

FREQUENTLY ASKED QUESTIONS

On December 30, 2022, TSA Administrator David P. Pekoske issued a new Determination on Transportation Security Officers and Collective Bargaining (2022 Determination) that more closely mirrors Title 5, Chapter 71 (which is the labor law that applies to most Federal agencies). Please take a moment to read the full Determination, which is available on [iShare](#).

The FAQs below are intended to assist with understanding the 2022 Determination, as well as formal discussions and Weingarten rights. For additional information/questions, please contact your Labor Management Point of Contact (LMPOC) and/or field counsel.

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I. 2022 Determination

a. General

1. Are the employees in the bargaining unit the same?

Yes, the employees who are in the bargaining unit have not changed. Bargaining unit employees (BUEs) continue to be non-supervisory screening officers. *See 2022 Determination, Section 2.* STSOs, SSAs, and CCOs are not in the bargaining unit.

2. Is the American Federation of Government Employees (AFGE) still the union representing BUEs?

Yes, AFGE remains the union representing BUEs. You also may see AFGE referred to as the “exclusive representative” of the BUEs. *See 2022 Determination, Section 3.*

3. Does the CBA still have to be followed?

Yes, the CBA is still in effect and must be followed. The CBA will be in effect until a new CBA is negotiated, ratified by AFGE, and in effect. *See 2022 Determination, Section 4.*

4. Are trial period TSOs covered by the 2022 Determination and the CBA?

Yes, the 2022 Determination and the CBA cover trial period TSOs because they are BUEs.

5. Is the 2019 Determination still in effect?

No, the 2019 Determination is not in effect. The 2022 Determination superseded and replaced the 2019 Determination. *See 2022 Determination, Introduction.*

6. I read that the 2022 Determination more closely aligns TSA’s labor framework for BUEs with Chapter 71 of Title 5. Is TSA now under Title 5, Chapter 71 for BUEs?

No, TSA is not under Title 5, Chapter 71 for BUEs. Rather, the Administrator issued the 2022 Determination in accordance with his authority under the Aviation and Transportation Security Act (ATSA) to set the terms and conditions of employment for the screening workforce. *See* 2022 Determination, Section 1.

7. Will labor disputes now go to the Federal Labor Relations Authority (FLRA)?

No, labor disputes will not go to the FLRA. Labor disputes will be addressed through TSA’s grievance and arbitration policy (HCM 771-4, *National Resolution Center*, and associated Handbook for BUEs) until TSA and AFGE negotiate a Memorandum of Agreement (MOA) on grievance and arbitration processes. *See* 2022 Determination, Section 9.

b. Dues

8. Do BUEs have to pay dues to AFGE to be covered by the 2022 Determination?

No, BUEs do not have to pay dues to AFGE to be covered by the 2022 Determination. The 2022 Determination, like the CBA, covers all BUEs regardless of whether they pay dues.

9. Does the 2022 Determination require BUEs to pay dues?

No, the 2022 Determination does not require BUEs to pay dues. It is up to the individual BUE whether they choose to pay dues.

*c. Official Time **New!***

10. I understand that TSA and AFGE are in the process of negotiating a Memorandum of Agreement (MOA) on Official Time. Until an MOA on Official Time is in effect, do TSA, the Union, and BUEs have to follow TSA MD 1100.61-7, *Official Time for Bargaining Unit Employees* and HCAM 2021.61-7? **New!**

Yes, TSA, the Union, and BUEs must follow TSA MD 1100.61-7, *Official Time for Bargaining Unit Employees*, and HCAM 2021.61-7, as there currently is no MOA on Official Time in effect. TSA and AFGE are negotiating the MOA on Official Time at the national level. Further communications and guidance will be issued once TSA and AFGE have reached agreement on an MOA and prior to the effective date of the MOA.

d. Phased Implementation

11. I read that the 2022 Determination has phased implementation. What does that mean?

It means that bargaining and other representational rights will happen over time, rather than immediately. The 2022 Determination’s implementation plan was developed after careful consideration and in consultation with AFGE.

TSA and AFGE are currently engaged in negotiations on official time and grievance and arbitration processes. On 2/28/23, the Union's expanded formal discussion and Weingarten rights are in effect. No later than 3/30/23, TSA and AFGE can begin negotiating ground rules for a new CBA. Negotiations for a new CBA begin after the conclusion of ground rules negotiations. No later than 4/29/23, TSA and AFGE can engage, at the national level, in "impact and implementation" bargaining. Finally, local level bargaining on set topics will begin on a future date (there currently is no local bargaining). *See* 2022 Determination, Section 11.

e. Bargaining

12. What does it mean to say that the 2022 Determination has expanded collective bargaining?

It means that more issues are negotiable now than were under previous Determinations. Previous Determinations provided that TSA and AFGE could negotiate approximately 10 issues. Under the 2022 Determination, TSA and AFGE generally can negotiate issues to the extent that they are negotiable under Chapter 71. *See* 2022 Determination, Section 5.

13. Are there exclusions from collective bargaining as in previous Determinations?

No, there are no exclusions from collective bargaining as in previous Determinations. However, there are parameters for bargaining. If an issue is not negotiable under Chapter 71, it is not negotiable under the 2022 Determination. *See* 2022 Determination, Section 5.a.

14. Will TSA and AFGE negotiate pay for BUEs?

No, the 2022 Determination provides that the TSA Administrator will retain sole and exclusive discretion over pay and policies affecting pay. *See* 2022 Determination, Section 6.

