

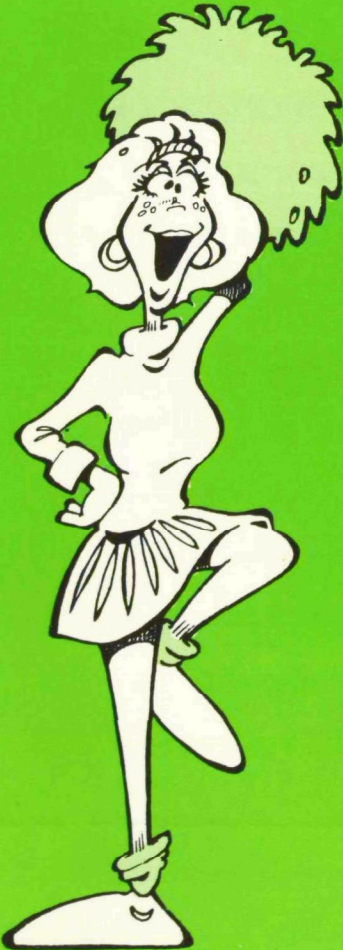


AN INTRODUCTION TO LABOR RELATIONS FOR SUPERVISORS AND MANAGERS OF THE ENVIRONMENTAL PROTECTION AGENCY

United States Environmental Protection Agency



401 M Street, S.W., Washington, DC 20460



"Let's Hear it for Labor Relations"

LABOR-MANAGEMENT AND EMPLOYEE RELATIONS
PERSONNEL MANAGEMENT DIVISION
OFFICE OF ADMINISTRATION

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INTRODUCTION

There are a number of things this handbook will not do for you. It will not make you into a labor relations specialist. (For that matter, the authors might suggest intensive psychotherapy for anyone so inclined.) It will not subject you to yet another fascinating history of labor relations in the Federal government. It will not give you the legal citations and case studies that keep lawyers awake at night reading. And, it will not discuss issues or situations which you have never heard of and probably never will. Having said that, what can you anticipate?

You can expect a handbook designed specifically for EPA supervisors and managers about EPA labor relations. You can expect some very basic "do's and don'ts." You can expect a handbook we have tried to make useful, readable and interesting.

More than anything else, you can expect a perspective that, stripped of all its trappings and legalisms, good labor relations is simply good common sense and good management. At the risk of having our jobs seem less important (and less needed), we do not manage labor relations. We advise you, represent you, and negotiate for you. But, you are the manager. You make the decisions and set the climate that determine what kind of labor relations we have in EPA. We firmly believe good management with a little exposure to some fundamental principles is the basis for good labor relations. And, that is what this handbook is all about.

CHAPTER I

REPRESENTATION AND BARGAINING UNITS



If this were your normal handbook for supervisors, you would be reading—or, more likely, ignoring—a string of definitions. Well, if we need to define something, let's do it where we talk about it. For now, we are going to assume you know what a union is. We are not going to make the same assumption about management. Not because we think you can not define management, but because we want to spend some time discussing *you as management* in a labor relations context.

A union represents employees. It represents them collectively as a group and as individuals in certain circumstances. Before we go further, you should understand that a union represents all the employees regardless of union membership. Therefore, union membership is irrelevant. That means we do not ask employees whether they are union members. Idle curiosity in this area can get you into a lot of trouble. Along the same line, we do not provide advice, even if solicited, on whether employees should vote for or join a union. It is none of our business how employees vote in a union election, if they decide to join a union, or how they feel about having a union represent them. Discretion is the better part of valor—keep your opinions to yourself.

The employees a union represents are contained in a discrete grouping called a bargaining unit. Since a union represents only bargaining unit employees, we do concern ourselves with whether individual employees are in or out of a bargaining unit. Generally speaking, managers, supervisors, confidential employees, personnel types, and people involved in internal EPA security or audit functions are excluded from all bargaining units. Management officials (non-supervisory merit pay employees) cannot be in a bargaining unit. In EPA, our policy is to remove from merit pay (GM) any employee found to be properly included in a bargaining unit. Instead of a GM-13, 14 or 15, they become the GS equivalent. Supervisors are excluded from bargaining units even if they do not meet the personnel definition of a supervisor in terms of the number of employees supervised for our purposes. If that strikes you as inconsistent, you have good reasoning abilities. If the inconsistency does not bother you, you have the potential for understanding labor relations.

