



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

6.711.1

OCTOBER 15, 2010

PURPOSE

- (1) This transmits a complete revision of the Table of Content and text for IRM 6.711, Labor-Management Relations, Section 1, Authorities and Responsibilities.

MATERIAL CHANGES

- (1) IRM 6.711.1 provides current policies and procedures from the Human Capital Office, Workforce Relations Division, to assist managers and Labor/ Employee (LR/ER) Relations staffs by delineating responsibilities, establishing procedures for daily labor relations business, and providing channels of communications among managers and staff at all levels of the organization. This IRM must be read and interpreted in accordance with pertinent law, Government-wide regulations, contractual obligations, and applicable case law.
- (2) All sections were updated to include current organizational titles, provide clarification, and include current communications tools.
- (3) Exhibits 1-7 were added and previous exhibits deleted.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 6.711.1, Labor-Management Relations, dated July 1, 2002.

AUDIENCE

All Operating Divisions and Functions.

EFFECTIVE DATE

(10-15-2010)

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6.711.1

Authorities, Responsibilities, and Processes

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6.711.1.1
(07-01-2002)
Overview and Purpose

- (1) This IRM discusses labor-management relations in the Internal Revenue Service (IRS) that are governed by the statutory framework of Title VII of the Civil Service Reform Act of 1978 (chapter 71 of Title 5, United States Code). The Act established a legal right for Federal employees to organize and bargain collectively with Agency management — through labor organizations of their own choosing — over the conditions of their employment. Like several Executive Orders that governed labor-management relations prior to its enactment, the legislation is premised on a recognition that establishment of this employee right safeguards the public interest, contributes to the effective conduct of public business, and facilitates amicable settlement of disputes over conditions of employment.
- (2) The IRS can better accomplish its mission if management collectively plans and carries out its labor relations activities with the same sense of direction, conviction, and purpose that is observed in tax administration. This will enable managers to realize the maximum benefits afforded to the public interest through a constructive and productive relationship with the IRS workforce and with its bargaining representatives.
- (3) IRM 6.711.1 advises managers and the Labor Relations staff by delineating responsibilities, establishing procedures for daily labor relations business, and providing channels of communication among managers and staff at all levels of the organization.

6.711.1.2
(10-15-2010)
References

- (1) Contract Administration Handbook
- (2) 5 CFR 550.322
- (3) 5 U.S.C. 552a(b)
- (4) 5 U.S.C 7114
- (5) 5 U.S.C. 7115
- (6) 5 U.S.C. 7116
- (7) Internal Revenue Code (IRC) Section 6103

6.711.1.3
(10-15-2010)
Labor Relations Authorities

- (1) **The Federal Labor Relations Authority (“ Authority” or FLRA)** was created by statute and Executive Order in 1978 as an independent institution of Government to consolidate the central policy-making functions for Federal sector labor-management relations. Composed of three members appointed by the President and confirmed by the Senate, who may be removed only upon notice and hearing for cause, the FLRA carries out several key functions, such as:
 - a. Resolving complaints of unfair labor practices (ULP);
 - b. Determining the appropriateness of units for Labor organization representation;
 - c. Adjudicating exceptions to arbitration awards;
 - d. Adjudicating legal issues relating to duty to bargain; and
 - e. Resolving impasses during negotiations.
- (2) **The General Counsel (GC) of the Federal Labor Relations Authority** is responsible for investigating allegations that an agency or a labor organization has committed an unfair labor practice (ULP), as defined at 5 U.S.C. 7116(a)

or (b). After its investigation, the GC may serve a written complaint on the agency or labor organization and prosecute the complaint before the Authority.

- (3) **The Federal Service Impasses Panel (FSIP or “Panel”)** facilitates the resolution of negotiation impasses between agency management and an exclusive representative. The Panel may use persuasive techniques to assist the parties to resolve the impasse, but if these methods are ineffective, it may take whatever steps are necessary to force a resolution, including ordering the parties to adopt particular language into their collective bargaining agreement.
- (4) **The Federal Mediation and Conciliation Service (FMCS)** is an independent establishment created in 1947 to help prevent the disruptive effects of labor-management disputes in the private sector. It relies wholly on methods of mediation and persuasion to perform this same role with Federal parties.

6.711.1.4
(07-01-2002)
**Exclusive Union
Representation**

- (1) **The National Treasury Employees Union (NTEU)** is constituted as an independent, national labor organization whose membership comprises thousands of present and former employees of the Federal Government, including IRS, other bureaus of the Department of the Treasury, and other agencies of Government. The national organization is structured by NTEU districts that are, in turn, structured by local chapters. It is governed by a constitution and a biennial national convention of local chapter representatives which elect a National President and one National Executive Vice President. Between conventions, NTEU is governed by an Executive Board composed of the two nationally elected officers and other National Vice Presidents elected by the NTEU districts. The Union employs its own salaried staff at sites across the country, including a headquarters office in Washington, D.C.
- (2) NTEU has petitioned for and obtained from FLRA the exclusive right of representation for a consolidated nationwide bargaining unit within IRS. As the exclusive representative for all eligible IRS bargaining unit employees, NTEU is entitled to act on their behalf in negotiations with management on the conditions of their employment. NTEU is also entitled as the exclusive representative to be represented in formal discussions conducted by management with employees concerning grievances, personnel policies or practices, or other general conditions of employment; as well as at certain interviews of unit employees by management representatives in connection with an investigation. NTEU represents all employees who occupy positions within the bargaining unit, including those who are not dues paying members of the Union.
- (3) The best use of human resources in the IRS requires not only a full understanding of internal management policies, systems, and processes, but also acceptance of the Union’s institutional role and the determination to manage skillfully in bilateral affairs.

6.711.1.5
(10-15-2010)
Information Resources

- (1) **The LR Community Gateway** is an electronic research site exclusively for LR practitioners. The site is a repository for arbitration awards, settlement agreements, program information, national grievances, monthly negotiation notices, and mid-term agreements. It provides interpretive and historical guidance on the Agency’s master agreement.
- (2) **Contract Administration Handbook:** a detailed analysis of the Agency’s master agreement. It discusses each substantive provision of the agreement

and is published as a resource for LR/ER staff and managers who need to know how the agreement should be interpreted for practical application purposes.