15. TSA and AFGE currently have a national CBA. Will the next CBA negotiated under the 2022 Determination also be on a national level?

Yes, TSA and AFGE will continue to negotiate a CBA at the national level. *See* 2022 Determination, Sections 5.a, 11.c.

16. When does collective bargaining for a new CBA begin?

Collective bargaining for a new CBA begins after the conclusion of ground rules negotiations. Ground rules negotiations can begin no later than 3/30/23 (90 days after the effective date of the 2022 Determination). *See* 2022 Determination, Section 11.c.

*i. Local Bargaining **New!***

17. Will TSA and AFGE be able to negotiate at the local level?

Yes, the 2022 Determination allows TSA and AFGE to negotiate at the local level on a specific set of issues (e.g., parking facilities and shuttle service, lockers). This local

bargaining can occur after a new CBA is in effect that contains procedures for local bargaining. There currently is no local bargaining. See 2022 Determination, Sections 5.b, 11.e.

18. What is the date that TSA and AFGE can begin to negotiate at the local level? *New!*

There is no date set and it will not be in the near future. The procedures for local bargaining must be negotiated and in effect as part of a new CBA before local bargaining can begin. See 2022 Determination, Section 11.e. Collective bargaining for a new CBA will begin after ground rules are negotiated (ground rules negotiations will begin no later than 3/30/23). See 2022 Determination, Section 11.c.

19. What topics will TSA and AFGE be able to bargain over at a local level?

There currently is no local bargaining. When local bargaining is in effect, TSA and AFGE will be able to bargain locally over the following issues: access to TSA-controlled space for union representational activities; lighting; parking facilities and shuttle service; break space for BUEs' use; and lockers. See 2022 Determination, Section 5.b.

ii. Impact and Implementation Bargaining

20. I heard that TSA and AFGE will be able to engage in impact and implementation bargaining under the 2022 Determination. What is impact and implementation bargaining and when does it begin?

In general, impact and implementation bargaining involves bargaining over how certain policy changes will impact BUEs and be implemented. No later than 4/29/23 (120 days after the effective date of the 2022 Determination), TSA and AFGE will be able, at a national level, to engage in impact and implementation bargaining. There is no local level impact and implementation bargaining. See 2022 Determination, Section 11.d.

f. Formal Discussions and Weingarten Rights

21. The 2022 Determination provides that AFGE will have the right to the following to the same extent as permitted under Section 7114 of Title 5: the opportunity to be represented at formal discussions; and the opportunity to be represented at any examination of a bargaining unit employee by a TSA representative in connection with an investigation if the bargaining unit employee reasonably believes that the examination may result in disciplinary action against the bargaining unit employee and the bargaining unit employee requests representation.

Where can I find more information about these rights?

TSA will issue updated policy regarding these expanded rights (which will be effective 2/28/23). For information on formal discussions, please see TSA MD 1100.77-5, *Formal Discussions*. For information on Weingarten rights, please see Article 15 of the CBA, as

well as TSA MD 1100.63-4, *Union Representation During Examination* (effective 2/28/23). Additionally, Sections II and III of these FAQs address formal discussions and Weingarten.

g. Grievance and Arbitration Policy

22. I read that TSA’s grievance and arbitration policy changed under the 2022

Determination. How has it changed?

Consistent with the 2022 Determination, TSA’s grievance and arbitration policy has been updated to:

- a. Remove the exclusion of issues from the grievance process that were excluded from bargaining under the 2019 Determination;
- b. Allow for third parties (arbitrators) to review dismissal determinations made by the National Resolution Center, as well as continue to review claims on the merits; and,
- c. Incorporate the joint recommendations regarding grievance procedures made by the Working Group convened under Section 1907 of the *TSA Modernization Act*.

See 2022 Determination, Section 11.b.1.

The updated policy can be found at

<https://office.ishare.tsa.dhs.gov/sites/NRC/SitePages/Home.aspx>. This updated policy will remain in effect until a Memorandum of Agreement between TSA and AFGE on the grievance and arbitration processes for BUEs is in effect.

23. A BUE filed a grievance before the 2022 Determination was issued and the grievance is still pending. Which grievance and arbitration policy applies to the grievance?

The updated grievance and arbitration policy applies to the grievance. The 2022 Determination provides that pending grievances and third party review requests filed before the effective date of the 2022 Determination will be processed under the updated grievance and arbitration policy until it is superseded and replaced by a Memorandum of Agreement regarding the grievance and arbitration processes. See 2022 Determination, Section 11.b.2.

II. Formal Discussions

a. General

24. Where do I find information regarding formal discussions?

Where to look has not changed – please refer to TSA MD 1100.77-5, *Formal Discussions*, which will be updated effective 2/28/23.

25. Are “formal discussions” new?

No, “formal discussions” are not a new concept. TSA has had a policy on AFGE’s rights in formal discussions since 2011. These rights will be expanded effective 2/28/23.

b. AFGE’s Rights in Formal Discussions

26. What is AFGE’s right in formal discussions?

AFGE has the right to notified of and the opportunity to be represented at a formal discussion. See TSA MD 1100.77-5, *Formal Discussions*, Section 6.A.