A union is an organization. On the management side, we tend to think and talk in terms of "the union." Union representatives, for their part, think and talk in terms of "management." "Management" is just as much an amorphous entity to them as the "union" is to us. The problem is that labor relations is not like two computers talking to each other. Labor relations is real life people dealing with each other. In the next two chapters, we are going to look at some approaches and perceptions that can make those dealings a little easier.

CHAPTER II



YOU, THE MANAGEMENT

At the risk of sounding simplistic, the management of EPA is its supervisors and managers. Each supervisor and manager is an individual with his or her own style, beliefs and human frailties. We know we are a collection of individuals that often disagree with each other. That is not the common perception of us held by employees and unions. Be it convenience or personal philosophy, "management" is seen as a malevolent being, unified in its actions. The problem for you is that employees and union representatives carry that perception into dealings with you.

There are a number of different forums in which you may have to deal with union representatives. [Union representatives may be employees or outside individuals who work for the union. Most of the time, they will be our own employees.] They include informal meetings, formal discussions, grievances, appeals, and bargaining sessions, to name a few. All of them have the potential to be combative. In many situations, the union is there to challenge a decision you have made or implemented. Many of us believe we get paid to make decisions and do not like to have those decisions challenged. Some of us take offense at even having to explain our rationale behind a decision. All too often we have a scenario where a union representative with his or her preconceived notion of management (and the attitude that goes with that perception) confronts a manager who is hostile to the idea of having his or her decisions questioned. Without a great deal of imagination, we can see that the potential for problem solving is not great.

We are now at a point where some of you may be saying, "Why should we worry about problem solving? Put another way, the question really concerns the nature of the basic relationship between management and a union. "Why should we cooperate?" Certainly, there are numerous instances where the relationship between a particular management and union is anything but cooperative. Many institutions deliberately pursue a "hardline" approach to dealing with unions. Here at EPA, some of our relationships have been extremely adversarial. And, there is the thought that a cooperative relationship is usually an outgrowth of the respect the parties gain for each other after having been at each other's throats for some time.

Perhaps, if we define our conceptualization of cooperation, it might be useful to you. Cooperation does not mean rolling over and playing dead everytime you deal with a union. It does not mean giving in to their every demand. To us, cooperation means dealing honestly with a union. Hiding information always comes back to haunt you. Most unions have extremely good information networks. Sooner or later, the union will find out. When we keep information from a union, the result is suspicion and distrust, which makes it much more difficult when you have to deal with them on the subject. Now, the timing or content of the information may make a real difference. Usually, we do not provide unions with information concerning management decisions *under consideration*. If you are considering a number of alternatives for a reorganization, that does not trigger any obligation because there is not yet a management position. So, we would not provide a union with all the information that goes with each alternative. But, nothing prevents you from telling the union you are looking at possible reorganizations. In a later chapter, we will discuss our obligation to bargain changes with a union, but in this specific example the organization itself is not subject to bargaining but the impact of the new organization on bargaining unit employees is. Also, we do not provide unions with information on non-bargaining unit employees or that which deals with advice or guidance concerning EPA labor relations. In general, an open approach to information (as opposed to a secretive one) with unions tends to reduce tensions and the potential or distrust.

Cooperation also includes the approach you take. Be willing to listen, to explain and to explore. Many issues result from misinformation or poor communications. If you are non-responsive, unwilling to hear the union out, you force them into a confrontive posture. Again, we are not saying you should agree with everything the union wants. But, talking things through usually allows the parties to see they are not so far apart. That is not to say there will be no disagreements—believe us, there will be. It is the nature of the disagreements that matters. When management and a union can agree to disagree and not affect the workings of the relationship, then a substantial degree of maturity has been reached.

For those of you with lingering doubts about the value of cooperation, keep in mind that confrontation is extremely time-consuming. Your job is to get EPA's work done. That becomes difficult if you are constantly involved in grievances, appeals, unfair labor practice charges and other such activities. We happen to think that investment up front pays large dividends at the other end. A five minute discussion with the union can save you hours and days of trouble.