6.711.1.6
(10-15-2010)
Managing Change and Dealing with the Union

- (1) **Management Information Exchange.** Managers at every level of the organization have a responsibility for communicating and consulting with their colleagues in management whose job interests or responsibilities may be affected by change in conditions of employment. Sharing proposals for change with other members of management is a fundamental aspect of effective intramanagement communications. A prompt and effective intramanagement communication has occurred when managers have learned about management proposed change through management channels rather than from the Union or other sources.
- (2) The effective management of change, which affects conditions of employment within the bargaining unit, needs *careful analysis*, including: how it affects employees and their exclusive representative; whether there are pertinent requirements in the existing collective bargaining agreement; what rights management has in the labor-management relationship; what are management's interests and responsibilities; and what is the legal responsibility to the exclusive representative.
- (3) The LR/ER staff who advise and assist line or functional officials responsible for implementing such change should be involved timely in the planning process to ensure that Union implications are taken into full account. Apart from any legal and formal contractual requirements, *management interest is usually better served if the Union can be formally or informally brought into the process at the earliest feasible and appropriate date.* In this way, management may be able to avoid the conflicts that arise from mistrust, suspicion, and rumor, or from Union uncertainty about the impact on unit employees. It is also possible that Union concerns may surface that management can cure more quickly and easily in open conversation at the drawing table rather than later in more guarded discussion at the bargaining table. There are as many informal means for this purpose as there are managers, LR/ER specialists, and Union officials; such means can be useful but the managers and the LR/ER staff should have clear expectations of how and if this is done. The local Labor-Management Relations Committee is another effective means for managing the process of change in a bilateral environment.
- (4) Before implementing any change that has more than a de minimis impact on personnel policies, practices, or other matters affecting the working conditions of bargaining unit employees, *management has the duty to give prior notice to the employees' exclusive representative, NTEU.* Procedures and time frame for the notice are contained in the Agency's master agreement and associated agreements. Once the notice is provided, a briefing is to be held within thirty (30) days. Management must be ready to brief NTEU on the change within this timeframe or place it on a subsequent monthly notice..
- (5) If the exclusive representative initiates bargaining with management over the change, *both parties must negotiate in good faith to reach agreement* with respect to the conditions of employment in the bargaining unit. If agreement is reached, the parties should execute a written document incorporating the agreement. If no agreement is reached and the matter stands at impasse, management may not change the conditions of employment without first notifying the Union it intends to do so, allowing a reasonable time for the Union

to seek assistance in resolving the impasse from the FMCS and, if necessary, from the FSIP. Unless it can be justified with a showing of extraordinary and exigent need (which the FLRA rarely sees), it is an unfair labor practice for management to change the conditions of employment until this process has run its course and there is an “agreement” between the parties, whether reached voluntarily or imposed by the Panel.

- (6) All bargaining between the parties is national in scope:
 - a. With the exception of section b) below, all changes to conditions of employment must be channeled through the LR Strategy and Negotiations office, using the monthly process as described in the Agency’s master agreement. The LR Strategy and Negotiations office coordinates this process, assists division managers and embedded LR/ER staff by advising on the notice process, conducting or advising in any following discussions with NTEU representatives and facilitating the implementation of any agreements with contract materials and other guidelines.
 - b. Through the Agency’s master agreement, the parties have agreed to a separate process for reassignments and realignments of employees and changes to space, furniture and leases, and specified items limited to a single geographic area. While the negotiations are national in scope, the parties have agreed to a more efficient process as described in the agreement.
- (7) LR Strategy and Negotiations staff or designees are responsible for ensuring that any *collective bargaining agreement* between IRS and NTEU is timely forwarded for agency head review and approval in accordance with the requirements of 5 U.S.C. 7114(c). Agency head review will be conducted by either the IRS or Treasury as determined by the appropriate delegation order and policies between the Bureau and the Department. Agreements will be approved if they conform to applicable law, rule, and regulation.

6.711.1.7
(10-15-2010)

**Unfair Labor Practice
Charges and Complaints**

- (1) An Unfair Labor Practice (ULP) is a practice by agency management or by a labor organization which violates, respectively, subsections (a) or (b) of section 7116, title 5, United States Code. *An unfair labor practice charge is an alleged violation of 5 U.S.C. 7116 that has been filed by any person with the FLRA General Counsel’s Office.*
- (2) It is a ULP for the agency to:
 - a. Interfere with, restrain, or coerce any employee in the exercise by the employee of any right under Chapter 71, 5 U.S.C.;
 - b. encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
 - c. to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;
 - d. to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under Chapter 71, 5 U.S.C.;
 - e. to refuse to consult or negotiate in good faith with a labor organization as required by Chapter 71, 5 U.S.C.;

- f. to fail or refuse to cooperate in impasse procedures and impasse decisions as required by Chapter 71, 5 U.S.C.;
- g. to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of Title 5) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or
- h. to otherwise fail or refuse to comply with any provision of Chapter 71, 5 U.S.C.

- (3) An unfair labor practice complaint is an alleged violation that the General Counsel's (GC) Office, following an FLRA staff investigation of a ULP charge, has filed with the FLRA. The FLRA is responsible for hearing and adjudicating ULP complaints filed and prosecuted by the GC. It relies on a staff of Administrative Law Judges (ALJs) who conduct evidentiary hearings; rule on questions of law, procedure, and fact; and issue recommended decisions and remedial orders which become binding unless appealed to and modified or set aside by the appointed FLRA members or other lawfully competent authority.
- (4) The FLRA and its ALJs have considerable authority to remedy ULP findings. Available remedies include orders to cease and desist from the unfair labor practice, which almost invariably include orders to post a notice in conspicuous places as directed by the Authority. The Authority can also order more stringently onerous remedies, and it has done so in many cases.
- (5) Careful attention must be paid to ULP charges filed against IRS management, not simply because remedial action may be ordered if the charge is substantiated, but because public and managerial interests require it. During the processing of the charge or complaint, opportunities may arise for settling the case acceptably without the unnecessary expenditure of additional resources. Moreover, the potential for these cases to set unexpected precedent should be carefully evaluated. Finally, management has as strong an interest in correcting its inappropriate practices as it does in defending and maintaining practices that are lawful and appropriate.

6.711.1.7.1
(10-15-2010)
**ULP Reporting
Procedures**

- (1) Under the Authority's regulations, IRS as a charged party must be served a copy of the ULP charge from the charging party. Although the charging party is primarily responsible for service of the charge, the FLRA Regional Directors also cause a copy to be served upon the charged party. If a charge is received by management, the servicing LR/ER staff will send a copy to the servicing General Legal Services (GLS) office and notify the Director, Workforce Relations Division by e-mail, fax, or memorandum.
- (2) Upon receipt of a charge by General Legal Services (GLS), that Office will notify the FLRA in writing of the IRS attorney of record. (The Office of Chief Counsel will ensure that the appropriate GLS attorney receives a copy of the charges.) A copy of the attorney of record notification will be sent to the servicing LR/ER office. The attorney of record will serve as the FLRA's contact point for all matters relating to the investigation, including any requests to interview IRS managers.
- (3) The charged party need not file a response to a charge. Therefore, decisions to file a response will be made on a case-by case basis by the attorneys handling the cases in coordination with the servicing LR/ER staff and the Workforce Relations Division, LR Strategy and Negotiations office.

6.711.1.7.2
(10-15-2010)

**Agency Investigation of
an ULP Charge**

- (1) In each ULP charge, the LR Strategy and Negotiations office will determine to what extent that staff will be involved in handling the ULP charges and give appropriate instructions to the LR/ER specialist.
- (2) The LR/ER specialist assigned the case will investigate it promptly in order to determine the facts surrounding the charge and provide a briefing when management's counsel initiates contact on the case. The specialist should keep a detailed record of the information gathered about a charge since a considerable period of time may pass between the filing of the charge and the actual investigation by the FLRA. However, no formal documentation, such as a statement of case, is required by this text.