27. What is the purpose of AFGE’s right to be given the opportunity to be represented a formal discussion?

The purpose is to provide AFGE with an opportunity to safeguard its interests and the interests of BUEs, viewed in the context of AFGE’s full range of responsibilities under the 2022 Determination. See TSA MD 1100.77-5, *Formal Discussions*, Section 6.A.

c. TSA’s Obligations in Formal Discussions

28. What are TSA’s obligations regarding formal discussions?

TSA must provide reasonable advance notice to the Union of the formal discussion and attempt to accommodate reasonable scheduling requests from the Union. See TSA MD 1100.77-5, *Formal Discussions*, Sections 7.A, 7.D.

d. Formal Discussion Elements

29. What is a formal discussion?

There are four elements that must be met for a discussion to be a formal discussion. A formal discussion is: (1) a discussion; (2) which is formal in nature; (3) between one or more Agency Representatives and one or more BUEs or their representatives; and (4) concerning any grievance, personnel policy or practice, or other general condition of employment. See TSA MD 1100.77-5, *Formal Discussions*, Section 4.F.

i. “A Discussion” New!

30. What does “discussion” mean in the context of formal discussions?

The term “discussion” for formal discussion purposes is broader than what you might think of when you think of what a “discussion” means. For purposes of formal discussions, a “discussion” is a meeting between Agency representatives and BUEs. There does not have to be an actual conversation, debate, or dialogue between Agency Representatives and BUEs to meet the “discussion” element.

For example, if the other requirements are met, a meeting for the sole purpose of making a statement or announcement can be a formal discussion. Telephone conversations also can be found to be formal discussions if the other elements are met.

31. Can emails or written documentation (e.g., questionnaires, written counseling) to BUEs be considered formal discussions? *New!*

No, emails or written documentation to BUEs are not formal discussions as they do not satisfy the element #1 of a formal discussion (i.e., they are not discussions).

ii. “Which Is Formal in Nature”

32. What does it mean for a discussion to be “formal in nature”?

Whether a discussion is a formal discussion depends on the totality of the circumstances. The purpose and nature of a discussion, as well as other factors, can be considered. Those can include:

- the status of the individual who held the discussion (the more senior/higher in management the individual, the more likely to be formal in nature);
- whether any other management officials attended (the more management officials attending, the more likely to be formal in nature);
- the site of the discussions (e.g., in a hallway versus a dedicated office);
- how the meeting for the discussion was called (advance notice more likely to be considered formal in nature than spontaneous);
- how long the discussions lasted (the longer the discussion, the more likely to be formal in nature);
- whether a formal agenda was established (more likely to be formal in nature if an agenda was used);
- the manner in which the discussion was conducted; and
- whether attendance by the BUE(s) was mandatory (if it is mandatory, more likely to be formal in nature).

All of these factors do not have to be present for a discussion to be considered formal in nature.

See TSA MD 1100.77-5, Formal Discussions, Section 6.C.

*iii. “Between One or More Agency Representatives and One or More BUEs or Their Representatives” **New!***

33. Who is considered an “Agency Representative” for formal discussion purposes?

For formal discussion purposes, an Agency Representative is, generally, any TSA employee in a BUE’s chain of supervision, such as a supervisor or manager (e.g., Federal Security Director (FSD), Assistant FSD, Transportation Security Manager, Supervisory

Transportation Security Officer (STSO)), or another person acting on behalf of the Agency (e.g., Field Counsel, Human Resources Specialist, Equal Employment Opportunity Investigator) who is a participant in a formal discussion. See TSA MD 1100.77-5, *Formal Discussions*, Section 4.A.

Please note that that this is broader than what was in policy before 2/28/23. Before 2/28/23, the Agency Representative was limited to any TSA employee in a BUE's chain of supervision.

34. Are STIs considered Agency Representatives for purposes of formal discussions? *New!*

No, STIs are not considered Agency Representatives for purposes of formal discussions. They are members of the bargaining unit.

35. If a BUE is a trial period employee, are they still considered a BUE for formal discussion purposes? *New!*

Yes, there is no difference between a trial period BUE and a non-trial period BUE for purposes of formal discussions.

iv. "Concerning Any Grievance, Personnel Policy or Practice, or Other General Condition of Employment"

36. What is a "grievance" for purposes of formal discussions?

For purposes of formal discussions, the term "grievance" is broader than a grievance filed with the National Resolution Center. For purposes of formal discussions, a grievance is any complaint:

- (1) By any BUE concerning any matter relating to the employment of the BUE;
- (2) By the Union (AFGE) concerning any matter relating to the employment of any BUE;
- or
- (3) By any BUE, the Union, or the Agency concerning:
 - (a) The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
 - (b) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

See TSA MD 1100.77-5, *Formal Discussions*, Section 4.G.

Please note that is new for formal discussions. Prior to 2/28/23, grievance, as defined above, was not considered a topic for a formal discussion.

37. What does "any personnel policy or practices" mean?

For formal discussion purposes, "any personnel policy or practices" means general rules applicable to BUEs, not discrete actions taken with respect to individual BUEs.

38. What does “general conditions of employment” mean?

For formal discussion purposes, general conditions of employment mean those discussions (except for grievance meetings) which concern conditions of employment affecting BUEs generally.

39. Can a discussion that initially did not meet the definition of formal discussion turn into a formal discussion as it progresses?

