

Office of Human Capital Management  
NASA Guide to Pre-Decisional Involvement (PDI)  
2011

**Purpose**

The purpose of this guide is to provide management officials information on PDI per Executive Order (EO) 13522, “Creating Labor-Management Forums to Improve Delivery of Government Services” and to discuss practical applications of PDI. Consistent with Section 5(a) of the EO, nothing in this guide negates or usurps the provisions or requirements of any Collective Bargaining Agreement (CBA) or 5 U.S.C. (hereafter “the Statute”).

**References:**

- 5 USC Chapter 71, Federal Service Labor-Management Relations Statute
- EO 13522, “Creating Labor-Management Forums to Improve Delivery of Government Services”
- NASA Labor-Management Forum Implementation Plan
- Memo from Deputy Administrator Lori Garver dated September 28, 2010
- Memo from Deputy Administrator Lori Garver dated March 31, 2011

**Background**

NASA has three labor unions that together represent over 50% of the civil service workforce: the International Federation of Professional and Technical Engineers (IFPTE), the American Federation of Government Employees (AFGE), and Washington Area Metal Trades Council (WAMTC). Two of these unions, IFPTE and AFGE, represent a significant number of employees and have, therefore, been granted National Consultation Rights (NCR) at the Agency level. In addition, each union has a negotiated CBA at each Center where they are present. Each Center, except Dryden and Stennis has at least one CBA.

EO 13522, “Creating Labor-Management Forums to Improve the Delivery of Government Services”, requires Agencies to work with employees and their union representatives to engage

pre-decisionally in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106. This effort can be accomplished by sharing information with union representatives where it is not prohibited by law and by making a good-faith attempt to jointly resolve issues concerning proposed changes in working conditions and/or conditions of employment. Management and Labor can engage in PDI through established Agency or Center level Labor-Management Forums (LMF) as appropriate or through other work groups, committees, or informal discussions.

### **The Nature of PDI**

While there is no precise definition of PDI, or a single way to engage the unions in pre-decisional conversations, there are several points of view that Management may want to consider. For example, PDI can be used as a communication tool to share information, ideas, concerns, and opinions early in the process, before decisions are made, in order to achieve better and more supportable results with employee/labor buy-in without necessarily going through formal post-decisional processes available through a CBA and/or the Statute. PDI can also be used to provide an opportunity for employees, through their elected representatives, to address problems and craft solutions, identify efficiencies, and improve services in the workplace. In terms of collective bargaining, PDI may result in resolution of some issues outside the traditional bargaining processes through early collaboration using an interest-based, problem-solving approach.

PDI supplements the rights and obligations of Labor and Management under the Statute, but does not alter any of those rights. PDI is not negotiation (as defined in the Statute), nor is it intended to prevent or hinder National consultation rights or collective bargaining obligations. Although, PDI can result in Labor voluntarily waiving those rights to expedite implementation when PDI at either the Local or Agency level has resolved Labor's concerns). If mutual agreement is reached through PDI, a Memorandum of Agreement (MoA), Management Letter of Intent (LOI), or other appropriate documentation should result that eliminates the need for further consultation or statutory bargaining on the topic. PDI is not co-management, but is a powerful tool that adds value to management decision making by thoughtfully considering the perspective of rank-and-file employees who are members of a bargaining unit (as communicated

by their elected representatives) before decisions are made. This is not to say that Labor and Management will agree on every point, but rather that by using PDI, Management will have additional inputs and perspectives with which to make more fully informed decisions. Finally, because of its inherent pre-decisional nature, PDI is meant to be a collaborative, interest-based, problem solving approach and not an adversarial process.

### **Determining When PDI is Appropriate**

The EO indicates that PDI should be allowed in all workplace matters to the fullest extent practicable. When Management considers making changes that would impact working conditions or conditions of employment, PDI should occur prior to making final decisions. Likewise, PDI should also occur when new policies, practices, or procedures that impact employees are being developed. Management should consider the following when trying to determine if a pre-decisional discussion is necessary:

- Does the situation involve a workplace matter?
- Will current policy/process change as a result?
- Is a new policy/process being implemented?
- Does the new or changed policy/process impact the working conditions of employees?
- Will the decision result in an impact on a condition of employment or other workplace issue for employees?

If the answer to any of these questions is ‘Yes’, PDI discussion may be warranted.

Additionally, Labor may also seek to engage pre-decisionally with Management in order to address workplace issues through the Labor-Management Forum (LMF) or other appropriate processes such as working groups, joint committees, study teams, or other ad hoc groups.

### **Practicability of PDI**

There may be circumstances that would make PDI impracticable, such as matters involving national security or emergency situations. Implementation timeframes may also impact whether and how much time can be devoted to PDI. PDI is not intended or designed to be overly burdensome as the amount of time necessary is directly related to the amount of time Management would ordinarily take to make a decision. For example, if the decision is one that

Management would normally make within an hour meeting, PDI should typically take a few hours. PDI could even occur simultaneously by including Labor among the stakeholders present during the decision meeting. If Management is planning on a 3-month timeline for a major and complex decision, PDI will typically take weeks or even months, and again, should occur in parallel with Management's deliberations. If invoked as early as possible, and fully embraced by Management, PDI should not significantly extend the planned decision-making timeline. It is distinctly possible that implementation of the decision will not only be smoother, but actually faster if consultation and/or bargaining become unnecessary because of agreement reached during PDI.

