

# **PART 1**

## **PRE-CHARGE**

## A. PRE-CHARGE ASSISTANCE

**OVERVIEW:** Before a party files a charge, ROs are frequently contacted by unions, activities, or other persons to discuss various labor-management matters. The Agent is prepared to give guidance and information in accordance with the specific needs expressed.

**OBJECTIVE:** To provide the Agent with a list of matters that s/he is prepared to cover if pre-charge assistance is required: (1) general pre-filing technical assistance; (2) drafting the charge; (3) collecting and organizing supporting evidence; and (4) legal impediments precluding the filing of a charge.

### 1. GENERAL PRE-FILING TECHNICAL ASSISTANCE:

Upon request, an Agent may provide a person/s the following types of assistance:

- Explain generally the rights and obligations under the Statute;
- Explain ULP procedures under the Regulations;
- The FLRA's Internet Home Page Web address-- **www.flra.gov**--and the types of information found there;
- Furnish appropriate forms and reasonable technical assistance regarding completion of forms, including drafting language describing the basis of charge; and
- Public written materials.



*The Agent clarifies, whether orally, in writing, or by e-mail, that s/he is providing technical assistance only; that s/he cannot advise a party on what course of action to pursue; and that should a charge be filed, the charge will be investigated and a decision will be made by the RD on the evidence adduced during the investigation.*

## 2. DRAFTING THE CHARGE:

- a. Generally, describe with specificity, the underlying basis of the charge, including locations, dates, and names and titles of Agency or Union representatives involved.
- b. Examples:
  - i. Independent § [7116](#)(a)(1) charge:  
Do not include names of employees involved.
  - ii. Section [7116](#)(a)(2) discrimination charge:
    - (1) All known discriminatees should be named and may be included in the same charge if subject to same circumstances or events constituting the discrimination; and
    - (2) Where names of all discriminatees are not known, the charge states: “the discriminatees include, but are not limited to, those named.”

## 3. COLLECTING AND ORGANIZING SUPPORTING EVIDENCE:

The Agent explains to the person the types of information that are necessary to gather to support a charge:

- Witnesses - with a brief synopsis as to what each witness will testify to, and a telephone number for each witness;
- Collective bargaining agreement;
- Documents; and
- Interests.

See [ATTACHMENT 1A1](#) for a Sample Letter describing what a person needs to do before filing a charge.

#### 4. LEGAL IMPEDIMENTS PRECLUDING THE FILING OF A CHARGE:

a. *Contractual notification requirements:*

An agreement between a union and an activity, which contains a requirement for pre-charge filing, notification, or settlement efforts, is enforceable. Headquarters, Fort Sam Houston, Department of the Army and American Federation of Government Employees, AFL-CIO, Local 2154, 8 FLRA No. 81, 8 FLRA 394, 395 (1982). If the Region finds that the Charging Party has not followed a required procedure, the charge is dismissed.



*Contractual notification requirements are not binding on persons who file charges as individuals.*

b. *Grievance bar:*

- i. Second sentence of § [7116](#)(d) governs whether ULP charge is barred by a previously-filed grievance: and
- ii. ULP charge is barred by an earlier-filed grievance if “the unfair labor practice charge arose from the same set of factual circumstances as the grievance and the theory advanced in support of the ULP charge and the grievance are substantially similar.” Olam Southwest Air Defense Sector (TAC), Point Arena Air Force Station, Point Arena, California, 51 FLRA No. 69, 51 FLRA 797, 801-02 (1996) (citation omitted).



*The charge form requires that the Charging Party state whether the matter raised in the charge has been raised previously in a grievance procedure. See § [2423.4](#)(a)(i).*

c. *Charge is untimely:*

Agent advises if action may be untimely under § [7118](#)(a)(4) of the Statute. See EEOC, Washington, D.C., 53 FLRA No. 54, 53 FLRA 487 (1997) (EEOC); Air Force Flight Test Center,

[Edwards Air Force Base, California](#), 55 FLRA No. 21, 55 FLRA 116, 120 (1999) (Charge was timely filed where although changes in program were made more than six months before the charge was filed, charge alleges incident upon which charge was based occurred in the month preceding the charge, i.e., meeting that occurred in month preceding charge modified conditions of employment from those set forth in memorandum which issued more than six months prior to the filing of the charge). See also Part 2, Chapter A concerning Filing a Charge.



*If any of the legal impediments described above applies, the Agent informs the person. But, the Agent advises person that s/he has the right to file a charge and a determination will be made by the RD.*

## 5. E-MAIL AND PRE-CHARGE ASSISTANCE:

Agents may reply by e-mail to inquiries received by e-mail. All Agents check their e-mail for messages with the same frequency that they check their telephone messages.

