

FORMAL DISCUSSIONS

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Formal Discussions under 5 USC Chapter 71

- Formal discussions are addressed under § 7114(a)(2)(A)
 - An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at:
 - Any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment

Formal Discussions under 5 USC Chapter 71

- Recognizing formal discussions:
 - Key Points
 - Who called the meeting?
 - Who will attend?
 - What will be discussed?
 - Where was it held?
 - How long did it last?
 - Is the meeting or discussion “formal” or a casual conversation?
 - how was the meeting arranged?
 - were minutes taken or was the meeting recorded?
 - was employee attendance mandatory?

Formal Discussions under 5 USC Chapter 71

- Recognizing formal discussions (continued)
 - A meeting may be considered formal even if there is no dialogue and only one party is speaking. 29 FLRA 594
 - Telephonic meetings or discussions may be considered formal discussions. 35 FLRA 594
 - Interviews of bargaining unit employees by management officials in preparation for 3rd party proceedings, including MSPB, are formal discussions. 47 FLRA 170
 - A meeting may not begin as a formal discussion, but may evolve into a formal discussion. 37 FLRA 952

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- The Authority will find that a formal discussion occurred if the evidence shows:
 - there was a discussion
 - it was formal
 - between one or more agency representatives and one or more bargaining unit employees or their representatives
 - concerned any grievance or personnel policy, practice, or other general condition of employment

29 FLRA 584, affirmed 865 F.2d 1283 (D.C. Cir 1989)

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- Meetings or discussions that are not formal
 - discussions between non-bargaining unit employees
 - meetings with bargaining unit employees on work procedures, work assignments, how a job is done, etc.
 - meetings related to performance standards or evaluations
 - discussions involving employee conduct

Formal Discussions under 5 USC Chapter 71

- The meeting you have scheduled is a formal discussion. What next?
 - Management has an obligation to:
 - Provide adequate prior notice to the union
 - Provide the union with an opportunity to attend
 - If management has notified the union, but no union representative attends, management may hold the meeting without the union's presence

Formal Discussions under 5 USC Chapter 71

- Union representatives may:
 - Ask questions related to the meeting topics
 - State the union's opinion on those topics
 - Agree or disagree with management's views

21 FLRA 765

Formal Discussions under 5 USC Chapter 71

- Union representatives may not:
 - disrupt the meeting
 - take over the meeting
 - bring the meeting to a halt
 - engage in egregiously disrespectful or antagonistic behavior

Formal Discussions under 5 USC Chapter 71

- Management's options:
 - Stop the meeting
 - Ask union representative to stop disruption
 - if request is not complied with, ask union representative to leave
 - be prepared to provide sound reasons for asking the union representative to leave

16 FLRA 703

Formal Discussions under 5 USC Chapter 71

- EEO meetings between management officials and bargaining unit employees
 - The Federal Labor Relations Authority has ruled that meetings during the formal EEO complaint process are grievances and, therefore, treated as formal discussions under 5 USC § 7114(a)(2)(A). Applies to:
 - interviews of any bargaining unit employee, including witnesses
 - mediation
 - settlement meetings

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- Pertinent case law:
 - 54 FLRA 716 (8/98) meeting with EEO complainant involved a grievance and was a formal discussion
 - 208 F.3d 221 (12/99) Ninth Circuit Court of Appeals reversed decision in 54 FLRA 716 finding the complaint filed pursuant to EEO procedures was not a “grievance” under the Statute
 - 57 FLRA 304 (6/01) EEO mediation involved a grievance and was a formal discussion
 - 01-1373 (1/03) U.S. Court of Appeals upheld 57 FLRA 304

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- Pertinent case law (continued)
 - 58 FLRA 528 (5/03) and 59 FLRA No. 5 (8/03) mediation conferences with an EEO complainant concerned grievances and were formal discussions
 - 59 FLRA No. 875 (4/04) interviews of bargaining unit employees as witnesses in an EEO complaint involved grievances and were formal discussions
 - 60 FLRA No. 128 (3/05) mediation meetings involved grievances and were formal discussions

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- Pertinent case law (continued)
 - 61 FLRA 181 (8/05) meeting to sign a settlement agreement was not considered a formal discussion. The issue of whether the employee's objection to the union's presence during the meeting created a direct conflict between the rights of the union and the rights of the employee was raised, but not addressed.
 - 62 FLRA 219 (11/07) contract investigators of EEO complaints were considered representatives of the agency. The Authority referenced *NASA v. FLRA*, 527 U.S. 229 (1999).



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QUESTIONS?