Yes, a discussion that initially was not a formal discussion can turn into a formal discussion as it progresses. For example, a discussion could begin about a specific BUE only (and not a grievance) and could evolve into a discussion about general working conditions (for example). In that scenario, provided the required elements for a formal discussion were met, it would then be a formal discussion and management needs to stop that part of the discussion (i.e., stop discussing the topic that would make it a formal discussion). If management and/or the BUE want to continue that part of the discussion, the discussion can resume after the Agency Representative satisfies the notice requirement and the attempt to accommodate reasonable scheduling requests by the Union.

h. Notice of the Formal Discussion

40. Who for TSA must provide notice of the formal discussion?

The Agency Representative must provide AFGE with reasonable advance notice of the formal discussion. See TSA MD 1100.77-5, *Formal Discussions*, Sections 6.A, 7.A.

41. Does the advance notice have to be in writing?

Generally, the advance notice must be in writing unless the meeting is scheduled on short notice. For meetings scheduled on short notice, the notice can be provided verbally. See TSA MD 1100.77-5, *Formal Discussions*, Section 7.A.

42. What must the written notice contain?

The written notice must state the date, time, and place of the formal discussion, the general topic(s) for the formal discussion, and the contact information for the formal discussion. See TSA MD 1100.77-5, *Formal Discussions*, Section 7.B.

43. Should the Agency Representative wait to provide the notice if the specific location of the meeting is not yet secured?

No, if the Agency Representative has all of the other required information, the Agency Representative should not wait to provide the notice. If the specific location is not yet secured, the notice must provide the general location (e.g., section of the airport, terminal or other identifiable area) and additional information about the location must be provided to the Union Representative in a reasonable amount of time for when it is obtained. See TSA MD 1100.77-5, *Formal Discussions*, Section 7.B.

44. If the notice is provided verbally, what must it contain?

The verbal notification for a meeting scheduled on short notice must contain the same information as written notice (i.e., the date, time, and place of the formal discussion, the general topic(s) for the formal discussion, and the contact information for the formal discussion). Additionally, it is recommended that the Agency Representative provide follow-up written notice to the Union Representative to whom the verbal notification was made. *See* TSA MD 1100.77-5, *Formal Discussions*, Section 7.B(1) and (2).

45. To whom does the Agency Representative have to provide the reasonable advance notice?

The Agency Representative should work with the LMPOC to communicate the notice to the Union Representative designated to receive notices of formal discussions. *See* TSA MD 1100.77-5, *Formal Discussions*, Section 7.C.

46. How should Agency Representatives at the local level provide notice to the designated Union Representative of formal discussions? *New!*

Agency Representatives at the local level must work through their LMPOC to provide notice to the designated Union Representative of formal discussions. However, Chief Counsel attorneys who are the Agency Representatives in a formal discussion must provide notice to the designated Union Representative of the formal discussion (i.e., they will not work through the LMPOC). The designated Union Representative at the local level is the AFGE local president.

47. An HQ office is having a discussion that includes BUEs and that the HQ office believes is a formal discussion. How does the HQ office provide notice to the Union? *New!*

The HQ Office must contact TSA Labor Relations to facilitate providing notice to the designated Union Representative.

48. If a BUE attending the formal discussion is also a Union Representative, is it sufficient to provide the notice to that BUE?

No, it is not sufficient to notify only the BUE who is also a Union Representative unless that BUE is the designated Union Representative. If the BUE is not the designated Union Representative, the Agency Representative (through the LMPOC) must notify the designated Union Representative. *See* TSA MD 1100.77-5, *Formal Discussions*, Section 7.C.

49. If the BUEs planning to attend the formal discussion tell management it is okay to not provide notice to the Union, does TSA still have to provide the designated Union Representative with notice of the formal discussion?

Yes, the Agency Representative (through the LMPOC) still must provide advance notice to the designated Union Representative. The right to be notified and have the opportunity to attend formal discussions is the Union's right. It cannot be waived by the BUEs.

i. Union Representative Attendance and Participation at Formal Discussions

50. Does the Union have to attend every formal discussion?

No, the Union does not have to attend every formal discussion. It is up to the Union whether it has a Union Representative attend a formal discussion.

51. If the Agency Representative provided the required notice to the designated Union Representative and no one from the Union attends the formal discussion, can the Agency Representative proceed with the formal discussion?

Yes, if the Agency Representative (through the LMPOC) has provided the required notice to the designated Union Representative and no Union Representative attends the formal discussion, the Agency Representative can proceed with the formal discussion. Please note, however, if the Union Representative asks for a scheduling adjustment for the formal discussion, the Agency Representative must attempt to accommodate reasonable scheduling requests. *See* TSA MD 1100.77-5, *Formal Discussions*, Section 7.D.

52. Who decides which Union Representative will attend a formal discussion?

The Union decides which Union Representative will attend a formal discussion. It is not decided by the Agency Representatives or the BUEs planning on attending the formal discussion.

53. Can the Union Representative participate in the formal discussion?

Yes, the Union Representative can participate in the formal discussion. During a formal discussion, the Union Representative may comment, speak, and make statements related to the subject(s) of the formal discussion. The Union Representative can also state the views or interests of the Union and/or the Union's assessment of the collective views or interests of BUEs on the topics identified for the formal discussion. The views or interests expressed by the Union Representative may or may not be the same as the BUE(s) participating in the formal discussion. *See* TSA MD 1100.77-5, *Formal Discussions*, Section 6.D.

54. Are there limitations on the Union Representative's participation in the formal discussion?

Yes, the Union Representative cannot take charge of or disrupt the formal discussion. Additionally, the Union Representative's comments must relate to the topics of the formal discussion. *See* TSA MD 1100.77-5, *Formal Discussions*, Sections 6.D, 6.E.

