administration*, 110 LRP 64754, 65 FLRA 171 (FLRA 2010).
* ***Broida:*** The management rights provisions of [5 USC 7106](http://www.cyberfeds.com/CF3/servlet/GetReg?cite=5+USC+7106) do not provide a basis for determining that a grievance is not arbitrable. *VA Medical Center, Biloxi, Miss.*, 110 LRP 12902, 64 FLRA 520 (FLRA 2010). Conversely, a grievance is arbitrable (although other exceptions to the resulting award may lie) despite even a successful claim that the resultant award infringes management rights. [*Broida Guide to Federal Labor Relations Authority Law and Practice:* Management Rights](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Chapter+09:+Review+of+Arbitration+Awards,+Subchapter+06:+Recurrent+Jurisdictional+Issues,+Section+D:+Management+Rights).
* Because Section 7106(b)(1) is an exception to Section 7106(a), an arbitrator's award enforcing an agreement made under Subsection (b)(1) will not be disturbed even though it affects a management right contained in Subsection (a). *Federal Aviation Administration, Alaskan Region,* 107 LRP 38321, 62 FLRA 90 (FLRA 2007).

**Status unknown**

**Editor's note:** As noted in the Overview above, the following cases were issued before the excessive interference test was replaced with the abrogation standard. They are included because it is unknown how they would have been resolved under the abrogation standard.

* An arbitrator's award does not necessarily interfere with a management right when the arbitrator finds the agency improperly exercised the right. *Army Corps of Engineers, St. Paul District*, 105 LRP 42837, 61 FLRA 201 (FLRA 2005).
* An arbitrator's award excessively interfered with management rights where it provided for the use of seniority in selections from among employees minimally qualified for the position. It precluded the agency from deciding the specific knowledge, abilities, and personal characteristics necessary for positions. *VA Medical Center, St. Cloud, Minn*., 108 LRP 40882, 62 FLRA 508 (FLRA 2008).
* An arbitrator's award limiting the agency's ability to use selective placement factors interfered with the right to make selections. *Internal Revenue Service*, 106 LRP 43029, 61 FLRA 618 (FLRA 2006).
* An arbitrator's award requiring a change in an employee's duty station may, at times, interfere with the agency's right to determine its organization, but this is not always the case. *Department of Education*, 105 LRP 48935, 61 FLRA 307 (FLRA 2005).
* Arbitrators' awards that would delay a decision to contract out or preclude an agency from contracting out interfere with the right to make contracting out determinations. *Army Corps of Engineers, Northwestern Division*, 105 LRP 3460, 60 FLRA 595 (FLRA 2005); *Fish and Wildlife Service, Hadley, Mass.*, 100 FLRR 1-1007, 55 FLRA 1081 (FLRA 1999).