SECNAV INSTRUCTION 4200.36B

From: Secretary of the Navy

Subj: CONTRACTOR LABOR RELATIONS

Ref: (a) Federal Acquisition Regulation (FAR) Part 22
(b) Defense Federal Acquisition Regulation Supplement (DFARS) Part 222
(c) DFARS Procedures Guidance and Information (PGI) Subpart 222
(d) Navy Marine Corps Acquisition Regulation Supplement (NMCARS) Part 5222

Encl: (1) Responsibilities
      (2) Referral Listing
      (3) Sample Letter: Reserve Gate Procedures for Use During Labor Picketing on Naval Installations
      (4) Sample Reserve Gate Signs for Use During Labor Picketing on Naval Installations

1. Purpose. To establish Department of the Navy (DON) policies and procedures to fully execute its operational responsibilities regarding contractor labor relations and standards.

2. Cancellation. SECNAV INSTRUCTION 4200.36A.

3. Summary of Changes. This instruction updates references to supplemental regulations, organization names, and related telephone numbers, and e-mail addresses, and removes contracting officer responsibilities, directing them to FAR Part 22, DFARS Part 222, PGI Subpart 222, and NMCARS Part 5222.

4. Applicability. This instruction applies to all DON personnel involved directly or indirectly in contractor labor relations matters and contract labor standards.

5. Policy

   a. The collective bargaining rights and obligations of employers (including contractors), employees, and employee representatives are set by law. Pursuant to FAR 22.101-
1(b)(1)(Reference (a)), it is DON policy to remain neutral and impartial regarding contractor labor-management relations and disputes. Accordingly, DON personnel shall not participate in or otherwise attempt to influence collective bargaining campaigns, or undertake to conciliate, mediate or arbitrate disputes between contractors and labor unions representing or seeking to represent contractor employees.

b. Nonetheless, the DON encourages fair and peaceful labor-management relations on DON installations and contracts. Such relations, as well as the proper and consistent implementation of labor standards laws under DON contracts, enhance the acquisition process by promoting good business and effective contracting in terms of price, quality, speed of delivery, customer satisfaction, and mission success. Consistent with these principles, DON personnel shall cooperate with Federal and State agencies having responsibilities relating to contractor labor-management relations and standards activities affecting DON operations.

c. Strikes, work stoppages, picketing and other labor demonstrations are often legitimate and permissible actions taken by labor unions and workers to pursue their rights to collectively respond to labor disputes with a contractor. Picketing and other labor demonstrations generally are not permitted on DON installations or controlled sites. In most instances, picketing outside of a DON installation can be legally confined to the area immediately surrounding one or more designated gates, known as reserve gates, by restricting the contractor (and its employees, management, suppliers and vendors) that is the target of the picketing activity to use such gate(s). This procedure allows other contractors, their employees, management, suppliers, and other visitors not involved in the dispute to have access to the installation or controlled site through a gate that has no picket line, known as a neutral gate.

d. Tenant organizations on DON installations may include other Federal agencies, other DOD or DON organizations, non-appropriated fund activities, and private-sector companies not under Navy contract (e.g., credit unions and banks, fast-food restaurants, schools, automobile service stations). These employers could also experience labor disputes between management and employees or their union representatives.
e. Contractor labor relations activities at overseas commands or installations are usually governed by the laws and regulations of the host country. This includes labor disputes and employment conditions involving host country nationals working for DON contractors.

f. The DON expects its military and civilian personnel to continue the normal installation or contractor plant functions during a labor dispute.

g. The DON does not permit off-duty military personnel to work at an hourly rate of pay less than the minimum or prevailing wage or to accept employment in jobs temporarily vacated by a contractor or other employer's striking workers. However, DON military personnel who were employed by a contracting firm before it became involved in a labor dispute need not be required to terminate employment solely because of the dispute.

h. For questions concerning the employment or labor relations of federal civilian workers, or the activities of unions representing Federal civilian workers on DON installations (e.g., representation, access, employee contact, meetings, distributing literature), contact the Office of the Deputy Assistant Secretary of Navy (Civilian Human Resources) or the Human Resources Office servicing the installation.