55. Do Union Representatives have to be physically present for formal discussions? For example, could a Union Representative attend virtually or by phone for a formal discussion at a more remote CAT IV airport? *New!*

Union Representatives do not have to be physically present for formal discussions. They can attend virtually or by phone. If a Union Representative requests to be physically present and doing so could cause a delay, that request should be considered under the "reasonableness"

standard for accommodating scheduling requests from the Union. *See* TSA MD 1100.77-5, *Formal Discussions*, Section 7.D.

56. The Union Representative who will attend a formal discussion on behalf of the Union is a BUE. The Union Representative would not otherwise be in attendance if it was not a formal discussion. Does the Union Representative have to request and be approved for official time in advance of the formal discussion? *New!*

Yes, unless the Union Representative (who is a BUE) is on break or otherwise off-duty or is on 100% official time, the Union Representative must request and be approved for official time prior to the formal discussion consistent with TSA MD 1100.61-7, *Official Time for Bargaining Unit Employees*.

57. Can notice for a formal discussion be sent to a Union Representative's personal email address, in addition to their work email address? *New!*

Yes, typically, Union Representatives are BUEs, who do not always have access to a TSA computer, or not employed by TSA. Sending formal discussion notifications to their personal email addresses could mean that the notice gets to them sooner. As a reminder, SSI protections must be followed.

j. Union Representative Scheduling Requests

58. Does the Agency Representative have to attempt to accommodate scheduling requests from the Union Representative attending the formal discussion on behalf of the Union?

Yes, the Agency Representative must attempt to accommodate the Union Representative's *reasonable* scheduling requests consistent with mission requirements and TSA policy. *See* TSA MD 1100.77-5, *Formal Discussions*, Sections 7.D.

*k. Examples of Formal Discussions *New!**

59. Are staff meetings, including shift briefs, at which new or updated Standard Operating Procedures (SOPs) are discussed considered formal discussions?

Yes, effective 2/28/23, staff meetings, including shift briefs, involving BUEs at which SOPs are disseminated or discussed generally will be formal discussions.

60. Are Town Halls at which BUEs are invited considered formal discussions?

Yes, effective 2/28/23, Town Halls at which BUEs are invited are formal discussions.

61. Is new hire orientation for BUEs a formal discussion?

Yes, effective 2/28/23, new hire orientation for BUEs is a formal discussion.

62. Is a BUE's grievance meeting considered a formal discussion?

Yes, effective 2/28/23, a BUE's grievance meeting is a formal discussion.

63. I understand that the delivery of training is not considered a formal discussion. What about broader discussions about training (e.g., feedback, planning, priorities)? Could those be considered formal discussions? *New!*

Yes, broader discussions about training (e.g., feedback, planning, priorities) could be considered formal discussions provided the required elements of formal discussions are met. The four elements of a formal discussion are: (1) a discussion; (2) which is formal in nature; (3) between one or more Agency Representatives and one or more BUEs or their representatives; and (4) concerning any grievance, personnel policy or practice, or other general condition of employment. *See* TSA MD 1100.77-5, *Formal Discussions*, Section 4.F.

64. Are discussions with the FEVS action group (which includes BUE and management members) considered formal discussions? *New!*

Yes, these discussions would be considered formal discussions as they likely satisfy all four elements for a formal discussion. However, to be a formal discussion, a BUE would need to be in attendance for each FEVS action group meeting.

The four elements of a formal discussion are: (1) a discussion; (2) which is formal in nature; (3) between one or more Agency Representatives and one or more BUEs or their representatives; and (4) concerning any grievance, personnel policy or practice, or other general condition of employment. *See* TSA MD 1100.77-5, *Formal Discussions*, Section 4.F.

65. Are committee meetings (e.g., EAC, Morale Committee, DEIA Groups) considered formal discussions if an Agency Representative is present and participates in the discussion? *New!*

Whether a committee meeting that includes one or more Agency Representatives is considered a formal discussion will depend on what is discussed and whether one or more BUEs is present. If one or BUEs is present and the committee plans to discuss any grievance, personnel policy or practice, or other general condition of employment, it is likely a formal discussion.

*l. Examples of Discussions that Are Generally Not Formal Discussions *New!**

66. Is a TSM's individual counseling session involving a specific BUE's performance and/or conduct a formal discussion?

No, a TSM's individual counseling session involving a specific BUE's performance and/or conduct is not a formal discussion because it does not meet element #4 for a formal

discussion. Specifically, it is not concerning any grievance, personnel policy or practice, or other general condition of employment.

However, if the discussion turns to addressing the BUE's complaint about management's assessment of their performance or conduct or a discussion of performance or conduct generally at TSA, it could be turn into a formal discussion if the other requirements are met.

67. An STSO meets with a BUE to review and discuss their attendance record. Is that a formal discussion?

No, it would not be considered a formal discussion as it does not satisfy element #4 (it is not concerning any grievance, personnel policy or practice, or other general condition of employment).

68. Would a BUE's oral reply to proposed discipline be considered a formal discussion?

No, a BUE's oral reply to proposed discipline is not a formal discussion. It does not satisfy element #4 as it is not concerning any grievance, personnel policy or practice, or other general condition of employment.

69. A TSO asks an STSO a question at the checkpoint about his schedule. The discussion lasted less than five (5) minutes and was not planned in advance. Is this a formal discussion?

