



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
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WASHINGTON, DC 20350-1000

SECNAVINST 4200.36A
ASN (RD&A) DASN (ACQ)
08 Aug 2005

SECNAV INSTRUCTION 4200.36A

From: Secretary of the Navy

Subj: CONTRACTOR INDUSTRIAL LABOR RELATIONS

Ref: (a) FAR Part 22
(b) DFARS Part 222
(c) NMCARS Part 5222

Encl: (1) Referral Listing
(2) Sample Letter: Reserve Gate Procedures
(3) Sample Reserve Gate Signs

1. Purpose. To issue Department of the Navy (DON) policies and procedures to fully execute its responsibilities in contracting and operational matters under the various statutes, regulations, executive orders, and policy directives regarding contractor industrial labor relations.

2. Cancellation. SECNAVINST 4200.36.

3. Summary of Changes. This instruction updates references to supplemental regulations, organization names, and related telephone and facsimile numbers, and email addresses.

4. Applicability. This instruction applies to all DON personnel involved directly or indirectly in contractor industrial labor relations matters including contract labor standards and contractor equal employment opportunity programs.

5. Authority and Responsibility

a. Authority

(1) The Navy Labor Advisor has responsibility for developing, implementing, and revising DON policies on matters involving contractor industrial labor relations and

contract labor standards, in accordance with references (a), (b), and (c).

(2) To ensure uniformity of contractor industrial labor relations practices and procedures throughout the DON, proposed supplements to this instruction shall be sent to the Navy Labor Advisor for approval prior to issuance.

b. Responsibility

(1) The Navy Labor Advisor provides support to commands, installations, and subordinate activities on matters involving contractor industrial labor relations and contract labor standards, including:

(a) Coordinating contractor industrial labor relations and contract labor standards program operations;

(b) Providing guidance and assistance to DON commands, installations, and other field activities;

(c) Monitoring and reporting status of major collective bargaining negotiations and labor-management disputes affecting significant DON programs; and

(d) Coordinating programs to provide training to DON personnel on agency responsibilities regarding contractor industrial labor relations matters.

(2) DON base commanders, contracting officers, Labor Relations Coordinators and other designated personnel are responsible for actions and procedures specified within this instruction.

(3) DON personnel shall coordinate all actions taken under this instruction with appropriate Offices of Counsel, as necessary.

(4) 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).

c. Representing the DON

(1) The Navy Labor Advisor represents the DON in contractor industrial labor relations matters with national and international offices of Federal agencies (other than routine contacts with the Department of Labor (DOL)), contractor associations, and labor union organizations. The Navy Labor Advisor may delegate representation on contractor labor relations matters as necessary.

(2) Naval Facilities Engineering Command (NAVFACENGCOCM) is assigned responsibility for preparing and maintaining contractor industrial relations policy and procedures on contracts with construction requirements. NAVFACENGCOCM shall coordinate proposed labor relations policies, procedures, and programs with the Navy Labor Advisor prior to issuance. Such policies, procedures, and programs shall be in accordance with requirements established in the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), and Navy Marine Corps Acquisition Regulation Supplement (NMCARS).

6. Policy

a. General. It is DON policy to remain neutral regarding contractor labor-management relations. The DON encourages fair and peaceful labor-management relations between employers and workers on DON installations and contracts. Good contractor labor-management relations, as well as proper and consistent implementation of labor standards in DON contracts, promote good business and effective contracting in terms of price, quality, speed of delivery, customer satisfaction, and mission success.

b. Collective Bargaining and Union Representation

(1) The collective bargaining rights and obligations of employers (including contractors), employees, and employee representatives are set by law. Collective bargaining activities conducted by private sector employees or labor union representatives on a DON installation are restricted by DON policy (reference Section 9, Procedures).

(2) DON personnel shall not participate in, facilitate, interfere with, or try to influence collective bargaining, organizing campaigns, or disputes between

contractors and labor unions representing or seeking to represent contractor employees.

(3) DON personnel shall cooperate with Federal and state agencies having responsibilities relating to industrial labor-management relations activities affecting DON operations.

c. Contractor Employment of Off-Duty Military Personnel. The DON does not permit off-duty military personnel to work at an hourly rate of pay less than the minimum or prevailing wage. The DON does not permit off-duty military personnel 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.

7. Action

a. Naval regional commanders and the Commandant of the Marine Corps shall each 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. Each regional commander and the Commandant of the Marine Corps shall provide to the Navy Labor Advisor the names, addresses, and telephone numbers of its Labor Relations Coordinator and alternate, and shall 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.