6.711.1.7.3
(10-15-2010)

**FLRA Investigation of a
ULP Charge**

- (1) The FLRA staff investigator will seek interviews with managers, as well as other employees. The FLRA staff investigator should not bypass the attorney of record by contacting a manager directly. However, if an FLRA investigator does speak directly to a manager, the manager should contact the servicing LR/ER specialist before answering any questions. Managers will be advised that they have the right to counsel when being questioned by FLRA staff investigators and that the LR/ER specialist will arrange for an attorney to be present. The specialist will inform the attorney of record if a manager was contacted directly by FLRA staff.
- (2) Based on a review of the information gathered by the servicing LR/ER specialist and in accordance with the circumstances in each case, the attorney will determine how to respond to requests for information or interviews from the FLRA investigator. Instead of making witnesses available to an investigator, it may be advantageous in some situations to furnish a statement of position or a statement from a manager. In other cases, a witness may be provided for questioning, but an affidavit will not be furnished. If an affidavit is furnished, and particularly if the affidavit is drafted by the FLRA investigator, the manager should carefully review the affidavit for completeness and accuracy before signing it.
- (3) If management witnesses are to be made available, the LR/ER specialist will coordinate the interviews and attend if requested by the attorney or management. If any materials or statements, signed or unsigned, are furnished to the FLRA, the attorney will furnish copies of such documents to the specialist assigned to the case. The LR/ER specialist will maintain a complete file.
- (4) Authority regulations provide that any employee it asks to participate in a proceeding before the Authority "...shall be granted official time for such participation including necessary travel time as occurs during the employee's regular work hours and when the employee would otherwise be in a work or paid leave status." Proceedings, of course, include an employee giving a statement to the FLRA staff investigator investigating the ULP charges. Official time must be granted if the FLRA investigator requests an interview during the employee's regular work hours unless the employee's absence would cause a severe work interruption.
- (5) Travel and per diem expenses will be reimbursed in accordance with the Agency's master agreement and applicable travel regulations.
- (6) Reasonable bank time will be granted to prepare witnesses and meet with national NTEU staff representatives, if official time is otherwise authorized.

6.711.1.7.4
(10-15-2010)
ULP Settlements

- (1) The Authority encourages voluntary settlements between the parties and prefers not to reverse or interfere with such arrangements. The emphasis in settlements should be to arrive at workable, pragmatic solutions. However, a ULP charge is an allegation that IRS has violated Federal law, and prudence and care should be used in the way a settlement is structured and with whom, especially if it will affect management practices or require action beyond the local office directly involved.
- (2) Discussions of settlements will be coordinated with all stakeholders. The LR Strategy and Negotiations office may be consulted, through the servicing LR/ER office at any time during settlement discussions. The LR Strategy and Negotiations office approval must be obtained if a proposed settlement agreement will affect national labor-management practices, policies, or procedures. Before entering into settlement discussions with any representative of NTEU or FLRA, the person representing management must ensure that managerial interests at all appropriate levels have been clearly identified and consulted, that the legal ramifications have been taken into full account, and that settlement guidelines have been discussed with and agreed to by managers, staff, and counsel at appropriate organizational levels.
- (3) It should also be noted that discussion of a proposed settlement with an inappropriate party, such as a local union official or employee, could well constitute a separate and justifiable ULP if the charge was filed by the exclusive representative. It would be rarely appropriate, if ever, to discuss a proposed settlement directly with an employee. Settlement negotiations will ordinarily be conducted with the FLRA or the NTEU field representative unless there is a local agreement governing preliminary settlement discussions or a clearly established and documented local past practice to the contrary.

6.711.1.8
(10-15-2010)
Labor-Management Relations Committees

- (1) **“NOTE: The National Agreement II provides for Labor-Management Relations Committees, for the purpose of building relationships between management and union officials, exchanging information, receiving pre-decisional input, and discussing matters of concern in the broad areas of personnel policies, practices, and working conditions that may have national, cross-functional or local impact on the Service’s employees, and attempting to resolve problems informally in lieu of more protracted and costly negotiations or grievance proceedings.”**
- (2) The Agency’s National Agreement provides for *Labor-Management Relations Committees*. Management and Union officials can use this forum to resolve midterm problems in a relatively informal setting. The Committee is designed to afford the parties a means to share information with each other, to discuss problems of mutual concern throughout the term of an existing collective bargaining agreement, and to promote a constructive, open, cooperative, and problem solving environment. Success of the Committee depends upon how able and willing both parties are to use it.
- (3) Each Committee usually meets at regular intervals or on special call of either party, as agreed. The Committee can be used for any or all of the following purposes:
 - a. Build strong relationships nationally and locally between key leaders of each party;
 - b. Exchange information;

- c. Receive pre-decisional input and the discussion of matters of concern or interest in the broad areas of personnel policies, practices and working conditions that may have national, cross-functional or local impact on employees; and
 - d. An attempt to resolve problems informally in an effort to avoid protracted and costly negotiations or grievance proceedings.
- (4) The structures of the national and local committees are defined in the Agency's master agreement.

6.711.1.9
(10-15-2010)

Grievance Processing

- (1) Policies contained herein should be read and followed in conjunction with the Agency's National Agreement and any subsequent applicable agreements.

6.711.1.9.1
(10-15-2010)

Case Management and Tracking Procedures

(1) **Reporting the Existence of a Grievance:**

- a. The servicing LR/ER office will report and discuss the facts, issues, and prospects for settlement of a grievance with the LR Strategy and Negotiations office whenever appropriate or required. If the grievance concerns a contract interpretation issue that is not clearly addressed by the Contract Administration Handbook (CAH) (or other published interpretive materials) the servicing LR/ER office will contact the senior specialist for their respective branch. If needed, the senior specialist will contact the LR Strategy and Negotiations office.
- b. The LR Strategy and Negotiations office will be responsible for providing pertinent bargaining history, any recent unpublished arbitration decision that is relevant, information about similar cases pending arbitration, or in other forums that might affect the outcome, and any other significant information that the final step official should take into account.
- c. When a settlement of a grievance may involve significant monetary outlays, have precedential significance, or high public visibility, the servicing LR/ER office will inform the LR Strategy and Negotiations office, the affected business unit Human Resources Director, and the servicing GLS office.

(2) **Establishment and Control of Case Folder:**

- a. When the servicing LR/ER office has notice of a first step grievance, a case folder will be established. This folder will be the permanent repository for every document (or the clearest copy that can be obtained) which has any pertinence to the grievance.
- b. A case control number will be automatically assigned to each case by the ALERTS system. This will identify the folder and all documents generated or received in connection with the grievance. The case control number will be used for Service-wide case identifications and tracking purposes.