This is not a formal discussion. As it is a spontaneous discussion at the checkpoint about the TSO's own schedule that lasted less than five (5) minutes, the discussion does not meet the required elements to be a formal discussion. Specifically, it does not meet element #2 (formal in nature) and element #4 (concerning any grievance, personnel policy or practice, or other general condition of employment).

70. Are discussions occurring after security operations to discuss those particular events (e.g., playbook play, Red Team testing) considered formal discussions?

No, these discussions generally will not be considered formal discussions as they likely do not meet element #2 (formal in nature) and element #4 (concerning any grievance, personnel policy or practice, or other general condition of employment).

71. Is the administration of a Field Evaluation Test (FET) considered a formal discussion?

New!

No, the administration of a FET is not considered a formal discussion because it does not satisfy element #1 (i.e., is not a discussion) and element #4 (i.e., it is not concerning any grievance, personnel policy or practice, or other general condition of employment) of formal discussions.

72. Are the FET Post Test Reviews (PTRs), more commonly referred to as “hot washes”, involving BUEs considered formal discussions? *New!*

No, in general, these PTRs would not be formal discussions as they do not meet element #4 of formal discussions (i.e., are not concerning any grievance, personnel policy or practice, or other general condition of employment). They also likely would not satisfy element #2 (i.e., are not formal in nature).

73. Is a hot wash immediately following an access event at a terminal considered a formal discussion? *New!*

No, in general, the hot wash would not be formal discussions as it does not meet element #4 of formal discussions (i.e., is not concerning any grievance, personnel policy or practice, or other general condition of employment). It also does not satisfy element #2 (i.e., is not formal in nature).

74. When an STI remediates a BUE after a test failure or security incident, is that a formal discussion? *New!*

No, this would not be considered a formal discussion as it does not satisfy element #3 (i.e., not between one or more Agency Representatives and one or more BUEs or their representatives) and element #4 (i.e., is not concerning any grievance, personnel policy or practice, or other general condition of employment). It also may not satisfy element #2 (i.e., not formal in nature).

75. Are On-the-Job Training (OJT) evaluations of BUEs considered formal discussions? *New!*

No, OJT evaluations of BUEs are not considered formal discussions. They do not meet element #4 of formal discussions (i.e., are not concerning any grievance, personnel policy or practice, or other general condition of employment). They also may not satisfy element #2 (i.e., not formal in nature). Further if the OJT evaluation is conducted by another BUE (e.g., an STI), it would not satisfy element #3 of formal discussions (i.e., not between one or more Agency Representatives and one or more BUEs or their representatives).

76. Is a management representative’s discussion with a BUE about a BUE’s sick leave restriction considered a formal discussion? *New!*

In general, a meeting to issue a sick leave restriction to a BUE and/or to discuss the sick leave restriction is not a formal discussion because it does not satisfy element #4 of formal discussions (i.e., is not concerning any grievance, personnel policy or practice, or other general condition of employment). However, a meeting in which a BUE voices complaints about their sick leave restriction or regarding a BUE’s grievance about a sick leave restriction could be a formal discussion if the other elements for a formal discussion are met.

77. If management is meeting with an STSO to discuss the STSO's complaint about something that occurred when the STSO was an LTSO, could it be a formal discussion? *New!*

No, as the STSO is no longer in the bargaining unit, the discussion would not be a formal discussion. Element #3 of formal discussions would not be satisfied (i.e., is not between one or more Agency Representatives and one or more BUEs or their representatives).

78. A BUE has been subpoenaed by the state to testify as to his role as the Property Search Officer on the checkpoint when he found drugs in a defendant's accessible property. TSA counsel will discuss safeguarding SSI with the BUE in advance of his testimony. Is this discussion a formal discussion? *New!*

No, the discussion is not formal in nature as it does not satisfy element #4 of formal discussions (i.e., is not concerning any grievance, personnel policy or practice, or other general condition of employment).

79. Are awards ceremonies involving BUEs considered formal discussions? *New!*

No, awards ceremonies involving BUEs are not considered formal discussions as they are a one-way distribution of recognition and generally do not meet the 4th element of formal discussions (i.e., are not concerning any grievance, personnel policy or practice, or other general condition of employment).

80. Can discussions about a BUE's informal EEO complaint be considered formal discussions? *New!*

No, discussions about a BUE's informal EEO complaint are not considered formal discussions. Only a formal EEO complaint is considered a "grievance" for purposes of element #4 of formal discussions (i.e., concerning any grievance, personnel policy or practice, or other general condition of employment). The formal EEO complaint process begins with the filing of a formal complaint after the issuance of the notice of right to file a discrimination complaint. See FLRA Guidance on Meetings, p. 13 (internal citations omitted).

81. A BUE spontaneously calls an HR Specialist to briefly discuss concerns about his FMLA leave request. Is this a formal discussion? *New!*

No, in general, a brief, spontaneous discussion with an HR Specialist initiated by the BUE would not be a formal discussion. It likely would not meet element #2 of a formal discussion (i.e., is not formal in nature). Also, depending on the facts, the concerns raised by the BUE may not be considered a "grievance" and, therefore, also would not satisfy element #4 (i.e., is not concerning any grievance, personnel policy or practice, or other general condition of employment).