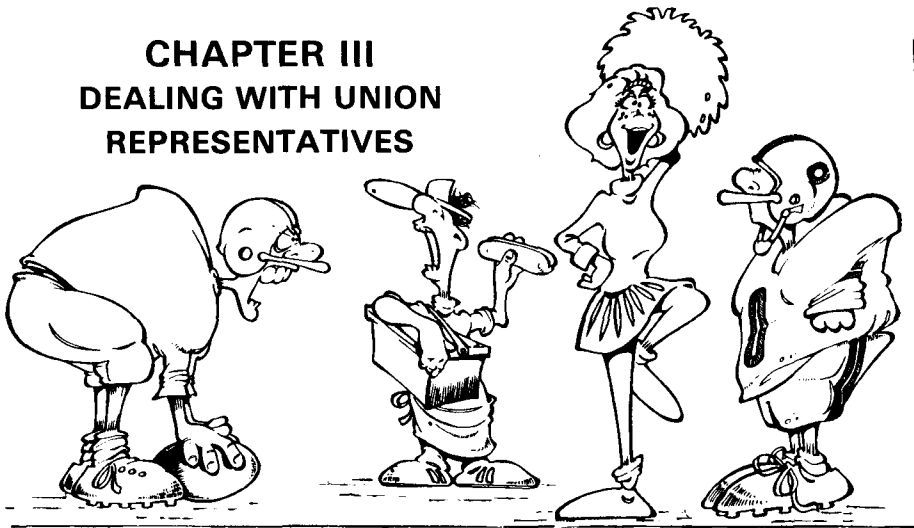
As we said before, there is nothing earthshaking about this approach. Taking the time to communicate and listen to your employees is simply good management. The union is just an extension of those employees. No, it will not be easy. We guarantee you will get frustrated and, perhaps, angry. At least until the union representatives you deal with come to see you as an individual—and one whose word is good and who deals with them openly and honestly. Yes, it's a two-way street and we will get to the other side next.



"a cooperative relationship is usually an outgrowth of the respect the parties gain for each other after having been at each others throats for some time."

CHAPTER III

DEALING WITH UNION REPRESENTATIVES



Like managers, union representatives come in all shapes and sizes. Each has his or her own personality, motives and goals. It is not particularly useful to wonder why people become union representatives, and we certainly do not ask them! Suffice it to say, certain individuals become union representatives and those are the ones we deal with. What is important is to realize you are dealing with individuals, each one different from the other.

One of the more difficult tasks in labor relations is dealing with a union representative who is antagonistic (or appears to be). First of all, remember you are a symbol for "management." As we discussed in the previous chapter, many union representatives have an image of "management" that gets carried over into their dealings with individual managers. Whether their perception of "management" is valid is not relevant—you must still deal with it. Also, most employee representatives are generally at a lower organizational level than you. That organizational positioning can put them on the defensive, and one way of compensating is to be confrontive. Some representatives are unsure of themselves or their position on an issue and react by being overly aggressive. On the other hand, some representatives—like some managers—have a combative disposition period. Finally, in some situations, a few representatives feel compelled to put on a "show" for their clientele at your expense. The way to effectively deal with such individuals (and your own blood pressure) is to remain calm and objective. EPA does not pay you to get angry, bent out of shape or to take such things personally. We know its easier said than done, but you have to disassociate your personal reactions (and ego) from the situation. In the course of their experiences in labor relations, the authors have been called every name imaginable , and have been

physically threatened. A hard lesson to learn is that once you respond in kind to such attacks you are in a no-win situation. Again, try to divorce your personal self from the event and see if you can discover what is really going on. Fortunately, most interactions in labor relations are reasonably calm and not abusive.

There are some basic ground rules for dealing with all union representatives. When you are meeting or talking with union representatives, you are on equal footing. For that point in time, regardless of their organizational status, you are equals. Treat them with the respect and do not talk down to them. The average union representative is intelligent, politically savvy, and has a lot of common sense. They probably know more about labor relations than you, and they almost always know what is going on in your organization. Also, we do not possess an exclusive license on the right way to do things. A better idea regardless of where it comes from is a better idea. Listening to and exploring union suggestions costs us nothing. As we have said before, there is nothing new or startling about this approach. Good managers treat their employees with respect and are willing to hear them out when they have suggestions or problems.