(3) **Case Folder Contents:**

LEFT SIDE	RIGHT SIDE
Grievance Participants Location Information	Step 3 Response and additional information submitted at Step 3
Case History Sheet and/or ALERTS Printout	Appeal to Step 3

ALERTS Information	Step 2 Response, if applicable, and additional information submitted at Step 2
Correspondence (e.g., e-mails, memos)	Appeal to Step 2
Other miscellaneous information that is pertinent	Step 1 Response, if applicable, and information provided by NTEU
	Copy of 7114 information request and response, if applicable
	Background information
	Original Grievance

6.711.1.9.2
(10-15-2010)
Employee Grievance Procedure

- (1) The Agency’s National Agreement establishes three (3) types of employee grievances:
 - a. **Employee grievance:** A grievance filed by an individual bargaining unit employee, or by the Union on behalf of an individual bargaining unit employee.
 - b. **Streamlined grievance:** An employee grievance processed through an expedited/streamlined process, beginning at Step 2 of the uniform employee grievance process. This process will be used to consider grievances concerning outside employment; hours or work (including AWS, credit hours, and distribution of overtime); absence and leave (including AWOL); disputes over the approval of official time; request for a pseudonym; issuance of sick leave restriction letter; or any other matters mutually agreed upon by the parties.
 - c. **Mass grievance:** One or more grievances filed by two or more bargaining unit employees within the jurisdiction of one Union chapter involving the same facts and issues; or one or more grievances filed by the Union on behalf of two or more bargaining unit employees within the jurisdiction of one chapter involving the same facts and issues.
 - d. **Performance appraisal grievance:** A grievance filed by an individual bargaining unit employee, or by the Union on behalf of an individual bargaining unit employee, over a performance appraisal received by that employee.

- (2) Each type of employee grievances has its own procedure, as described in Article 41 of the National Agreement and in the Article 41 Grievance Process charts.

- (3) Role of the Labor/Employee Relations (LR/ER) Specialist: LR/ER specialists serve as management’s technical advisors during the grievance process. As subject matter experts on the Employment and Labor Relations laws, rules, and regulations, the primary role is to advise and assist managers in taking appropriate actions to resolve grievances. This role may include: maintaining the official grievance case file; providing guidance and assistance to managers to prepare for grievance meetings; attending grievance meetings, at management’s request; preparing an Executive Summary for the Executive grievance hearing official; assisting in the preparation or review of management’s written

responses to grievances; and advising management on implementing appropriate actions to settle/resolve the grievances. It should be noted that the Labor Relations role is advisory; management retains the authority to take any action to settle or resolve grievances.

6.711.1.9.3
(10-15-2010)

Institutional Grievances

- (1) An institutional grievance is defined as “any complaint by the Union concerning the effect or interpretation, or a claim or breach of the provisions of the negotiated agreement relating to the rights and benefits that accrue to the Union as the exclusive representative of bargaining unit employees.”
- (2) Grievances filed on behalf of individual employees are not institutional grievances. They should instead be processed in accordance with the employee (negotiated) grievance procedure set forth in IRM 6.711.1.9.1 above and in the National Agreement, Article 41.
- (3) The uniform local institutional grievance procedure, as described in Article 42, Section 3, is a one step process. The written grievance is filed by the NTEU Chapter President (or designee) with the first level executive of the division, function, or campus in which the grievance arose, unless the parties mutually agree that the issues could be more appropriately addressed by a different official. If the grievance involves more than one division, function, or campus in a particular Senior Commissioner Representative (SCR) area, it must be filed with the SCR with jurisdiction over the area within which the grievance arose. If the institutional grievance is not resolved at the local level, NTEU may invoke arbitration.
- (4) An institutional grievance that involves more than one division, function, or campus in more than one SCR area will be treated as a National Institutional grievance under Article 42, Section 4. Such grievances will be filed with the LR Strategy and Negotiations office and will be handled by that staff.
- (5) The institutional grievance procedure is prescribed by the current negotiated agreement.

6.711.1.10
(10-15-2010)

Information Requests

- (1) As part of the Agency’s obligation to bargain with NTEU in good faith, the agency must furnish information upon request, and to the extent not prohibited by law, data:
 - a. Which is normally maintained by the agency in the regular course of business;
 - b. Which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and
 - c. Which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors relating to collective bargaining.
- (2) Failure to provide the information that meets the above criteria is an Unfair Labor Practice (ULP).
- (3) NTEU must articulate a particularized need for any information requested. Specifically, NTEU must articulate why it needs the information and how it intends to use the information. It must also establish a connection between the requested information and its representational duties.

- (4) Information requests from NTEU that are servicewide in scope will be processed by the LR Strategy and Negotiations office.
- (5) Local information requests from local NTEU chapters must be directed to the servicing LR/ER office. Information requests that impact the Agency’s master agreement, negotiations, or national grievances must be coordinated with the LR Strategy and Negotiations office.
- (6) Institutional grievances filed regarding information requests must be processed using procedures in the Agency’s master agreement.

Note:

The complete process for handling Information Request is contained in IRM 6.711.2.

6.711.1.11
(10-15-2010)
Arbitration Procedure

- (1) Matters not settled in the grievance procedure or that are otherwise appealable to arbitration will be arbitrated pursuant to the terms of the National Agreement, Article 43. The National Agreement establishes three types of arbitration procedures;
 - **Conventional Arbitration** - used when a matter is not identified as one that is to be arbitrated by means of expedited or streamlined procedures.
 - **Expedited Arbitration** - used for the following matters, provided that the dispute does not allege discrimination based on race, color, sex, national origin, religion, age, or physical or mental handicap, and provided that the dispute does not involve questions of bargaining history:
 - a. suspension of 14 calendar days or less;
 - b. written reprimands;
 - c. oral admonishments confirmed in writing;
 - d. dues withholding;
 - e. improper maintenance of personnel records;
 - f. reassignments/realignments in violation of Article 15 of the National Agreement;
 - g. bulletin board postings;
 - h. literature distribution;
 - i. performance appraisals;
 - j. ranking panel/official evaluations;
 - k. release/recall appraisals.
 - **Streamlined Arbitration**- used for the following types of disputes, consistent with Article 41, Section 17:
 - a. absence and leave (including AWOL);
 - b. denial of Union time;
 - c. hours of work (including AWS, credit hours, and distribution of overtime);
 - d. denial of outside employment requests;
 - e. denial of request for pseudonym;
 - f. issuance of sick leave restriction letter; and
 - g. any other matter which the parties involved in the dispute mutually agree upon.

- (2) As the arbitration procedure is driven by the current negotiated agreement, information on these procedures is contained in the National Agreement, Article 43. Additional information can be found in the Arbitration (Article 43) Cases Process Chart.
- a. Case establishment: Upon receipt of a notice of invocation of arbitration, the servicing LR/ER office will establish a "T" case in ALERTS and prepare the case folder.
 - b. Statement of Case: When arbitration is invoked in any grievance or adverse/performance-based action, the servicing LR/ER specialist will prepare a statement of case for GLS with the facts (who, what, when, where, and why), the rationale for management's position (strengths and weaknesses), the issues which would be subject to arbitration, and a recommendation. It is quite important that hidden flaws, potential weaknesses, and latent issues in the case be exposed to open, independent analysis by the LR/ER staffs (and by the LR Strategy and Negotiations office for interpretation questions) so that better decisions can be made whether and how to present the case to an arbitrator.
 - c. Forwarding the case folder: When arbitration is invoked, the servicing office will send the statement of case, the case folder, and two (2) copies of all documents contained therein to the servicing GLS office within three weeks of the invocation. A copy of the statement of case will be sent to the LR Strategy and Negotiations office through e-mail at *WRD-arbitrations@irs.gov.
- (3) **Arbitrating the case-**
- a. Position in interpretation cases. The LR Strategy and Negotiations office will decide whether the case should be arbitrated or not.
 - b. Position in non-interpretation cases. The servicing LR/ER office will recommend to the affected business unit whether the case should be settled or arbitrated.
 - c. All proposed settlement agreements must be shared with the business unit embedded HR Director and the Associate Director, Field Operations, WRD.