82. An HR Specialist plans to call a BUE to obtain more information about her workers' compensation claim. The HR Specialist believes the discussion will last about 10 minutes. Would this discussion be a formal discussion? *New!*

No, in general, this discussion would not be a formal discussion. It does not satisfy element #2 of a formal discussion (i.e., is not formal in nature). Also, it may not satisfy element #4 (i.e., is not concerning any grievance, personnel policy or practice, or other general condition of employment).

83. If a BUE goes to management to make a complaint about another BUE, is this a formal discussion? *New!*

No, in general, a brief, spontaneous discussion with management initiated by the BUE would not be a formal discussion. It likely would not meet element #2 of a formal discussion (i.e., is not formal in nature).

84. Are exit interviews or other out-processing activities considered formal discussions? *New!*

No, in general, exit interviews and out-processing activities would not be formal discussions as they do not meet element #4 of formal discussions (i.e., are not concerning any grievance, personnel policy or practice, or other general condition of employment). They also may not satisfy element #2 (i.e., are not formal in nature).

85. Locally, if a BUE fails a FET or RED team test, the final step in their remediation is to speak to the AFSD-G regarding lessons learned from the test and subsequent remediation. Would this be a formal discussion? *New!*

No, a meeting to address performance related concerns of a specific BUE is not a formal discussion. It does not satisfy element #4 (i.e., is not concerning any grievance, personnel policy or practice, or other general condition of employment).

*m. Miscellaneous **New!***

86. A grievance meeting is scheduled between a DGO and a BUE on her grievance. The BUE has a personal representative who is not a Union Representative. Does TSA still have to provide the Union with notice and the opportunity to be represented at the grievance meeting? If so, does that mean there could be two different representatives at the grievance meeting? *New!*

Yes, TSA must still provide the Union with notice and the opportunity to be represented at the grievance meeting consistent with TSA MD 1100.77-5, *Formal Discussions*. The DGO should work through the LMPOC to provide notice to the designated Union Representative. The fact that the BUE has a personal representative who is not a Union Representative does not change the right of the Union to be given notice and the opportunity to be represented at the formal discussion.

If both the Union Representative and the personal representative attend the DGO meeting, there could be two representatives present. NOTE: Once TSA and AFGE negotiate a Memorandum of Agreement (MOA) regarding the grievance and arbitration processes and that MOA is in effect, BUEs will only be able to have Union Representatives represent them in grievances. They no longer will be able to designate personal representatives who are not Union Representatives.

87. Can an Agency Representative, a BUE, and/or a Union Representative record a formal discussion? *New!*

No, an Agency Representative, a BUE, and/or a Union Representative generally should not record formal discussions. Please see Section I of the associated Handbook to TSA MD 1100.73-5, *Employee Responsibilities and Code of Conduct*.

88. If a TSM or AFSD has a one-on-one meeting with a BUE, not planned in advance, to ask how things are going and/or to address their suggestions or concerns, is this a formal discussion? *New!*

It depends. All of the indicators of whether the discussion is “formal in nature” (i.e., element #2 of formal discussions) would need to be considered, such as: how long the meeting will last, how is it called, where is it being held, is there a formal agenda, what is the subject matter to be addressed, is attendance mandatory. If management needs assistance in determining whether a discussion is a formal discussion, please reach out to the LMPOC and/or field counsel.

III. Weingarten Rights

a. General

89. What are Weingarten rights?

In general, when you hear “Weingarten rights,” it means the following: the Union will be given the opportunity to be represented at any examination of a BUE by a representative of the agency in connection with an investigation if:

- (1) The BUE reasonably believes the examination may result in disciplinary or adverse action against the BUE; and
- (2) The BUE requests representation.

This is a Union right that is triggered by the BUE asking for representation.

See TSA MD 1100.63-4, *Union Representation During Examination*, Section 6.A.

90. Where do I find information regarding Weingarten rights?

Please refer to Article 15 of the CBA, the related Interim Guidance Document, and TSA MD 1100.63-4, *Union Representation During Examination*, updated effective 2/28/23.

91. Are Weingarten rights new?

No, in general, the BUEs have been able to have a Union Representative in certain examinations in connection with an investigation if the BUE reasonably believes that the examination may result in disciplinary action against the BUE and the BUE requests representation.

Effective 2/28/23, the Union's rights in this context (called Weingarten rights) are broader. Specifically, effective 2/28/23, more examinations will qualify as ones in which the BUE can ask for Union Representation and the Union's rights during the examinations are broader.

b. Weingarten Elements New!

92. What are the elements that must be met for Weingarten rights to attach?

The following elements must be met:

- (1) The person conducting the examination must be an Agency Representative;
- (2) The examination must be of a BUE;
- (3) The examination must be in connection with an investigation;
- (4) The BUE must have a reasonable belief that they may be disciplined as a result of the examination; and
- (5) The BUE must request union representation.

See TSA MD 1100.63-4, *Union Representation During Examination*, Section 6.A.

93. Who is considered an Agency Representative for Weingarten purposes?

For Weingarten purposes, an Agency Representative is a local supervisor, management official, or any TSA employee or agent authorized by TSA management to conduct any fact-finding process (e.g., administrative inquiries). An Agency Representative also can be any representatives from the TSA Investigations Office (INV) conducting investigations of possible criminal, civil, or administrative violations. See TSA MD 1100.63-4, *Union Representation During Examination*, Section 4.A.

94. Can a trial period BUE request union representation in examinations in connection with investigations that the trial period BUE reasonably believes may result in disciplinary or adverse action against them? New!

