



## 6. Labor Relations and RPA

*When does the duty to bargain arise, agency and union responsibilities*

This effort is a continuation of our Transformation Tools found at: [OPM.gov/Reshaping](https://www.opm.gov/Reshaping)



## Labor Relations Guidance

Approximately 60% of the Executive Branch workforce is covered by bargaining units represented by labor unions. As a result, when management decides to reengineer business processes including automation of existing processes, there will most likely be labor relations implications.

### Duty to Bargain

Agencies have a right to determine the technology, methods, and means of performing work. However, under 5 USC Chapter 71, Agencies have a duty to bargain over negotiable proposals regarding:

- the procedures to implement the change; and
- any appropriate arrangements to mitigate adverse impact to affected employees.

### Questions That Must Be Addressed

- Are the effects of the change more than de minimis (i.e., more than trivial)?
- Have the parties already bargained over the change (covered by defense)?
- Did the union waive its right to bargain over the change?

### Communications

Employee engagement is a significant aspect of the Robotic Process Automation (RPA) plan. Meetings with bargaining unit employees regarding potential changes to conditions of employment (i.e., changes in the work processes, automation of manual functions) would qualify as formal meetings/discussions. The union must be afforded the opportunity to attend formal meetings.

### Agency's Responsibilities

- Provide union reasonable notice of change and opportunity to request bargaining
- Respond to union requests for information, if any.
- Respond to union request for bargaining
- Bargain to the extent required by Statute
- Generally, maintain status quo until the bargaining process is completed
- Cooperate with the Federal Mediation and Conciliation Service and the Federal Service Impasses Panel, if requested by the union, prior to implementation

## Union's Responsibilities

- Timely request to bargain
- Timely submit negotiable and responsive proposals
- Bargain in good faith
- Timely request Federal Service Impasses Panel assistance if impasse is reached

## When Does the Duty to Bargain Arise?

When the Agency has fully developed plans for the change and is preparing to implement. The Agency should build in time for completion of bargaining prior to implementation of the new process.

## Scope of Bargaining – Examples of Issues Typically Bargained Over

- Procedures for negotiations (dates, times and locations of meetings, official time for bargaining teams, etc.)
- Process for educating and engaging workforce for buy in and acceptance of change
- Bargaining unit users to test system or assist in developing the new processes as subject matter experts
- Potential Impact to employee grades due to automated processes changing work environment
- Potential impact from loss of FTE and future hiring
- Opportunities for promotion, i.e., for upskilling and reskilling
- Individual Development Plans (training plan for individual growth)
- Potential Reduction in Force or soft landings
- Impact of Change to organizational structure
- Impact of Change to reporting structure
- Procedures for training on new functions
- Learning curve or upskilling or reskilling
- Soft landings for individuals who cannot work with new system or may not be needed
- Hours of work, tours of duty
- System errors and impact to workload
- 508 compliance
- System errors and impact on employee performance
- How employees will be selected for specific types of positions in new environment
- Telework, remote work

## Prohibited Subjects of Bargaining

No duty to bargain over matters:

- Specifically provided for by Federal Statute
- Inconsistent with law or Government-wide rule or regulation
- Inconsistent with any agency rule of regulation for which compelling need exists
- Relating to the conditions of employment of employees in a different bargaining unit, or outside the unit

## Possible Way for OPM to Assist Agencies

For technical assistance on unique or unprecedented issues, agency headquarters Human Resources staff may consult with OPM's Accountability and Workforce Relations at [awr@opm.gov](mailto:awr@opm.gov).