6.711.1.12
(10-15-2010)
**Union Dues Allotments,
Withholding, and
Payments**

- (1) **Authority.** The authority for withholding Union membership dues from an employee's pay derives from 5 U.S.C. 7115, which applies only in the circumstance where a labor organization holds exclusive recognition status (as NTEU does with IRS). Thus, if management has received a written assignment from a bargaining unit employee which authorizes the deduction from the employee's pay of regular and periodic membership dues, payable to NTEU, then management must honor the assignment at no cost to the employee or the Union. Methods for implementing this statutory requirement were negotiated with NTEU and are contained in the Agency's National Agreement
- (2) **Review, Acceptance, and Revocation of Employee Dues Assignments.** Upon receipt of an employee's properly executed and certified dues assignment (Standard Form 1187, Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues), the servicing personnel office will promptly ascertain whether authority exists to honor the assignment. For purposes of 5 U.S.C. 7115, this requires two determinations:
- a. The employee must be properly included within the bargaining unit. Employees who are excluded from the bargaining unit are not eligible for

dues withholding under 5 U.S.C. 7115. These ineligible employees are supervisors, managers, management officials, employees of the Criminal Investigation Division, and employees holding nonclerical positions in Personnel.

- b. The employee's assignment of dues must be made to the labor organization that holds status as the exclusive representative of the bargaining unit in which the employee is included. The National Treasury Employees Union is the only labor organization which holds this status for IRS employees, and dues may not be withheld or paid to any others under authority of 5 U.S.C. 7115. The employee's assignment will be considered valid without regard to which local chapter is designated so long as the assignment is made to the exclusive representative.
- (3) Where authority exists under 5 U.S.C. 7115 to honor an employee's properly executed and certified dues assignment, the assignment should be made effective promptly in accordance with negotiated requirements in order to avoid risking needless financial liability to the Government.
 - (4) In general, an assignment of dues may not be revoked for a period of one (1) year, and then only upon receipt of the employee's properly executed written request (Standard Form 1188, Revocation of Voluntary Allotment of Compensation for Payment of Employee Organization Dues). However, when an employee is reassigned to a position outside the bargaining unit, even temporarily, the authority to withhold dues ceases and the servicing personnel office should promptly cancel the allotment to avoid risking needless financial liability to the Government. If the reassignment is a temporary one, then the allotment must be promptly reinstated upon the employee's reassignment to a bargaining unit position. The servicing personnel office need not secure Forms 1188 or 1187 for dues cancellations or reinstatements in the case of such reassignments out of or back to the bargaining unit.
 - (5) In certain circumstances, authority may exist apart from 5 U.S.C. 7115 to honor membership dues assignments from individuals who are not included within a bargaining unit, although such authority would not apply in the case of assignments payable to labor organizations such as NTEU which represent bargaining unit employees. Certain supervisors, for example, may qualify for dues assignments under a savings provision found at 5 CFR 550.322. In cases such as these, any agreements between IRS and NTEU are inapplicable, and the assignment will be handled in accordance with any other requirements that may apply.
 - (6) Where no authority can be found to honor an employee's request for dues assignment, the servicing personnel office will notify the employee of that fact. Unless an authority can be found, the request should not be processed.

6.711.1.13
(10-15-2010)
**Recording Official Time
Used by Union
Representatives**

- (1) NTEU representatives are required to utilize Form 3081 to record time spent conducting union representational duties.
- (2) Additional requirements, such as time codes, are contained in the Agency's National Agreement.

6.711.1.14
(10-15-2010)

**Job Actions Reporting
Procedures**

- (1) Information concerning potential, threatened, or existing job actions by IRS employees against the Service or the Federal Government must be communicated rapidly to the Workforce Relations Division. Examples of job actions include but are not limited to employee demonstrations; picketing; actual work stoppages or work disruptions; group refusal to work overtime or to perform assigned duties; and “slowdowns” or “sick-outs”.
- (2) Information on job actions will be communicated by telephone (through the servicing LR/ER offices) to the LR Strategy and Negotiations office, which will immediately notify the Workforce Relations Division.

Exhibit 6.711.1-1 (10-15-2010)

Uniform/Streamlined Employee Grievance Process

Exhibit 6.711.1-1		
PROCESS: UNIFORM EMPLOYEE GRIEVANCE PROCESS		
STARTS:	LR/ER is notified that a grievance has been files	
ENDS:	Case closed on ALERTS and filed	
STEP	PROCESS DESCRIPTION	RESPONSIBILITY
1	Notify servicing LR/ER that a grievance has been filed.	Management
2	Forward copy of grievance to servicing LR/ER office.	Management
3	Establish "G" case in ALERTS	Servicing LR/ER
4	Prepare case file folder, including copies of ALERTS printouts on left side. All other case information on right side in reverse chronological order.	Servicing LR/ER
5	Review grievance with regard to threshold issues such as timeliness.	Servicing LR/ER
6	If information request is received, refer to procedures for processing Information Requests.	Servicing LR/ER
7	Contact appropriate manager to ensure meeting is scheduled within appropriate timeframe. Provide advice and guidance to manager.	Servicing LR/ER
8	If filed under Streamlined procedures, go to Step 17. if not, schedule Step 1 meeting. Include grievant's immediate supervisor, grievant, grievants union representative, and servicing LR/ER specialist (at management's option).	Management
9	Hold Step 1 meeting. If asked to participate, servicing LR/ER specialist will participate by phone, unless in same location/ POD as grievance meeting.	Management
10	Prepare and issue Step 1 response within appropriate timeframe. NOTE: Decision will not normally exceed 2 pages in length and will include the name of next higher level supervisor to receive any appeal. (LR/ER specialist will review response prior to issuance.)	Management
11	Obtain copy of Step 1 response and file in grievance file folder.	Servicing LR/ER
12	If grievance is resolved, go to Step 30.	Servicing LR/ER
13	If grievance is appealed, forward copy of Step 2 appeal to LR/ER specialist.	Management
14	Review Step 2 appeal for new issues; consult with management.	Servicing LR/ER

Exhibit 6.711.1-1 (Cont. 1) (10-15-2010)
Uniform/Streamlined Employee Grievance Process