6. Responsibilities. See enclosure (1).

7. Referral Listing. See enclosure (2).

8. Sample Letter: Reserve Gate Procedures for Use During Labor Picketing on Naval Installations. See enclosure (3).

9. Sample Reserve Gate Signs for Use During Labor Picketing on Naval Installations. See enclosure (4).

10. Records Management

a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned according to the records disposition schedules found on the Directives and Records Management Division (DRMD) portal page:
b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local Records Manager or the DRMD program office.

Distribution:
Electronic only, via Department of the Navy Issuances Web site
https://www.secnav.navy.mil/doni
RESPONSIBILITIES

1. Naval Regional Commanders and the Commandant of the Marine Corps shall:

   a. Designate a Labor Relations Coordinator and an alternate. These designees are responsible for direct contact and liaison with the Navy Labor Advisor in the event of an actual or potential contractor labor dispute. In these situations, the designees must have ready access to installation commanders.

   b. Provide the Navy Labor Advisor the names, addresses, e-mail addresses, and telephone numbers of its Labor Relations Coordinator and alternate, and provide notice of changes in a timely manner. This does not preclude direct communications between the Navy Labor Advisor and the installation commander and staff members as each situation may require.

2. Installation Commanders or his/her designee shall, with respect to the following contractor labor relations matters:

   a. General procedures on admitting private sector labor union representatives to DON installations. Establish procedures to be followed by all installation personnel regarding admission of the general public to a DON installation. Such procedures shall specify that:

      (1) Labor union representatives will be subject to the same access procedures as is the general public.

      (2) Any variations to installation access procedures, which are made by DON personnel for the purpose of either accommodating or restricting access specifically by labor union representatives, shall be coordinated with and approved by the Navy Labor Advisor.

      (3) Access to enter a DON installation does not grant the labor union representative permission to access contractor work sites on that installation without prior approval of the prime contractor.
(4) Permission to enter an installation does not grant the right to enter secured or controlled areas, to hold meetings, collect dues, make speeches, or engage in activities that are disruptive to contractor or DON operations or that violate any safety or security regulations that apply to persons visiting the installation.

(5) In accordance with established local installation access procedures, the installation commander may issue an indefinite or term-specific entry pass to labor union representatives who represent workers of multiple contractors on the installation or whose activities may otherwise require regular and frequent visits.

b. Procedures on admitting private sector labor union representatives for union voting and for organizing and representational activities on DON installations. In addition to the procedures set forth in Section 2a above, the installation commander or his/her designee shall further ensure that the established procedures:

(1) Permit labor union representatives reasonable accommodation to access contractor employees working on a DON installation to organize employees and to engage in representational activities under a collective bargaining agreement (e.g., to process employee grievances), subject to the following restrictions:

(2) Distribution of literature and contact with individual contractor employees shall be outside the contractor’s work areas and shall be restricted to the contractor employees’ non-work hours, such as before or after work, or during lunch or other breaks.

(3) Any denial of access for organizational or representational purposes shall be coordinated in advance with the designated Labor Relations Coordinator and Navy Labor Advisor.

(4) Upon request of the National Labor Relations Board (NLRB) and after coordination with the designated Labor
Relations Coordinator and Navy Labor Advisor, provide the NLRB with a suitable place on the DON installation to conduct a union bargaining unit certification or decertification election.

(5) Upon request of a union representing contractor employees, and after coordination with the designated Labor Relations Coordinator and Navy Labor Advisor, may provide labor unions with space on a DON installation or controlled site to hold collective bargaining agreement ratification votes.

(6) Ensure that no union activity except as provided in this instruction is permitted on properties owned or controlled by the DON. This prohibition includes internal union elections at all levels.

c. Labor disputes at DON installations or facilities.