Prior to approaching the union to participate in PDI, Management should engage in internal coordination and analysis to determine if the subject is appropriate for PDI discussion. There are additional case-by-case considerations that should also be considered in determining when PDI is appropriate and the timing of effective pre-decisional involvement. For example:

- Have legal and regulatory concerns been identified/addressed?
- Have the issues that need to be addressed been sufficiently identified?
- Is the matter ripe for PDI? Is the issue developed to the point where PDI is practicable?
- Are there sensitive matters and information being discussed and shared and can it be kept confidential until an appropriate time for disclosure?
- Is there flexibility, or a lack thereof, in developing potential options jointly with the union?
- Who will serve as the appropriate management/labor point(s) of contact for the subject (e.g., subject matter expert, Labor Relations Officer, etc.)?
- Establishment of timeframes when responses will be issued or received, information shared or reviewed.

### **Initiating a PDI Discussion**

Once it is determined that formal PDI discussions are warranted, the Agency or Center Labor Relations Officer (LRO) should be contacted to initiate the discussion between Management and

Labor. If the issue to be discussed has Agency-wide impact, the Agency LRO should be contacted. If the impact is limited to the Center, the Center LRO should be contacted. The local HR Office will be able to provide the contact information for the LROs.

### **Outcomes of PDI:**

PDI outcomes can vary depending on the nature and complexity of the issues being addressed. PDI can result in a consensus decision with recommendations accepted by all parties for implementation. Such agreements are typically documented in writing (as described above). If Labor is satisfied with the final outcome, further consultation or statutory negotiations may be waived. A thorough discussion and understanding of the issue without reaching final consensus or acceptance of recommendations for implementation may also result from PDI. In this situation, the management official making the decision should be provided with both points of view to consider when making the decision. PDI does not bind or obligate management to reach a specific decision or take a specific action. Likewise, the parties would still have the discretion to exercise their rights under the Statute and in accordance with the established NCR processes and the provisions of local CBAs.

### **General PDI Process:**

There is no official Agency-wide process for PDI and the process at each Center may vary based on local Labor-Management agreements and LMF charters. That said the following process is generally followed.

1. Determine if PDI is Warranted - Using the information in this guide, Management determines if a PDI discussion is warranted on a given topic. Labor may also raise topics for PDI discussion.
2. Contact your servicing LRO to facilitate the PDI discussion (ensure reasonable time is permitted for coordination).
3. Share Information with Labor - This could be in the form of draft documents, a briefing, or a meeting to discuss the topic. Sufficient information should be provided to Labor to ensure that a complete and thoughtful discussion can be held. In such cases where the information is of a confidential nature, Management can request that Labor not disseminate the information outside the Agency or beyond those labor officials with a

need to know. Where a response is time sensitive, Management and Labor should agree to a reasonable date when a response can be expected.

4. Dialogue About the Topic – Dialogue may occur in person, via telecon, or electronically. Depending on the depth and complexity of the topic, multiple meetings/discussions may be warranted. There is no prescribed amount of meetings that must occur, however the management participants should be knowledgeable of the subject and be empowered to make decisions on behalf of the organization.
5. Conclude PDI - After a reasonable amount of dialogue has been conducted, Labor or Management can elect to conclude the PDI process. At this point, Labor and Management should determine if consensus has been reached. A reasonable amount of dialogue will depend on the depth and complexity of the topic being addressed.
6. Provide outcome of PDI to appropriate Management Official - If consensus has been reached, the agreement should be documented (e.g., MoA) and provided to the Management Official. If consensus cannot be reached, the Management Official should be provided both points of view to consider.
7. Final Decision is Made - Once the final decision is made, Management may request that Labor waive (or shorten) their NCR or negotiation rights. Generally, if agreement is reached during the PDI process, Labor will be predisposed to waive their rights. If agreement was not reached during the PDI process, Labor is likely to exercise their rights under the Statute and/or their CBA.

### **PDI Best Practices**

The following best practices will help ensure collaborative and effective PDI discussions:

- The parties should have a common understanding of the issue(s) to be addressed.
- Trust between the parties, including the ability to be open, honest, and transparent regarding the issues. Generally, parties with a highly adversarial relationship do not achieve success in the PDI process.
- Willingness by both parties to engage in a problem solving approach based on interest based principles, including respect for each party's interests and concerns.
- Mutual understanding of confidential issues and what must not be disclosed to others.

- Common expectations concerning results (e.g. increased productivity; improved working conditions; better mission accomplishment, improving employee morale).
- Bilateral agreement and buy-in regarding implementation of decisions or other actions that should occur after PDI involvement has concluded.
- Shared understanding of the relationship between PDI and statutory collective bargaining obligations.
- Genuine agreement that PDI discussions are truly pre-decisional and that the discussion can be expected to influence the final decision.
- Empowered and informed participants on both sides; the PDI team cannot merely be gathering information for others to consider later – success requires that decision makers (either direct or delegated) on both sides must be directly involved in the PDI discussions.

### **Conclusion**

PDI is a consensus/recommendation process that Labor and Management can utilize as a vehicle to create solutions that benefit the organization as a whole. When successful, the benefits of PDI include better recommendations/decisions, timely implementation, and greater support of decisions by the parties. Parties should recognize that the initial implementation of this EO and of PDI includes an investment of time that was not necessary prior to the EO, however the potential benefits outweigh this initial burden and should result in strengthening the relationship between Labor and Management, resulting in more effective communications, fewer formal disputes, and better decisions at the Center and Agency level.