15	If Step 2 management official is Executive, prepare Executive Summary and provide it and copy of grievance folder to Step 2 management official.	Servicing LR/ER
16	Contact Step 2 management official to ensure that meeting is scheduled within appropriate timeframe. Provide advice and guidance to manager.	Servicing LR/ER
17	Schedule Step 2 meeting. Include grievant, designated union representative (chief steward, chapter president, or designee), 2nd level manager, and (at management's option) LR/ER specialist. NOTE: If Step 2 official is Executive, union can have 2 representatives present. One must be either chapter president or chief steward.)	Management
18	Hold Step 2 meeting. Union steward who filed grievance at Step 1 and any witnesses not within commuting area of meeting will participate by phone. If asked to participate, servicing LR/ER specialist will participate by phone if not in same POD as meeting.	Management
19	Prepare and issue Step 2 response within appropriate timeframe. (LR/ER will review prior to issuance.) NOTE: If Step 2 management official is Executive, response must include IRHCO and Director WRD address, e-mail and FAX number to receive copies of any appeal.	Management
20	Obtain copy of Step 2 response and file in grievance file folder.	Servicing LR/ER
21	If Step 2 management official was Executive, this is final grievance step. Go to Step 30. If grievance is resolved, go to Step 30.	Servicing LR/ER
22	If Step 2 management official was not Executive and grievance is appealed, forward copy of Step 3 appeal to servicing LR/ER specialist.	Management
23	Review Step 3 appeal for any new argument; consult with management.	Servicing LR/ER
24	Prepare Executive Summary and provide summary and copy of grievance folder to Step 3 management official.	Servicing LR/ER
25	Schedule Step 3 meeting. Include Executive or designee, servicing LR/ER specialist (at Executive's request), and 2 union representatives. NOTE: One union representative must be either chapter president or chief steward. The grievant does not attend the Step 3 meeting.	Management

Exhibit 6.711.1-1 (Cont. 2) (10-15-2010)
Uniform/Streamlined Employee Grievance Process

26	Hold Step 3 meeting within appropriate timeframe. Location and time of meeting will be mutually determined by Executive and chapter president. If they cannot agree, meeting will be held at site chosen by Executive, and Employer will reimburse travel in accordance with Article 9, Section 10. If asked to participate, servicing LR/ER specialist will participate by phone, unless in same POD as grievance meeting.	Management
27	Consult with Step 3 management official. Prepare response, forward to Step 3 official for review and issuance. Response must include IRHCO and Director WRD address, e-mail, and FAX number to receive copies of any appeal to arbitration.	Servicing LR/ER
28	Issue response to union within appropriate timeframe. Provide copy of response to grievant 1 day after original is issued to NTEU.	Management
29	Obtain copy of Step 3 response and file in grievance folder.	Servicing LR/ER
30	Timely close case on ALERTS and file.	Servicing LR/ER
APPEAL TO ARBITRATION		
31	If notice of invoked arbitration is received, file in case file and refer to procedures for processing Arbitration (Article 43) Cases (IRM 6.711.1.11).	Servicing LR/ER

Exhibit 6.711.1-2 (10-15-2010)
Mass Grievance Process

Exhibit 6.711.1-2		
PROCESS: MASS GRIEVANCE PROCESS		
STARTS:	LR/ER is notified that a grievance has been filed	
ENDS:	Case closed on ALERTS and filed	
STEP	PROCESS DESCRIPTION	RESPONSIBILITY
1	Notify servicing LR/ER that a grievance has been filed.	Management
2	Forward copy of grievance to servicing LR/ER.	Management
3	Establish "G" case in ALERTS	Servicing LR/ER
4	Prepare case file folder, including copies of ALERTS printouts on left side. All other case information on right side in reverse chronological order. [See Mass Grievance Case File Content guide.]	Servicing LR/ER
5	Review grievance with regard to threshold issues such as timeliness.	Servicing LR/ER
6	If information request is received, refer to procedures for processing Information Requests.	Servicing LR/ER
7	Contact appropriate Executive (or designee) to ensure meeting is scheduled within appropriate timeframe. Provide advice and guidance to management official.	Servicing LR/ER
8	Prepare Executive Summary (at management's option). Provide Executive Summary and copy of grievance folder to management official.	Servicing LR/ER
9	Schedule meeting. Include Executive or designee, servicing LR/ER specialist, grievants representatives, and designated grievants (in accordance with Article 41, Section 5).	Management
10	Hold meeting within appropriate timeframe. If asked to participate, servicing LR/ER specialist will do so by phone, unless in same POD as grievance meeting.	Management
11	Consult with management official. Prepare response. Forward to management official for review and issuance. Response must include IRHCO and Director WRD address, e-mail, and FAX number to receive copies of any appeal to arbitration.	Servicing LR/ER
12	Issue response to NTEU chapter president within appropriate timeframe.	Management
13	Obtain copy of response and file in grievance folder.	Servicing LR/ER
14	Timely close case on ALERTS and file.	Servicing LR/ER
APPEAL TO ARBITRATION		

**Exhibit 6.711.1-2 (Cont. 1) (10-15-2010)
Mass Grievance Process**

15	If notice of invoked arbitration is received, file in case file and refer to procedures for processing Arbitration (Article 43) Cases (IRM 6.711.1.11)	Servicing LR/ER
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Exhibit 6.711.1-3 (10-15-2010)
Grievance Executive Summary

GRIEVANCE EXECUTIVE SUMMARY	
Grievance Number:	
Personal Data:	
Grievant Name:	
Series/Grade:	
EOD:	
Manager:	
Step 1 Hearing Official:	
Step 2 Hearing Official:	
Case Information	
Date Grievance Filed:	
Type of Grievance:	
Contract Provision, Law, Regulation, or IRM Provisions Involved:	
Briefly describe the issues grieved and events that led to the Grievance:	
Additional information pertaining to grievance process:	
LR/ER Contact/Phone Number:	

Exhibit 6.711.1-4 (10-15-2010)
Institutional Grievance Process

Exhibit 6.711.1.5		
PROCESS: INSTITUTIONAL (ARTICLE 42) GRIEVANCES		
STARTS:	LR/ER is notified that a grievance has been filed	
ENDS:	Case closed on ALERTS and filed	
STEP	PROCESS DESCRIPTION	RESPONSIBILITY
1	Notify servicing LR/ER that a grievance has been filed.	Management
2	Forward a copy of grievance to servicing LR/ER.	Management
3	Establish "G" case in ALERTS.	Servicing LR/ER
4	Prepare case file folder, include copies of ALERTS printouts on left side. All other case information on right side in reverse chronological order. [See Institutional Grievance Case File Contents.]	Servicing LR/ER
5	Review grievance with regard to threshold issues such as timeliness.	Servicing LR/ER
6	If information request is received, refer to procedures for processing Information Requests.	Servicing LR/ER
7	Contact appropriate Executive/SCR to ensure meeting is scheduled within appropriate timeframe. Provide advice and guidance to hearing official.	Servicing LR/ER
8	Prepare Executive Summary [optional]. Provide executive summary and grievance folder to hearing official.	Servicing LR/ER
9	Schedule meeting; include Executive/SCR or mutually agreed appropriate official, servicing LR/ER specialist, and NTEU chapter president (or designee).	Management
10	Hold meeting, Servicing LR/ER specialist will participate by phone, unless in same POD as grievance meeting.	Management
11	Consult with hearing official. Prepare response. Forward to hearing official for review and issuance.	Servicing LR/ER
12	Issue response to NTEU Chapter President.	Management
13	Obtain copy of response and file in grievance folder.	Servicing LR/ER
14	Close case on ALERTS and file.	Servicing LR/ER
APPEAL TO ARBITRATION		
15	If notice of invoked arbitration is received, file in case file and refer to procedures for processing Arbitration (Article 43) Cases (IRM 6.711.1.11)	Servicing LR/ER

Exhibit 6.711.1-5 (10-15-2010)**Statement of Case Format (Contract Application/Interpretation)**

This document is prepared for agency counsel in preparation for litigation.