Managers often ask us whether they should have someone with them when they meet with union representatives. If it is a formal situation like a grievance meeting, you always should have a management representative present. In less formal areas, it is a matter of your discretion. However, if you have little experience in dealing with union representatives in general or a particular representative, we suggest having someone with you. Also, if the issue is a volatile one, regardless of the forum, we think some support is warranted. Each servicing personnel office has someone who can sit in with you, so use them when necessary. On the other hand, if you have an on-going relationship with a union representative and you feel confident about a one-on-one with that particular individual, we have no qualms about you meeting without someone from management there. We do think it is important that you always take notes of what transpired. They should not be word-for-word transcriptions but the notes should include the salient points.

Now a short word on agreeing to do (or not do) something with a union representative in the course of your discussion. We generally discourage it. Before you agree to something we think you should consider the consequences and get advice if necessary. There is nothing wrong or inappropriate with telling a union representative you want to think about it before you agree. We recognize there are many times when the decision is obvious and can do no harm. Fine, but if it represents a change in how business is normally done or if you have any doubts, postpone your decision until you can consider all

the ramifications. Caution is not illegal.

Finally, let's consider the situation of you supervising a union representative. We do not take an employee's union activities into consideration when appraising performance or considering him or her for promotion, training or any employment—related decisions. With certain notable exceptions, most union activities are protected. Union representatives can not call or participate in strikes nor can they conduct internal union business on official time (when they should be working). If there is going to be a problem because you have a union representative under your supervision, it will probably be over the use of official time, either the amount used or a failure to follow the prescribed procedures. *This is not an area for you to go it alone.* If you have such a problem (or, better yet, see one developing), get in touch with your servicing personnel office immediately. Do not put it off—it will only get more difficult to deal with because you will be giving the appearance of approving the situation.

CHAPTER IV

WHAT IS A WEINGARTEN?



Employees in a bargaining unit have a legal right not available to the rest of us. It is something called the *Weingarten* right and is generally misunderstood by managers, unions and employees. A bargaining unit employee being examined (questioned) by an agency representative in connection with an investigation has the right to have a union representative present, if (1) the employee reasonably believes the examination may result in disciplinary action against *that* employee, and (2) the employee requests representation.

Take a few minutes and consider all of the aspects that trigger a *Weingarten* situation. There must be an examination by an EPA official in the context of an investigation. That is, the employee must be asked questions which they must answer. (Employees must answer questions in an administrative context or they are subject to disciplinary action. If there is a possibility of criminal prosecution, contact the Office of General Counsel before you question the employee.) Situations where an employee is being told or given something or is being counseled *are not* examinations.

The employee must reasonably believe that disciplinary action may result from the examination. However, in this world of ours, the test is whether the legendary "reasonable" person would believe that action might result from the questioning. You can waive the possibility of disciplinary action by stating no action will be taken against the employee. Remember, you are an agent of EPA, and, if you waive action, you do so for the whole Agency.

If all the other components of *Weingarten* right are met, the employee must still request union presence. This is not an opportunity for you to act out any lingering fantasies you might have about being a police officer. We do not read employees their "rights" before we start questioning. If the employee does not request to have a representative present, there is no right to one. For those of you wondering how employees are supposed to know about their *Weingarten* right if you do not tell them, each year we publish and distribute it to all bargaining unit employees.

We have a couple of final points about *Weingarten* situations. The employee is entitled to have only a union representative present. That means no lawyers, fellow employees, family members, anyone unless the individual is an authorized union representative. If the employee exercises *Weingarten* and all the tests are met, you must wait for a union representative before you begin questioning. A union representative can not answer questions for the employee. The employee can consult with the representative before answering but the employee must answer. Above all else, keep in mind this is a highly charged situation, particularly for the employee. Be calm, objective, and ask what you need to know and no more. Allow the employee to explain answers. Do not get into arguments or verbalize your assessment of the employee's veracity.