(1) Upon receipt of notice of an actual or potential labor dispute, the installation commander or designee shall:

   (a) Immediately notify the designated Labor Relations Coordinator and the Navy Labor Advisor, either directly or through the designated Labor Relations Coordinator. Follow-up notification shall be made on a frequent and regular basis until the matter is resolved, and/or when significant changes occur.

   (b) Instruct DON installation personnel to refrain from expressing an opinion on the merits of or issues involving a contractor labor relations dispute, in order to ensure DON impartiality and minimize the impact on the DON mission.

   (c) Either directly or through the designated Labor Relations Coordinator, request the advice and guidance of the Navy Labor Advisor in determining appropriate procedures for entering and exiting the installation or facility if there is reason to believe that the physical safety of DON personnel is endangered by activities involving a contractor labor dispute.

(2) The cognizant DON official should request advice or guidance from the Navy Labor Advisor if the labor dispute occurs at a contractor facility.
d. Response to picketing and reserve gate procedures.

   (1) As soon as pickets appear or notice is received of potential picketing or other labor demonstration, the installation commander or designee, shall:

      (a) Notify the designated Labor Relations Coordinator and the Navy Labor Advisor (either directly or through the designated Labor Relations Coordinator) and request the Navy Labor Advisor’s assistance and guidance in determining the need for reserve gate procedures or other actions to minimize the impact on the installation and its programs.

      (b) Broadly distribute a statement informing all military and civilian personnel of the labor situation in general, neutral terms. Include in the statement the DON policy of strict neutrality, and the need to obey any special traffic or gate instructions.

      (c) Ensure that a special log is maintained of events and activities at the reserve gate and the picket lines.

      (d) Contact law enforcement officials to review installation boundaries and jurisdictions and ensure open and safe travel on public access routes to and from the installation, if necessary.

   (2) If it is determined that a reserve gate is required, the installation commander shall:

      (a) Send appropriate letters to the contractor and the union(s) involved (see enclosure (3)).

      (b) Post signs at the reserve gate(s) (see enclosure (4)).

      (c) Post signs at all other installation gates (see enclosure (4)).

   (3) During the course of the picketing, the installation commander or designee shall:

      (a) Ensure that employees, management, vendors, and suppliers of the contractor that is involved in the labor
dispute and that is the target of the picketing activity use only the designated reserve gate(s).

(a) Ensure that guard personnel constantly monitor both reserve and neutral gates for compliance with the reserve gate restrictions. Use of neutral gates by employees, management, vendors, and suppliers of the contractor that is involved in the labor dispute and that is the target of the picketing activity may result in the union legally picketing all gates to the installation, including the neutral gate(s).

(b) Inform the local law enforcement authorities of any strike-related disturbances outside the DON installation boundaries.

(c) Immediately inform the designated Labor Relations Coordinator and the Navy Labor Advisor (either directly or through the designated Labor Relations Coordinator) of any failure by the union to confine picketing to the designated reserve gate, or failure of persons to comply with the reserved gate procedures.

e. Labor disputes at a DON installation in situations involving tenant organizations not working under a DON contract.

(1) The installation commander or designee shall ensure that terms of agreement for non-Federal tenant organizations shall include a requirement that the tenant notify the installation commander or designee of any potential or actual labor dispute that may impact installation or tenant operations. Notification shall include identifying the parties to the dispute, actions taken by the tenant to resolve the dispute, and potential impact and length of the dispute.

(2) The installation commander or designee shall:

(a) Immediately notify the designated Labor Relations Coordinator and the Navy Labor Advisor (either directly or through the designated Labor Relations Coordinator), of potential or actual labor disputes involving tenant organizations, and also notify other organizations at the installation that may be impacted by the dispute.
(b) Either directly or through the designated Labor Relations Coordinator, request and consider the advice and guidance of the Navy Labor Advisor in determining the appropriate response to contractor labor relations disputes involving tenant organizations.

f. Contractor labor relations disputes at overseas commands and installations

(1) The installation commander or designee shall:

(a) Immediately notify the designated Labor Relations Coordinator and the Navy Labor Advisor (either directly or through the designated Labor Relations Coordinator) of potential or actual labor disputes involving contractors at overseas installations.