[Please note: all italicized notes are guidance for the LR/ER specialist. Please do not include these notes in your final product to GLS. Remember that agency counsel does not have the involvement or knowledge of the conditions that contributed to the grievance being filed. It is your responsibility to provide that information through the statement of case.]

I. PREPARATION OF THE STATEMENT OF CASE

- a. LR/ER specialist and specialist's supervisor: *[Name, telephone, fax number]*
- b. Date statement of case was prepared:
- c. ALERTS (T) case number

II. CASE INFORMATION

- a. Grievant(s): *Provide: Name, position and grade; Operating division, area, territory/branch/section, POD; Grievant's current manager and telephone number; prior manager(s) and telephone number(s) if applicable. Relevant information that might affect grievant's testimony or availability to testify (see Part V.a. below).*
- b. Grievance Information:
 - Grievance ALERTS (G) case number:
 - Date grievance filed:
 - Type of grievance: *Employee or Institutional grievance? Conventional, streamlines, or expedited arbitration? Contract interpretation or application?*
 - Date last step grievance response was provided to NTEU (or employee's representative) and manner in which it was provided: *[Hand delivered, e-mailed, mailed?]*
 - Date arbitration was invoked?
 - Contract provisions, law, regulations, or IRM provisions involved: *Which contract applies (National Agreement; side agreement, MOU or LOU)? Has NTEU raised issued regarding the application of any law or regulation? Are there any IRM provisions that are applicable to the issues in the grievance? If yes, explain.*

III. ISSUES GRIEVED/ARBITRATED

- a. Issue(s) grieved/arbitrated: *If the issue to be arbitrated is different from the issue as set forth in the original grievance, explain the facts surrounding the amendment, including when it was amended and why.*
- b. Grievability/arbitrability issues: *Was the grievance timely filed; did the Union pursue each step timely; and was arbitration timely invoked? Did the grievant/Union raise any new issues after the 2nd step, or in the case of discrimination issues, after the 3rd step? Were the new issues rejected as untimely? If not rejected, why not? If discrimination issues were raised, were they raised properly under the contract? Are there any other arbitrability issues? For example: grieved, arbitrated, filed in another forum and/or settled.*

IV. DISCUSSION OF THE CASE

- a. Factual chronology: *Tell the whole true story of the case; this is the essence/substance of the SOC. Chronological narrative, including dates of all material facts related to the grievance. Add any known precipitating background facts that might explain why the grievance was filed.*
- b. Bargaining history (if applicable): *Most arbitration cases do not raise an issue of contract interpretation requiring bargaining history evidence. However, if such issues exist, the LR/ER specialist should coordinate with LR Strategy and Negotiations, identify the appropriate contact in WRD who can provide*

Exhibit 6.711.1-5 (Cont. 1) (10-15-2010)

Statement of Case Format (Contract Application/Interpretation)

testimony or evidence relative to the provision. If the provision in question is a local agreement or LOU, provide the appropriate contact in the local office who can provide testimony or evidence relative to the local contract provision.

- c. The positions of the Union/employee's representative and management: *Discuss the theories of the case for the Union/employee's representative and management, as well as the arguments raised during each of the step meetings (if not already covered by Section IV.a. above). Discuss whether any issues were resolved or withdrawn or rejected as untimely during the step meetings. Determine whether any other related cases exist, including national grievances, and discuss any impact those cases may have on the current grievance.*
- d. Settlement offer(s): *Discuss any settlement offers made to the Union/employee's representative. Discuss any counter-offers. Discuss whether management's last settlement proposal is still on the table. Discuss whether there is a realistic chance of settlement.*

V. WITNESSES

- a. Key fact witnesses: *[These are the eye- and -ear-witnesses to what happened. Provide the following information for each potential key fact witness: Name, position (operating division, area, territory/branch/section, and POD) and whether or not a bargaining unit employee. Current telephone number and fax number or, in the case of a bargaining unit employee, the name and telephone number of the witness' current manager. Knowledge the witness has regarding the matter to be grieved, including whether the witness has access to documents relevant to the matter. Relevant information that might affect the witness testimony, such as pending disciplinary action, pending EEO complaints or prior demotion. Relevant information that might affect the witness availability to testify, such as scheduled retirement date, serious illness, lengthy detail to another office. Brief summary of expected testimony.*
- b. Other key management officials: *If not already listed above as a witness, provide the names and telephone numbers of the following management officials: Head of office (with decision making and settlement authority). Applicable Area Manager; Applicable Territory manager, Hearing officials during the grievance process (if not otherwise identified above).*
- c. Key resource contacts: *[If not already listed above, provide the names and telephone numbers of the following (if applicable and known: Technical personnel with expert knowledge concerning the matter at issue or subject matter expert relating to the matter at (e.g., CSIRC Internet expert). National program manager (e.g., SB/SE RRA '98 Section 1204, Embedded LR contact [if involved in the case]).*
- d. Records/documentation retention notification: *Advise all potential witnesses that they need to maintain all records and documentation (e-mail, electronic documents, system printouts, paper files, etc.) relevant to the case until the case is resolved and all appeal periods expire. GLS will provide a format for this notification.*

VI. RESEARCH

- a. *Provide information regarding any arbitration decisions and other case law that are relevant to the issues in this grievance. Check the Contract Administration Handbook, if appropriate. Include any local past practices bearing on the issue.*

VII. INFORMATION REQUESTS

- a. *If the Union/employee's representative has made any requests for documentation or information, whether through a 7114 request, FOIA request, or request during one of the grievance steps, provide a statement setting forth the date(s) on which the request(s) were made and management's response to the request(s). Attach a copy of each request and any response, including documents provided to the Union/ representative as well as documents withheld from the Union. If sanitized copies were provided to the Union, attach sanitized and unsanitized copies of what was provided.*

Exhibit 6.711.1-5 (Cont. 2) (10-15-2010)**Statement of Case Format (Contract Application/Interpretation)****VIII. DOCUMENTATION SUPPORTING THE STATEMENT OF CASE**

- a. *Generally, attach copies of all the documentary evidence relied upon by both management, the grievant, the Union, and the employee's representative. During the grievance meeting(s), ask for all documentation supporting the grievant's contentions.*
- b. *Attach LR/ER specialist's notes from grievance meetings.*
- c. *Attach correspondence or documentation capturing settlement offers/responses.*
- d. *Attach copies of other grievances/appeals filed by the employee regarding the same issues.*
- e. *Attach copies of all ALERTS case prints relating to this particular grievance/appeal and any other grievance or case with respect to the named grievant or regarding related issues by the Union. For example, if the case involves a grievance over Employee A's performance evaluation, the ALERTS case prints regarding Employee A's suspension two years earlier should also be provided. The same would be true with respect to a contract violation. If the Union raises a higher graded duty claim regarding bankruptcy specialists, ALERTS case prints for any previous case regarding bankruptcy specialist higher graded duty claims should also be provided. The information regarding prior cases should also include any information regarding their disposition.*
- f. *Attach hard copies of e-mails advising witnesses of their need to maintain records and documentation (see Part V.d. above).*

[REMINDER: Maintain all relevant documentation until the case is resolved.]