8. Procedures - Inquiries

a. DON personnel responding to inquiries from national or international offices of contractor associations, labor unions, or Federal agencies (other than routine contacts with the DOL) shall coordinate the response with the Navy Labor Advisor.

b. All major commands, major field activities, and base commanders seeking contact with national or international offices of contractor or industrial associations, labor unions, or Federal agencies on contractor labor-relations issues shall coordinate the contact with the Navy Labor Advisor.

c. A DON official who receives a non-routine inquiry involving DON contractor industrial labor relations policies or procedures, or who is confronted with an industrial labor relations matter not covered by this instruction, shall coordinate with the Navy Labor Advisor before responding or taking independent action.

9. Procedures - Admitting Private Sector Labor Union Representatives to DON Installations

a. General

(1) Installation commanders establish procedures governing admission of the general public to a DON installation. Labor union representatives will be subject to the same access procedures as is the general public. Any variations to base 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.

(2) Procedures shall make clear that 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.

(3) Procedures shall make clear that 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.

(4) In accordance with established local base 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.

(5) For questions pertaining to installation access and activities conducted by labor union officials representing Federal civilian workers, contact the Office of the Deputy Assistant Secretary of Navy (Civilian Human Resources).

b. Union Voting and Organizing Activities

(1) Labor union representatives are allowed reasonable accommodation to access contractor employees working on a DON base for organizational purposes subject to the following restrictions:

(a) The labor union representative's entry shall not violate safety or security regulations or procedures;

(b) The union representative's entry, presence, or activity shall not interfere with base operations or the contractor's work progress or activities; and

(c) Distribution of union 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 work, during lunch or other breaks, or after work.

(2) Union bargaining unit certification or decertification elections may be held on DON bases under the supervision of the National Labor Relations Board (NLRB). Base commanders must provide a suitable place for such elections upon the request of the NLRB, but only after coordinating such request with the Navy Labor Advisor.

(3) Collective bargaining agreement ratification votes may be held on DON bases or controlled sites at the discretion of the base commander, after coordinating such action with the Navy Labor Advisor.

(4) 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.

10. Procedures - Reporting and Dealing with Labor Disputes

a. Labor Disputes at Contractor Facilities

(1) When notice of an actual or potential labor dispute is received, the contract administration office shall provide notification in accordance with the procedures in references (a) and (b). Where the situation is urgent and unexpected, telephone notification is appropriate; written reports shall follow. The Navy Labor Advisor may provide recommendations for measures to minimize impact of the labor dispute on DON operations or programs. The Navy Labor Advisor may designate other offices to be included in the notification process, including other DOD organizations that may be impacted, and may expand the report as necessary to address the impact on programs or installations.

(2) Contracting officers who administer prime contracts are also responsible for reporting actual or potential labor disputes involving subcontractors if the subcontractor's dispute may significantly impact performance of the contract.

(3) Removal of Property or Material from Strike-Bound Plants and Facilities. When it becomes necessary to remove government-owned material from a strike-bound plant because the contractor is unable to deliver due to the strike, the contracting officer should request the advice and assistance of the Navy Labor Advisor in making the determinations necessary for these actions.

b. Labor Disputes at DON Bases or Facilities

(1) Contracting officers are responsible for reporting actual or potential strikes and picketing at DON bases where such actions involve or impact their contractors or subcontractors. Upon receipt of notice from a contractor or other party of a potential or actual labor dispute, the following actions should occur:

(a) The contracting officer shall notify the base commander and designated Labor Relations Coordinator immediately. The contracting officer must also provide immediate notification to the Navy Labor Advisor. The notification shall include any actions the contractor has taken to settle the matter, and the possible impact on base operations, support services, and active or projected construction projects on the base. Follow-up notification shall be made on a frequent and regular basis until the matter is resolved, and/or when significant changes occur.

(b) The Navy Labor Advisor will assess the labor dispute situation and will provide recommendations and

assistance to the base commander and contracting officer in deciding an appropriate course of action for the DON. The Navy Labor Advisor may also provide on-site assistance in these matters.

(2) In some instances, contractors are capable of contract performance through the use of non-striking personnel and/or new hires. If the contractor cannot continue to perform the requirements of the contract, and the performance is necessary for health, sanitation, safety, or other reasons, the contract shall be modified to reflect removal of the requirements from that contract. These requirements may then be accomplished by other means (i.e., in-house personnel or separate contract). These actions shall be taken only after the contracting officer coordinates with the Navy Labor Advisor.

(3) To ensure DON neutrality and minimize impact on the mission of the base, the base commander shall instruct DON personnel to refrain from expressing an opinion on the merits or issues of a contractor labor-management dispute.

c. Reserve Gate Procedures

(1) Strikes, work stoppages, picketing and other demonstrations are often legitimate and permissible actions taken by labor unions and workers to pursue their rights to collectively respond to disputes with a contractor on labor issues. Picketing and other demonstrations involving labor disputes generally are not permitted on DON installations or controlled sites.