CHAPTER V

COLLECTIVE BARGAINING

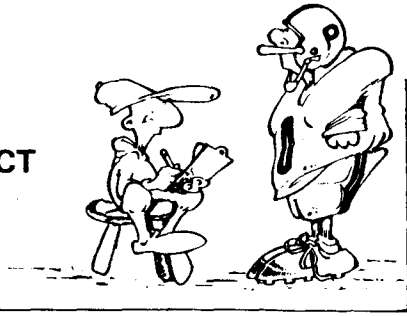
As a manager, there are two forms of collective bargaining that affect you. The first is bargaining that results in a negotiated agreement—a contract. Usually, the agreement is printed and distributed to employees and supervisors. It covers a number of different subjects and includes a grievance and arbitration mechanism. The second form of bargaining is called “impact and implementation.” This takes a little explanation. There are certain decisions which management makes which are not subject to bargaining. For example, we decide how to organize EPA. It is a decision made unilaterally. However, the impact of that decision and the process by which it is implemented are subject to bargaining. Thus, the substance of the decision is not negotiable but its impact is.

We are not going to cover the actual mechanics of negotiations here. If for no other reason, it would take a volume just to do the subject justice. But, there are a couple of things you should know. When we speak of negotiating or bargaining with unions, we mean just that. The process is not one of asking their opinion or soliciting their suggestions. It is give-and-take and they are under no obligation to agree. We are equals at the bargaining table and neither one of us can force the other to do anything.

The other thing to keep in mind is that we try to send our best negotiators to the table. Whether we are using a team of people or just one individual, they are the most knowledgeable and experienced representatives available at that time. And, they are representing you! Now, we always ask supervisors and managers what they want to see in an agreement. The process may vary depending on the location or subject, but we always ask. And, rarely get any input at all. So, we are left negotiating subjects as best we can with very little sense of what your needs are. All of this is to say that the next time someone asks for your suggestions on management’s positions in labor negotiations, it is worth your time and effort to give them. *You*, not us, have to live with the results.

CHAPTER VI

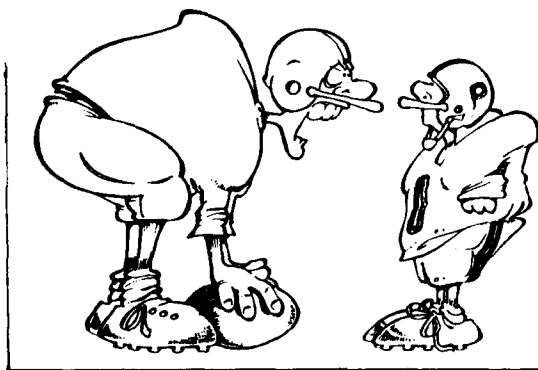
LIVING WITH A CONTRACT



In the previous chapter, we told you that one of the products of collective bargaining was a labor agreement. A labor agreement or contract spells out how management and employees deal with situations involving the employees' working conditions. While we cannot bargain over matters set out in law or government-wide regulation, we can and do bargain over areas that are discretionary with EPA management. A good example is annual leave. The amount of annual leave an employee earns is set by law, so we can neither increase or decrease through negotiations how much leave an employee earns. But, we can negotiate over the procedures through which an employee obtains approval to use annual leave.

It is reasonably important for you to understand that EPA regulations (meaning our manuals, orders, etc.) usually are not a bar to negotiations. That means we can bargain something entirely different than the EPA policy. If a labor contract and EPA policy conflict, it is the contract which takes precedence. Using our example of annual leave again, suppose EPA's Leave Manual has no requirement for how far in advance annual leave must be requested but the contract covering your employees states leave must be requested at least 24 hours in advance. The 24 hour requirement must be applied. The point here is that contracts often contain entirely different procedures or processes than EPA policies and you must adhere to the contractual provisions. It is extremely helpful if you read the labor agreement. The overwhelming majority of problems associated with contract violations occur simply because the supervisor or manager did not know what was in the agreement.

Second to sheer ignorance, questions in the interpretation of contract language cause the most problems. Negotiators spend a lot of time (*and we mean a lot of time*) trying to write contract language that is clear and easily understood. Sometimes, we succeed; other times, we do not. On occasion, the language is deliberately vague because it is the result (compromise, if you will) of the parties being unable to find more specific language which was mutually acceptable. When you are in a situation where the contract is not clear, call your servicing personnel office. They can tell you how to interpret and apply a particular contract provision.