## 6. CONFIRMATION AND DOCUMENTATION OF TECHNICAL ASSISTANCE:

### a. *Confirmation:*

Under no circumstances is it permissible for an Agent to allow a technical assistance call to be taped. An Agent who is advised that a conversation is actually being taped informs the caller that taping is against OGC policy and then terminates the conversation. If asked, the Agent may inform the caller that if the caller makes a specific inquiry in writing, the Region will respond in writing.

### b. *Documentation:*

Calls approximating at least five minutes duration are documented on the Technical Assistance form. Calls of shorter duration are not documented.



## [Part 2, Chapter A](#) concerning Filing a Charge.

## B. ALTERNATIVE DISPUTE RESOLUTION SERVICES

**OVERVIEW:** The provision of ADR services supports the FLRA's Agency-wide initiative to assist labor and management parties to develop collaborative relationships and to provide dispute resolution services. The OGC furthers its mission to provide leadership in promoting stable and productive labor-management relationships in the Federal sector by providing ADR programs both before and after a charge has been filed. See § [2423.1](#)(a) and (b). Section [2423.2](#) codifies the OGC's ADR services.

**OBJECTIVE:** To list the types of ADR services the OGC provides to parties and to describe how they promote stable and productive labor-management relationships in the Federal sector.

### 1. WHAT ADR SERVICES ARE PROVIDED:

*Pursuant to § [2423.2](#)(b), the parties may request the following services:*

- Facilitation - Assist parties in improving their labor-management relationships;
- Intervention - Assist parties in resolving dispute underlying pending charge using an interest-based alternative case-processing technique. See [Part 3, Chapter B](#), which describes this in more detail;
- Training - Train union officials and management representatives on their rights and responsibilities under the Statute, and how to avoid litigation over those rights, using interest-based bargaining skills and techniques; and
- Education - Work with the parties to recognize the benefits of, and establish processes for, avoiding disputes and resolving disputes by consensual rather than adversarial methods.

**2. BENEFITS OF ADR SERVICES:**

- Ensure understanding of, and compliance with, the Statute;
- Assist the parties in developing consensual problem-solving skills to reduce their reliance on adversarial methods;
- Enable Federal Agencies in partnership with Federal Unions to deliver the highest quality services; and
- Enhance the quality of work life and the well-being of employees and managers.

**3. ADR SERVICES PROVIDE LEADERSHIP AND PROMOTE STABLE AND PRODUCTIVE LABOR-MANAGEMENT RELATIONSHIPS:**

- a. *OGC ADR programs are designed to do the following:*
- Identify and assess the needs of Federal sector Unions and Agencies for facilitation, intervention, training and education services;
  - Facilitate the parties' development and maintenance of effective labor-management relationships;
  - Provide intervention assistance to resolve pending disputes without litigation;
  - Provide skills training jointly to Federal sector labor and management;
  - Provide training on the Statute which enables the parties to understand the legal doctrines and their effect on day-to-day labor-management relations;
  - Educate the parties on the benefits of collaborative approaches to labor-management relations, including partnerships;

- Create innovative programs that are responsive to the needs of the parties;
  - Effectively commit resources based on established criteria;
  - Promote alternative dispute resolution approaches to resolving disputes;
  - Evaluate the effectiveness of the ADR programs used in furtherance of this policy; and
  - Utilize OGC employees' labor law and problem-solving expertise to assist Federal employees, Unions and Agency management in avoiding and resolving disputes and enhancing labor-management relationships.
- b. *Description of ADR Programs:*
- Training for union and management representatives for the creation and maintenance of collaborative labor-management partnerships, for example, under E.O. 12871 (October 1, 1993);
  - Assistance provided to union and management representatives which supports their efforts to improve and strengthen their working relationships.
  - Services provided to union and management representatives who are experiencing or expect significant ULP activity due to relationship difficulties or external influences, and agree to use OGC ADR methods to try to resolve their conflicts and disputes.
  - Training for union and management representatives on the rights and duties of employees, unions, and management under the Statute to ensure that the Statute's purposes are understood and supported and to assist the parties to improve their labor-management relationships within the requirements of the Statute;
  - Training for union and management representatives on interest-based negotiation and problem-solving techniques for



contract negotiations and labor-management partnership activity; and

- Training for union and management representatives to assist them in designing ADR approaches to meet their needs.



[ATTACHMENT 1B1](#) contains a more exhaustive description of the above services.