(2) In cases involving a labor demonstration or picketing in the immediate vicinity outside of a DON installation, procedures established by policy or recommended by the Navy Labor Advisor must be taken to minimize adverse impact on base operations or missions. In all actions taken in response to a contractor labor dispute demonstration, DON personnel must remain neutral towards all parties in the dispute.

(3) Purpose of Reserve Gates. In most instances, picketing outside of a DON installation can be confined to the area immediately surrounding one or more gates by restricting the contractor(s) that is the target of the picketing activity to the use of designated gates, known as reserve gates. In restricting the targeted contractor, its employees, and suppliers to entering and exiting the installation through the reserve gates, the installation

obligates the union to limit its picketing to the immediate vicinity of those reserve gates. The procedure allows other contractors, their employees, and other visitors not involved in the dispute to have access to the installation or controlled site through a neutral gate, one that has no picket line.

(4) Response to Picketing. As soon as pickets appear or notice is received of potential picketing, the base commander or his/her designee shall, in coordination with the installation's designated Labor Relations Coordinator:

(a) Inform the Navy Labor Advisor and request assistance and guidance in determining the need for reserve gate procedures or other actions to minimize impact on the base and its programs;

(b) Publish a statement in the daily bulletin 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 reserved gate and at the picket lines; and

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

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

(a) Send appropriate letters to the contractor and the union(s) involved, reference enclosure (2);

(b) Post signs at the reserved gate(s), reference enclosure (3); and

(c) Post signs at all other base gates, reference enclosure (3).

(6) During the course of the picketing, the base commander shall:

(a) Ensure that contractor employees, management, vendors, and suppliers use only the designated gate(s);

(b) Ensure that guard personnel constantly monitor both reserve and neutral gates for compliance with the reserve gate restrictions. Use of neutral gates by personnel involved in the dispute may result in the union legally picketing all gates to the base;

(c) Inform the local law enforcement authorities of any strike-related disturbances outside the DON base boundaries; and

(d) Immediately inform the Navy Labor Advisor of any failure by the union to confine picketing to the designated reserve gate, or failure of persons to comply with reserved gate procedures.

d. Continuing Work Activities

(1) The DON expects its military and civilian personnel to continue the normal base or contractor plant functions during a labor dispute.

(2) If there is reason to believe that the physical safety of DON personnel is endangered by activities involving a contractor labor dispute, the base commander (or DON official at the contractor facility) should consider the advice and guidance of the Navy Labor Advisor in determining appropriate procedures for entering and exiting the facility.

e. Labor Disputes at a DON Base in Situations Not Involving a DON Contract

(1) 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 also experience disputes between management and employees or their representatives.

(2) Terms of agreement for non-Federal tenant organizations shall include a requirement that the tenant

notify the base commander or his/her designee of any potential or actual labor dispute that may impact base 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.

(3) The base commander or designated Labor Relations Coordinator shall provide notification of potential or actual labor disputes involving tenant organizations to the Navy Labor Advisor, and to other organizations on the base that may be impacted by the dispute.

f. Contractor Industrial Relations Disputes at Overseas Commands or Bases

(1) Contractor industrial labor relations activities at overseas commands or bases 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. However, overseas commands and installations must comply with this regulation where possible in administering their industrial labor relations affairs.

(2) Major commands, major field activities, and base commanders should consider the advice and guidance of the Navy Labor Advisor in determining the appropriate response to industrial labor-management disputes overseas.

(3) The base commander or designated Labor Relations Coordinator shall provide notification of potential or actual labor disputes involving contractors at overseas bases to the Navy Labor Advisor, and to other organizations that may be impacted by the dispute.

11. Contract Labor Standards Application, Administration, and Enforcement

a. Application

(1) The contracting officer is responsible for the application of appropriate contract labor standards in each contract, acting with good faith and within the intent of the law.

(2) Questions from DOL or other interested parties regarding the application of contract labor standards shall be referred to the Navy Labor Advisor (questions involving

NAVFACENGCOM contracts shall be referred to that command's Labor Advisor).

b. Enforcement of Labor Standards on Service and Supply Contracts

(1) DOL is responsible for monitoring, investigating, and enforcing the provisions of the Fair Labor Standards Act, the Service Contract Act (SCA), and the Walsh-Healey Public Contracts Act.

(2) When a contracting officer receives a complaint or other indication of violation of the labor standards in a service or supply contract, the complaint shall be referred promptly to the nearest office of DOL. The contracting officer should make every effort to maintain the confidentiality of the complainant, releasing the identity of the complainant only to officials of DOL. The contracting office should cooperate fully with DOL in its investigations. Any questions regarding such investigations or referrals shall be directed to the Navy Labor Advisor.

c. Enforcement of Labor Standards on Construction Contracts

(1) Contracting officers are responsible for ensuring compliance with the provisions of the Davis-Bacon Act (DBA) and the Contract Work Hours and Safety Standards Act (CWHSSA) where those standards are applicable in DON contracts. The routine enforcement process, or compliance checks, includes employee interviews, on-site inspections, and review of certified payrolls.