(b) Either directly or through the designated Labor Relations Coordinator, request and consider the advice and guidance of the Navy Labor Advisor in determining the appropriate response to contractor labor-relations disputes overseas.

(c) In conjunction with, or in the absence of, a Labor Relations Coordinator, submit for review any proposed supplements to this Instruction to the Navy Labor Advisor prior to issuance.

3. Labor Relations Coordinator shall:

a. Coordinate with the Navy Labor Advisor on contacts with and responses to inquiries regarding contractor labor relations issues from national or international offices of contractor associations, labor unions, or Federal agencies (other than routine contacts with the DOL).

b. Coordinate with the Navy Labor Advisor on responses to non-routine inquiries involving DON contractor labor relations policies or procedures.

c. Upon receipt of notice of an actual or potential labor dispute, including strikes, picketing, or other labor demonstrations, immediately notify and coordinate with the Navy Labor Advisor. The Labor Relations Coordinator shall also
immediately notify the installation commander or designee. Follow-up notification shall be made on a frequent and regular basis until the matter is resolved, and/or when significant changes occur.

d. Submit to the Navy Labor Advisor for review any proposed supplements to this Instruction prior to issuance.

e. As instructed by the installation commander or designee, provide notification of potential or actual labor disputes involving tenant organizations and contractors at overseas installations to the Navy Labor Advisor, and to other organizations at the installation that may be impacted by the dispute.

4. Navy Labor Advisor

a. Support commands, installations, and subordinate activities on matters involving contractor labor relations and contract labor standards. For contact information for the Navy Labor Advisor and Naval Facilities Engineering Command Labor Advisor, reference enclosure (2).

b. Develop, implement, and revise DON policies and procedures regarding contractor labor relations and contract labor standards.

c. Coordinate contractor labor relations and contract labor standards program operations.

d. Provide recommendations, guidance, and other assistance to DON commands, installations, and other field activities. Such assistance:

(1) Shall include an assessment of disputes between contractors and labor organizations, with recommendations for and guidance to installation commanders, Labor Relations Coordinators, and contracting officers regarding the appropriate course of action.

(2) Shall instruct DON personnel on how to minimize the adverse impact on installation operations or missions of a labor demonstration or picketing outside of a DON installation.
(3) May include on-site assistance, as appropriate.

e. Monitor and report status of major collective bargaining negotiations and labor-management disputes affecting significant DON programs.

f. Coordinate programs to provide training to DON personnel on agency responsibilities regarding contractor labor relations matters.

g. Where appropriate, represent DON in contractor labor relations matters before national and international offices of contractor associations, labor unions, and Federal and State agencies (other than routine contacts with the DOL).

h. Coordinate with NAVFAC Labor Advisor on proposed labor relations policies, procedures, and programs prior to issuance.

i. Provide support to all DON training programs on matters pertaining to contractor labor relations and contract labor standards. DON contracting and other elements are encouraged to request training from the Navy Labor Advisor on these subjects on a regular basis, where budget and time permits.

5. NAVFAC Labor Advisor

a. Develop, issue, maintain written guidance on the administration of labor standards on construction contracts and guidance on conducting compliance checks and investigations under the Construction Wage Rate Requirements statute (formerly known as the Davis-Bacon Act) and the Contract Work Hours and Safety Standards statute (formerly known as the Contract Work Hours and Safety Standards Act).

b. Prepare and timely submit to DOL the semiannual Labor Standards Enforcement Report required by reference (a), FAR 22.406-13 and a general outline of its proposed construction program required by reference (b), DFARS 222.404.

c. Consistent with NAVFAC procedures, obtain notification of investigations that disclose particularly egregious violations of the Construction Wage Rate Requirements statute and/or the Contract Work Hours and Safety Standards statute (e.g., significant underpayment of wages or benefits due
workers, extensive falsification of records, findings of willful violations, and recommendations for debarment).

d. Provide training relating to construction and service contracts on matters pertaining to contractor labor relations and contract labor standards. NAVFAC Labor Advisor conducts annual CTC 422 Application of Labor Laws to Federal Contracts training for the Naval Facilities Institute, where budget and time permits.

e. Coordinate with Navy Labor Advisor on proposed labor relations policies, procedures, and programs prior to issuance.