CHAPTER VII

FORMAL MEETINGS

"Innocent Ignorance"

There are times when you can get in trouble simply because you don't know any better. Unfortunately, in labor relations sins of omission get you just as much time in purgatory as sins of commission. In this chapter, we are going to spend some time looking at an area where almost all of our problems are the result of innocent ignorance.

A union has a right to be present at any formal discussion between an EPA representative (i.e., you) and a bargaining unit employee *when* the discussion concerns any grievance or personnel policy, practice or general condition of employment. Generally speaking, staff meetings, counseling sessions, and performance appraisal discussions are not included. Usually, what happens is you are planning a reorganization or a relocation and you call your employees together to tell them what you have planned. Good participative management, right? Sure it is, but the union has a right to be notified of the meeting and to send a representative. There are some guidelines as to what constitutes a formal meeting but we advise you *once again* to call your servicing personnel office. They can tell you whether your situation is a formal meeting. Also, in most locations, the personnel office is responsible for notifying the union.

Some of you may have just decided you will *no longer* hold such meetings if you have to invite the union. We think that is a bit short sighted. Most managers are concerned that the union representative will disrupt the meeting. In our experience, that almost never happens. Sure they ask questions and sometimes say something we are not too happy with, but remember, if they are disruptive or antagonistic, it reflects on them in front of the very people they represent. We told you before that union representatives are generally pretty savvy. They have no particular desire to look foolish in front of their constituency. For your part, treat them with respect, and be patient, and *never, never* get into an argument. We strongly recommend you always have a personnel representative at formal meetings when a union representative is present. In the unlikely event things get nasty, the personnel representative can intervene and remove you as a point of confrontation.

CHAPTER VIII

GRIEVANCES AND ULP's

With some hesitation, we are going to talk about grievances and unfair labor practice charges (ULP's). We hesitate because the overwhelming number of EPA managers and supervisors will never be involved in either. While we will discuss both grievances and ULP's there is only one thing to remember—*If you receive either a grievance or ULP, call your servicing personnel office immediately.*

A grievance is a complaint filed by an employee, a union or management under the procedure contained in the collective bargaining agreement. An employee or a union can file against management; management can file against the union. The coverage and procedures of each grievance procedure vary because each is the result of individual negotiations. But, there are some things that apply to all grievances. First of all, grievances are not a personal reflection on any one. Grievance procedures are problem-solving mechanisms. Employees and unions have the right to file grievances, and without the fear that we will retaliate against them for using that right. Secondly, only a union can represent an employee in a grievance filed under a contract. If the employee does not want union representation, the employee can present the grievance on the employee's own behalf. That means the employee can not get a lawyer or anyone else. Under no circumstances should you meet or discuss an employee's grievance with anyone outside management except the employee or union representative. Also, even if the employee decides to go it alone, the union has an absolute right to be present at any meeting with the employee about the grievance. It makes no difference whether the employee wants the union present.

When grievances are not resolved through the contractual procedure, either the union or management can refer them to arbitration. Employees cannot invoke arbitration. An arbitrator is someone outside the Federal government and not involved with the union who settles grievance disputes. An arbitrator's decision is binding on both parties—which means it's not a recommendation that we can adopt or reject at our option. Every labor agreement in the federal sector must have a negotiated grievance procedure which culminates in binding arbitration. An unfair labor practice is an action which violates a union's, employee's or management right guaranteed by the particular law which created labor relations in the Federal government. The Federal Labor Relations Authority investigates allegations of unfair labor practices. It also prosecutes if it believes a ULP has been committed. Very often, the Authority investigator

becomes the actual prosecutor. Because of this fact, we make decisions as to whether we will allow Authority investigators to interview supervisors on a case-by-case basis. Authority agents have their own predispositions and some are not particularly objective. If you are served with a ULP charge, complaint or subpoena, or if an Authority agent contacts you, *do not respond*. Get in touch with your servicing personnel office immediately. If a decision is made for you to meet with an Authority investigator, you should *always* have someone from the personnel office or General Counsel present with you. Many times, the Authority agent will ask you to sign an affidavit the agent prepares on the spot. You have the right to change it anyway you want before signing or you can simply not sign at all. Never sign an affidavit unless it reflects exactly what you believe to be true. It's your affidavit, not the agent's.

You probably will never be involved in a grievance or ULP, but, if you are, call your servicing personnel office immediately.