(a) NAVFACENGCOM is assigned responsibility for developing, issuing, and maintaining written guidance on the administration of labor standards on construction contracts and guidance on conducting compliance checks and investigations under DBA and CWHSSA.

(b) NAVFACENGCOM is assigned responsibility for preparing and submitting to DOL the Semi-Annual Labor Standards Enforcement Report as required by reference (a), Subsection 22.406-13.

(2) Complaints. The contracting officer shall respond promptly to any complaint received alleging labor standards violations on construction contracts. Allegations of DBA or CWHSSA violations shall be investigated and resolved in accordance with established procedures.

Allegations of other labor violations (e.g., safety and health, undocumented workers, discrimination) shall be referred to the appropriate enforcement agency (e.g., Occupational Safety and Health Administration, Office of Immigration and Customs Enforcement, Equal Employment Opportunity Commission).

(3) The NAVFACENCOM Labor Advisor shall be notified of investigations that disclose particularly egregious violations (e.g., significant underpayment of wages or benefits due workers, extensive falsification of records, findings of willful violation, and recommendations for debarment).

d. Responsibilities Under CWHSSA

(1) If a contractor is determined by investigation to be in violation of CWHSSA, the contractor will be liable for the underpayment of overtime compensation due the workers, and liable for an assessment of liquidated damages for each of those violations. Upon review of the investigation file, DOL will request that the contracting officer issue a recommendation regarding the assessment, reduction, or waiver of the liquidated damages computed by the investigator. (Reference (a), Subpart 22.302, and supplements.)

(2) The recommendations of the contracting officer shall be forwarded directly to the Navy Labor Advisor (or via the NAVFACENCOM Labor Advisor if the matter involves a NAVFACENCOM contract). The Navy Labor Advisor has the authority to:

(a) Reduce or waive the assessment of CWHSSA liquidated damages which total \$500 or less; or

(b) Reject the contracting officer's recommendations to reduce or waive CWHSSA liquidated damages, regardless of amount.

(3) The Navy Labor Advisor may delegate to the NAVFACENCOM Labor Advisor such authority for liquidated damages on NAVFACENCOM contracts.

e. The Navy Labor Advisor shall be informed of all major issues regarding contract labor standards application, administration, or enforcement.

f. Training in Contract Labor Standards Applications
and Contractor Industrial Labor Relations

(1) The Navy Labor Advisor and NAVFACENGCOM Labor Advisor shall provide support to all DON training programs on matters pertaining to contract labor standards and contractor industrial labor relations matters.

(2) Contracting officers are encouraged to request training from the Navy Labor Advisor or NAVFACENGCOM Labor Advisor on contract labor standards and contractor industrial labor relations matters on a regular basis, where budget and time permit.

JOHN J. YOUNG, JR.
Assistant Secretary of the Navy
(Research, Development and
Acquisition)

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<http://neds.daps.dla.mil>

REFERRAL LISTING

For Issues Concerning Contractor Labor-Management Relations:

Navy Labor Advisor
Office of the Assistant Secretary of the Navy
for Research, Development and Acquisition
Deputy Assistant Secretary of the Navy for
Acquisition Management
1000 Navy Pentagon, BF-992
Washington DC 20350-1000

Tel (703) 693-2939
FAX (703) 614-9394

email: NavyLaborAdvisor@navy.mil

For Issues Concerning Construction Contract Labor Standards:

Command Labor Advisor
Naval Facilities Engineering Command
Washington Navy Yard, Suite 1000 - ACQ
1322 Patterson Avenue
Washington, DC 20374-5065

Tel (202) 685-9137
FAX (202) 685-1569

email: NAVFACLaborAdvisor@navy.mil

For Issues Concerning Federal Employees:

(Labor and employee relations, and activities of unions representing federal employees)

Office of the Deputy Assistant Secretary of the Navy
(Civilian Human Resources)
Office of Civilian Human Resources
Head, Labor & Employee Relations Division
614 Sicard Street, Suite 100
Washington Navy Yard, DC 20374-5072

Tel (202) 685-6474
FAX (202) 685-6647
<http://www.donhr.navy.mil>

Or contact the Human Resources Office servicing the Navy installation.

SAMPLE LETTER: RESERVE GATE PROCEDURES
For Use During Contractor Labor-Management Disputes
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 CO or designated point of contact].

Signature: [installation commanding officer]

SAMPLE RESERVE GATE SIGNS
For Use During Contractor Labor-Management Disputes
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.

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”

Sign for all other Non-Reserve 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”