6. Contracting Officers. Responsibilities relating to contractor labor relations and standards are set forth in FAR Part 22, DFARS Part 222, PGI Part 222, and NMCARS Part 5222.
REFERRAL LISTING

For Issues Concerning Contractor Labor Relations and Contract Labor Standards (other than Construction):

DON Contract Industrial Relations/Labor Advisor
OASN (RD&A), DASN (AP)
1000 Navy Pentagon, BF-992
Washington, DC 20350-1000
NavyLaborAdvisor@navy.mil
(703) 693-2939

For Issues Concerning Construction Contract Labor Standards or other Contractor Labor Relations or Contract Labor Standards issues involving NAVFAC contracts or programs:

Command Labor Advisor
NAVFAC HQ Acquisition
1322 Patterson Avenue
Washington, DC 20374-5065
Lynn.Forbes@navy.mil
(360) 396-0272
SAMPLE LETTER: RESERVE GATE PROCEDURES FOR USE DURING LABOR PICKETING ON NAVAL INSTALLATIONS

Sample Letter to Notify Targeted Contractor and Union of Reserve Gate Procedures:

Address Letter to:

[Contractor Name and Address] and
[Union Name and Address]

SUBJ: RESERVE GATE PROCEDURES

I have been advised that a labor dispute between [contractor] and [union] may result in picketing at or near the [name of installation].

The Department of Navy maintains strict neutrality in contractor labor-management disputes. Consistent with this policy, and in order to ensure that the mission and operations of this installation are not adversely impacted by this labor action, please observe the following procedures effective [specify exact date and time] and until such procedures are removed by written direction:

All employees and suppliers of [contractor name] shall enter and exit this installation only through the designated reserve gate: [specify in detail the reserve gate(s)].

The contractor shall provide immediate notice of this requirement to all employees and suppliers and shall ensure that those persons comply with this directive.

The [union name] and its members shall cooperate with this directive by limiting any picketing or other labor action to the vicinity of the designated reserve gate.

[Installation] will post appropriate signs identifying the reserved gate at all other entrances to the installation and will monitor those entrances to ensure compliance with this directive.

All questions concerning this requirement shall be directed to [installation commanding officer or designated point of contact].

Signature: [installation commanding officer]
SAMPLE RESERVE GATE SIGNS
FOR USE DURING LABOR PICKETING ON NAVAL INSTALLATIONS

All signs must be placed in a prominent location, and easily readable from a distance of 75 feet by vehicle operators and pedestrians entering and exiting the installation.

1. **Sign for the Designated Reserve Gate** -

   "NOTICE:

   ALL EMPLOYEES AND SUPPLIERS OF

   [Name of Contractor Involved in Dispute]

   MUST ENTER AND EXIT THIS INSTALLATION VIA THIS GATE ONLY,

   BY ORDER OF THE COMMANDING OFFICER"

2. **Sign for all other Non-Reserve (Neutral) Gates on the Installation** -

   "NOTICE:

   ALL EMPLOYEES AND SUPPLIERS OF

   [Name of Contractor Involved in Dispute]

   MAY NOT ENTER OR EXIT THIS INSTALLATION VIA THIS GATE.

   GATE [Clearly identify the Reserved Gate by Name ] IS RESERVED FOR THE USE OF [Contractor Name] EMPLOYEES AND SUPPLIERS."

   BY ORDER OF THE COMMANDING OFFICER