- c. *Examples of when ADR assistance is appropriate and type of assistance offered:*
- Newly certified unit - statutory training for union officers and Agency Managers;
  - Newly certified unit in activity that has no experience with labor-management issues - statutory training; and relationship building;
  - Numerous ULP charges are filed at one activity - intervention; and
  - Parties wish to explore ways to implement pre-decisional involvement - partnership training.
- d. *Examples of symptoms that indicate assistance is appropriate and type of assistance offered:*
- Adversarial nature of negotiations; contract negotiations have been ongoing for too long a period of time - interest-based negotiations and relationship building; and
  - General interactions between union and management representatives are poor, e.g., parties do not talk to each other; no joint meetings are held; allegations are personalized; extraneous matters are raised - relationship building.
- e. **C+P** *Criteria for providing ADR services:*

The OGC concentrates its limited resources where they have the potential to achieve the greatest results. Based on this objective, RDs

consider specific factors in determining whether ADR programs and services are undertaken. Not all of the following factors are relevant to each situation:

- **Commitment of the parties to improve their labor-management relationship:**

The OGC expends its limited resources only when both parties are committed to improve their relationship. Parties must be willing to be represented by officials who are committed to the process undertaken and empowered with the authority to commit their principals to specific actions intended to improve their relationship. Resources are not committed if either party fails to empower its representatives.

- **Availability of OGC employees to meet the parties' needs:**

A program is not undertaken unless there are employees available to assign to the specific program. RDs only assign those employees who are experienced in the type of ADR program undertaken and who are available at a time agreeable to both parties.

- **Balancing of resource needs among OGC programs:**

The OGC continues to administer effectively its limited resources to achieve the maximum results in fulfilling its statutory mission. RDs thus take into consideration the pending ULP and representation caseload, the geographic location and timing of the program, the Agency's agreement to pay the travel and per diem of the RO employees involved and the size of the group which is involved in the ADR program.

- **Organizational level of the Agency and Union:**

The relative organizational level of the Agency and Union that would be involved in the program is taken into consideration in order to maximize resources. For example, RDs evaluate whether the parties are at a Department, bureau, Agency-wide or facility level and whether the Union involved has national recognition, is a national council or a local affiliate.

- **Character of labor-management relationships:**

As part of the decision-making process, an evaluation of the character of the current labor-management relationship is undertaken. For example, RDs take into consideration the extent of the parties' reliance on third-party procedures and whether there are current pending disputes before a third-party neutral.

- **The OGC's commitment to, and the parties' need for, continued assistance:**

In determining whether to commit resources to a program, the OGC evaluates previous commitments to, and the need for, continued assistance. RDs evaluate whether the parties are continuing a course of action designed to improve their relationship, as well as their continued need for ADR assistance.

- **Nature and extent of prior assistance:**

Similarly, an evaluation is made of the nature and extent of prior assistance provided to the parties through an ADR program or any other type of assistance.

- **Acceptability of OGC assistance by the Agency and Union:**

The acceptability of RO assistance by the Agency and Union also is evaluated. The weight of this factor varies depending upon the type of ADR program under consideration. For example, the degree of acceptability should be greater in a facilitation to improve a relationship, as compared to an intervention to resolve a pending ULP or representation dispute.

- **OGC involvement furthers dispute resolution:**

All ADR programs further the OGC's mission to provide leadership and promote stable and productive labor-management relationships in the Federal sector. The Regions do not undertake an ADR program which is not intended to further the mission.

- f. **C+P** *Additional criteria if request is for pre-charge ADR assistance pursuant to § [2423.1\(a\)](#):*
- Whether or not dispute involves a ULP;
  - How close is it to the 6-month time limit for filing a charge;
  - Parties are informed about the 6-month time period for filing charge is not tolled; and
  - Magnitude of the violation.

Among other things, the Region considers whether there is potential for the situation to get worse in a short period of time.

#### **4. HOW ADR SERVICES ARE INITIATED:**

ADR services may be initiated by the OGC or by a request or agreement of the parties. Depending upon the type of ADR service requested, it may be appropriate to require that the parties jointly agree that the Region provide such services, e.g., intervention or partnership training. In any event, the Region provides such services consistent with OGC criteria.

For example, parties may jointly request skills training or assistance in enhancing their labor-management relationship, or the OGC may suggest to the parties that they may benefit from such training or assistance. Irrespective of how these ADR services are initiated, the OGC creates innovative programs that are responsive to the varying needs of the parties.

#### **5. DECIDING WHETHER TO PROVIDE AN ADR SERVICE:**

Upon receipt of a joint request or a request from a Union or Agency for an ADR service, the Region explains the process for delivering an ADR program and obtains sufficient information from the parties to enable the RD to:

- Diagnose the needs of the parties;
- Apply the criteria listed above; and
- Determine which, if any, ADR program will be offered.

**6. NOTIFICATION OF THE PARENT OR NATIONAL ORGANIZATION:**

Before providing an ADR program, the Agent discusses with the parties whether the parties' national or parent organization should be notified of the use of any ADR program, and if so, how it will be accomplished.



**[Part 3, Chapter B](#) concerning Alternative Case Processing Procedure.**