IX. RECOMMENDATION

- a. *State recommended course of action. Provide an analysis of the strengths and weaknesses of the case, and settlement parameters, if any.*

Exhibit 6.711.1-6 (10-15-2010)

Statement of Case Format (Adverse Actions/Actions Based on Unacceptable Performance)

This document is prepared for agency counsel in preparation for litigation.

[Please note: all italicized notes are guidance for the LR/ER specialist. Please do not include these notes in your final product to GLS. Remember that agency counsel does not have the involvement or knowledge of the conditions that contributed to the grievance being filed. It is your responsibility to provide that information through the statement of case.]

I. PREPARATION OF THE STATEMENT OF CASE

- a. LR/ER specialist and specialist's supervisor: *[Name, telephone, fax number]*
- b. Date statement of case was prepared:
- c. ALERTS (T) case number

II. CASE INFORMATION

- a. Employee: *[Provide: Name, position and grade; Operating division, area, territory/branch/section, POD; Grievant's current manager and telephone number; prior manager(s) and telephone number(s) if applicable. Information, if known that might affect grievant's testimony or availability to testify (see Part V.a. below).]*
- b. Appeal Information:
 - Adverse action/performance-based action ALERTS number;
 - Date arbitration was invoked;
 - Contract provisions, law, regulations, or IRM provisions involved.

III. ISSUES

- a. State the charge(s): *[As written in the proposal letter plus:752 action - Was the action for such cause as will promote the efficiency of the Service?*

432 action - Was the performance unacceptable in one or more critical element(s) of the position?

- b. Arbitrability/jurisdictional/other appeal issues (if applicable): *[Was the appeal timely filed? Are there any other appeal issues? For example: grievance seeking reclassification of position, previously grieved/arbitrated, filed in another forum, settled, EEO, Whistleblower Protection Act.]*

IV. DISCUSSION OF THE CASE

- a. Factual chronology: *Tell the whole true story of the case; this is the essence/substance of the SOC. Chronological narrative, including dates of all material facts related to the grievance. Add any known precipitating background facts that might explain why the grievance was filed.*
- b. *For 432 cases: Discuss employee's work experience, training, last rating of record, last within grade increase. Discuss when and how performance problems were noted, how the employee was made aware of performance standards. Describe the opportunity period, including any extensions to the original period, any time the employee was absent or unavailable, what assistance was given, and what assistance listed in the opportunity letter was not provided. Describe any known background facts that may explain the employee's performance problem(s), e.g., lack of training or resources, medical condition, etc.]*
- c. *For 752 cases: Discuss employee's work experience and relevant training. Discuss whether previous misconduct was identified and how it was addressed. Discuss how the current misconduct was identified and provide summary of the facts relating to the misconduct. Discuss any known background facts that might explain or mitigate the employee's actions, [e.g., unusual job tensions, medical condition, etc.]. If a performance based action is being taken under 752 instead of 432, [explain the reasons for that determination and provide pertinent facts relative to that determination].*

Exhibit 6.711.1-6 (Cont. 1) (10-15-2010)**Statement of Case Format (Adverse Actions/Actions Based on Unacceptable Performance)**

- d. The positions of the Union/employee's representative and management: *Discuss the theories of the case, the evidence to support each theory, and the arguments raised during the written and/or oral reply.*
- e. Settlement offer(s): *Discuss any settlement offers made to the Union/employee's representative. Discuss any counter-offers received. Discuss whether management's last settlement proposal is still on the table. Discuss whether there is a realistic chance of settlement.*

V. WITNESSES

- a. Key fact witnesses: *These are the eye- and -ear-witnesses to what happened. Provide the following information for each potential key fact witness: Name, position (operating division, area, territory/branch/section, and POD) and whether or not a bargaining unit employee. Current telephone number and fax number or, in the case of a bargaining unit employee, the name and telephone number of the witness' current manager. Knowledge the witness has regarding the matter to be arbitrated, including whether the witness has access to documents relevant to the matter - (specify which reason/specifications the witness has knowledge of.) Relevant information that might affect the witness testimony, such as pending disciplinary action, pending EEO complaints or prior demotion. Relevant information that might affect the witness availability to testify, such as scheduled retirement date, serious illness, acceptance into XD program, lengthy detail to another office. Brief summary of expected testimony.*
- b. Other key management officials: *If not already listed above as a witness, provide the names and telephone numbers of the following management officials: Head of office (with decision making and settlement authority). Applicable Area Manager; Applicable Territory manager..*
- c. Key resource contacts: *If not already listed above, provide the names and telephone numbers of the following (if applicable and known: Technical personnel with expert knowledge concerning the matter at issue or subject matter expert relating to the matter at issue (e.g., CSIRC Internet expert). National program manager (e.g., SB/SE RRA '98 Section 1204 expert) Embedded LR contact, if involved in the case.*
- d. Records/documentation retention notification: *Advise all potential witnesses that they need to maintain all records and documentation (e-mail, electronic documents, system printouts, paper files, etc.) relevant to the case until the case is resolved and all appeal periods expire. GLS will provide a format for this notification.*

VI. RESEARCH

- a. *Information regarding any arbitration decisions and other case law that are relevant to the issues of the case. Relevant Contract Administration Handbook entries (if appropriate). Any local past practices bearing on the issue.*

VII. INFORMATION REQUESTS

- a. *If the Union/employee's representative has made any requests for documentation or information, whether through a 7114 request, FOIA request, or request at the reply stage, provide a statement setting forth the date(s) on which the request(s) were made and management's response to the request(s). Attach a copy of each request and any response, including documents provided to the Union representative and documents withheld from the Union. If sanitized copies were provided to the Union, attach sanitized and unsanitized copies of what was provided.*

VIII. DOCUMENTATION SUPPORTING THE STATEMENT OF CASE

- a. *Generally, attach copies of the proposal letter, oral and/or written reply, decision letter, and all documentary evidence relied upon by both management and the employee/Union/employee's representative. For example, For conduct cases, include copies of the receipt of the Rules of Conduct signed just prior to the time period at issue and any relevant ALERTS reports and/or proposal and decision letters showing management's actions in similar cases.*

Exhibit 6.711.1-6 (Cont. 2) (10-15-2010)**Statement of Case Format (Adverse Actions/Actions Based on Unacceptable Performance)**

- b. *Attach LR/ER specialist's notes from grievance meetings.*
- c. *Attach correspondence or documentation capturing settlement offers/responses.*
- d. *Attach copies of other grievances/appeals filed by the employee regarding the same issues.*
- e. *Attach copies of all ALERTS case prints regarding prior cases relating to the grievance. The information regarding prior cases should also include any information regarding the disposition of the matter.*
- f. *Attach copies of ALERTS case prints (or other information) concerning comparable cases that were provided or discussed with the deciding official.*
- g. *Attach hard copies of e-mails advising witnesses of their need to maintain records and documentation (see Part V.d. above).*

[REMINDER: Maintain all relevant documentation until the case is resolved.]

IX. RECOMMENDATION

- a. *State recommended course of action. Provide an analysis of the strengths and weaknesses of the case, and settlement parameters, if any.*

