



UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY**  
WASHINGTON, D.C. 20424-0001

May 8, 2000

**MEMORANDUM**

**TO:** Regional Directors

**FROM:** Joe Swerdzewski, General Counsel

**SUBJECT:** Guidance on Seeking Remedies for Unfair Labor Practices Under the Federal Service Labor-Management Relations Statute

This memorandum discusses the Office of the General Counsel policy on seeking remedies for unfair labor practices under the Federal Service Labor-Management Relations Statute (Statute). This memorandum provides guidance on the types of remedies and the elements of proof that are necessary to obtain those remedies. When determining, on behalf of the General Counsel, to issue an unfair labor practice complaint under the Statute, Regional Directors are required to make decisions on the remedy that will be sought in litigation. Regional Directors are guided by the decisions of the Members of the Federal Labor Relations Authority in determining the appropriate legal remedy for unfair labor practices. Obtaining these remedies from the Authority in litigation requires not only a finding that an unfair labor practice violation has occurred, but also a determination that the remedy sought is lawful and appropriate to the violation in the particular circumstances of the case. Thus, it is imperative that the Regions, and the parties, are aware of not only the variety of possible remedies, but also the type of evidence that is necessary to establish the appropriateness of these remedies.

This memorandum serves as guidance to the Regional Directors in investigating, settling and litigating unfair labor practice charges. It is also intended to assist parties in providing evidence and arguments concerning the appropriate remedy to an unfair labor practice charge. By understanding the types of remedies available and the evidence necessary to establish the appropriateness of those remedies, the Regions and the parties will be better suited to resolve unfair labor practice complaints and, if litigation is necessary, make cogent arguments based on relevant evidence as to the appropriateness of those remedies. The remedies set forth in this Guidance are illustrative of the remedies which may be sought

by the Regions. The Regions will continue to pursue new and better remedies and continue to expand potential remedies available for violations of the Statute.

I am making this Guidance Memorandum available to the public to assist union officials and agency representatives to resolve unfair labor practice issues in an expeditious fashion consistent with the requirements of the Statute. This Guidance is a continuation of my Office's commitment to provide the participants in the Federal Service Labor-Management Relations Program with my views on significant topics. [\[\\*\]](#) This Guidance reflects my views as the General Counsel of the Federal Labor Relations Authority and does not constitute an interpretation by the three-member Authority.

This Guidance is divided into five parts. Part I -- "Remedial Authority under the Statute " -- sets forth the remedial provisions of the Statute and discusses the purposes of remedies; Part II -- "OGC Remedy Policy" -- sets forth the General Counsel's policy on seeking remedies in the litigation of unfair labor practice complaints and emphasizes the importance of developing evidence of the appropriate remedy throughout the processing of an unfair labor practice charge and the litigation of an unfair labor practice complaint; Part III -- "Traditional and Nontraditional Remedies" -- explores the Authority's standards for ordering "nontraditional" remedies; Part IV -- "Postings and Notices" -- explores issues concerning where remedial notices are posted and distributed, and which official signs such notices; and Part V -- "Monetary Awards" -- discusses the requirements that need to be met before money may be awarded.

Many of the remedies discussed in this Guidance have been well established by Authority precedent, but those decisions also leave open the possibility for further innovative remedies, as long as the Statute is effectuated, the evidence establishes the need for such a remedy, and the remedy is not otherwise inconsistent with the Statute or other external law. Accordingly, to assist the parties in recognizing and supporting appropriate remedies, attached to this Guidance are: (1) the different types of remedies, both traditional and nontraditional, to specific unfair labor practices with descriptions of the types of evidence that are necessary to establish the appropriateness of those remedies; and (2) a decisional protocol to assist the Regional Director in determining what remedy to seek when litigating an unfair labor practice complaint.

The remedies discussed in this Guidance are sought, as appropriate, after an unfair labor practice complaint issues and the case is litigated before an Administrative Law Judge (ALJ) and the Authority. The Office of the General Counsel's Settlement Policy, on the other hand, concerns the settlement of unfair labor practice disputes without the need for litigation. The Settlement Policy sets forth the goals of settlements, the manner in which settlements are reached, and the criteria that Regional Directors apply in determining whether to approve settlement agreements. Those criteria are applied on a case-by-case basis and involve additional factors beyond the appropriate traditional or nontraditional remedy that would have been sought in litigation. Thus, settlements often contain provisions that are different from the remedies that may be sought in actual litigation.



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## Footnote \*

Previous public guidance memoranda have been issued on the following subjects: "The Duty to Bargain Over Programs Establishing Employee Involvement and Statutory Obligations When Selecting Employees for Work Groups" (August 8, 1995), "Guidance on Investigating, Deciding and Resolving Information Disputes" (January 5, 1996), "Proper Descriptions of Bargaining Units and Identification of Parties to the Collective Bargaining Relationships in Certifications" (December 18, 1996), "The Duty of Fair Representation" (January 27, 1997), "The Impact of Collective Bargaining Agreements on the Duty to Bargain and the Exercise of Other Statutory Rights" (March 5, 1997), "Pre-Decisional Involvement: A Team-Based Approach Utilizing Interest-Based Problem Solving Principles" (July 15, 1997), "Guidance in Determining Whether Union Bargaining Proposals are Within the Scope of Bargaining Under the Federal Service Labor-Management Relations Statute" (September 10, 1998), "Guidance on Applying the Requirements of the Federal Service Labor- Management Relations Statute to Processing Equal Employment Opportunity Complaints and Bargaining over Equal Employment Opportunity Matters" (January 26, 1999), and "Guidance on Developing a Labor Relations Strategic Plan" (September 24, 1999). Copies of all of these guidance memoranda can be found at the FLRA's [www.flra.gov](http://www.flra.gov).