CHAPTER IX

UNIONS IN EPA

Almost 52% of the employees in EPA are in bargaining units. Approximately 2500 of these employees are professionals. The term "professional" in a labor relations context has a very precise meaning. It does not refer to how individuals do their work or what education they personally possess. It means an individual occupying *a position* which has a specific educational level and/or licensing requirement. Thus, an individual with a PhD in Biology in an Environmental Protection Specialist position is *not* a professional because there is no positive education requirement for EPS positions.

Four different unions represent employees in EPA: American Federation of Government Employees (AFGE); Engineers and Scientists of California (ESC); National Association of Government Employees (NAGE); and National Federation of Federal Employees (NFFE).

NAGE represents both professionals and non-professionals at Narragansett. ESC represents the professionals in Region 9. NFFE holds recognitions for the professionals at Headquarters and Cincinnati, as well as the non-professionals in Athens, Cincinnati and Regions 4, 7 and 9. All of the ESC, NAGE and NFFE recognitions are at the local level. That means the collective bargaining relationship exists between the local union and management.

AFGE has two *consolidated* bargaining units in EPA. A consolidated unit is created when a number of local levels combine into a single unit. In AFGE's case, 18 local level recognitions (12 non-professional and 6 professional) were meshed into two consolidated units. One is a professional unit; the other is composed of non-professionals. Consolidation often changes the level of recognition, which is another way of saying where the collective bargaining relationship is organizationally. In this case, the level of recognition shifted from individual locations and AFGE locals to EPA as an agency and to AFGE as a national union. For better or worse, local levels no longer have control over their relations because the relationship has moved to the national level. The most obvious impact is the existence of a master Collective Bargaining Agreement with AFGE which applies to *all* of the employees in the AFGE units. Thus, a professional in Region 3 is covered by the same contract as a non-professional in Ada, Oklahoma.

Below we have listed the two AFGE consolidated units:

**AFGE NON-PROFESSIONAL
CONSOLIDATED UNIT**

Headquarters
Cincinnati
Edison, NJ
New York
Research Triangle Park
Boston
Montgomery, AL
Denver
Ada, OK
Chicago
Philadelphia
Ann Arbor, MI

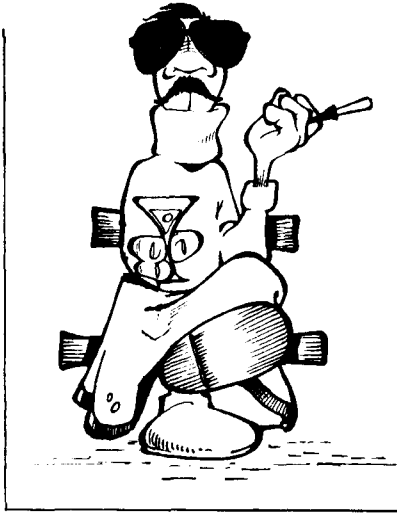
**AFGE PROFESSIONAL
CONSOLIDATED UNIT**

Denver
Research Triangle Park
Chicago
Philadelphia
New York
Edison, NJ

If you ever have any question as to whether one of your employees is in a bargaining unit, call your servicing personnel office. The bargaining unit definitions in EPA are much more involved than our discussion has been here. Do not assume inclusion or exclusion, go to the people that know.



Let's hear it for the "BARGAINING UNITS"



CHAPTER X

SOME FINAL THOUGHTS

We would like to leave you with some of the same thoughts we have been repeating throughout. Good labor relations *is* a function of good management. We have given you enough of the basics to help you steer clear of most technical problems. It's up to you to do the rest. Always keep in mind you're not in this alone. Your servicing personnel office is there to help you. *Use them.* Nobody expects you to know all the nuances of Federal labor relations. Take advantage of the people who have the training and experience to assist you—that's why they pay us.

We have tried to provide you with some very basic ground rules about labor relations in EPA. We know that reading about labor relations is not the most interesting thing in the world. If it's any consolation, writing about it isn't too thrilling either. For whatever it's worth to you, we attempted to make this readable and entertaining as well as informative. To some extent, it was an experiment for us because we tried to write as if we were in your shoes. We would like to know how we did. Drop us a note or give us a call—we really are interested in your reactions.