Yes, a trial period BUE can request union representation in examinations in connection with investigations that the trial period BUE reasonably believes may result in disciplinary or adverse action against them. There is no difference between a trial period BUE and a non-

trial period BUE with regard to Weingarten rights.

95. What is an “examination” for Weingarten purposes?

For purposes of Weingarten, an “examination” is any fact-finding process (e.g., administrative inquiries) conducted by an Agency Representative and investigations conducted by the TSA Investigations Office (INV) of possible criminal, civil or administrative violations. *See* TSA MD 1100.63-4, *Union Representation During Examination*, Section 4.H.

96. Can an examination be verbal or written?

Yes, an examination can be verbal or written.

97. How is it determined whether a BUE’s belief is reasonable?

Whether a BUE’s belief that the examination may result in discipline is reasonable will be determined by assessing whether a reasonable person would believe that disciplinary or adverse action may result from the examination given the totality of the circumstances from the perspective of the BUE. To underscore, it is from the perspective of the BUE, not the perspective of the Agency Representative. *See* TSA MD 1100.63-4, *Union Representation During Examination*, Section 6.B.

98. When does the BUE have to request representation?

The BUE can request Union representation either before or during the examination. *See* TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.A.3.

99. Does the BUE’s request for union representation have to be in writing?

No, the request does not have to be in writing. It can be done either orally or in writing. *See* TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.A.3.

100. Does the BUE have to say specifically that they want a Union Representative?

No, the BUE does not have to specifically state that they want a Union Representative. There are no “magic words” that the BUE has to use to request representation. For example, a BUE’s statement that I want “somebody to talk to” or I want “an attorney” is sufficient.

101. Can the BUE have a representative who is not affiliated with the Union?

No, the BUE cannot have a representative who is not a Union Representative. The representative must be a Union Representative. This is not new and has been the case since November 2021.

c. TSA's Obligations

102. Does the Agency Representative have to tell the BUE that they may have a right to Union Representation at the examination?

No, the Agency Representative is not required to inform the BUE that they may have a right to Union Representation during the examination. It is up to the BUE to ask for representation.

103. If the BUE requests Union representation, does the Agency Representative have to coordinate obtaining a Union Representative?

No, the Agency Representative does not coordinate obtaining a Union Representative for the BUE. It is the BUE's responsibility to work with the Union to secure Union Representation. *See* TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.B.1. *See also* Article 15, Section E.3.

104. How long does a BUE have to secure Union representation?

The BUE has a reasonable period of time to secure union representation. The arrangements made to accommodate union representation may not cause an unreasonable delay of the Agency's examination. The reasonableness of the delay will be assessed based on the individual circumstances of each case in consideration of TSA's mission. *See* TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.B.1. *See also* Article 15, Sections E.3, E.4.

105. What does the Agency Representative have to do after the BUE requests representation?

After a BUE requests union representation, an Agency Representative conducting an examination may, as appropriate:

- (1) Grant the BUE's request and delay the interview for a reasonable time period until a Union Representative is available. It is the BUE's responsibility to work with the union to secure a Union Representative. The arrangements made to accommodate union representation may not cause an unreasonable delay of the Agency's examination. The reasonableness of the delay will be assessed based on the individual circumstances of each case in consideration of TSA's mission;
- (2) Deny the BUE's request and end the interview. The denial must be provided in writing. *See* CBA Article 15.E.5;
- (3) Deny the BUE's request and continue with the interview after making the decision that the matter is not one for which union representation is authorized and so inform the BUE in writing; or

(4) Offer the BUE the choice of voluntarily continuing without a Union Representative.

See TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.B. *See also* Article 15, Section E.5.

106. Can the Agency Representative disallow a specific Union Representative from representing the BUE?

Yes, the Agency Representative can disallow a specific Union Representative from representing the BUE but only in “special circumstances.” An example of “special circumstances” is when the Union Representative’s participation might compromise the investigation. *See* TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.C.

If an Agency Representative is considering disallowing a specific Union Representative, the Agency Representative should first seek advice from TSA Labor Relations and/or field counsel before proceeding.

107. If the Union Representative is unavailable (or disallowed), what must the Agency Representative do?

If the Union Representative is unavailable or disallowed, the Agency Representative must inform the BUE that they may obtain an alternative Union Representative.

If an alternative Union Representative is available within a reasonable period of time that will not unduly delay the examination, the Agency Representative will delay the interview for a reasonable period of time and the BUE will not be required to answer questions during that time. If an alternative Union Representative is not available in a reasonable period of time, the interview may continue without a Union Representative for the BUE.

See TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.C.

108. If an Agency Representative denies the BUE’s request for union representation, does it have to do so in writing?

Yes, if an Agency Representative denies the BUE’s request for union representation (i.e., the matter is not one for which union representation is authorized), the Agency Representative must do so in writing. *See* TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.B.3. *See also* Article 15, Section E.5.

109. What happens if a BUE’s request for union representation is denied and disciplinary or adverse action is proposed based on information obtained during the examination?

If a BUE’s request for union representation is denied and a disciplinary or adverse action is proposed or imposed against the BUE based on information obtained during the BUE’s

interview without a Union Representative, the BUE may raise the effect of the absence of a Union Representative at the interview during the disciplinary or adverse action process.

The TSA management official or other TSA employee or agent authorized by TSA management proposing or imposing disciplinary or adverse action will consider the BUE's concerns regarding the lack of a Union Representative and evaluate those concerns as they would evaluate other factors raised by a BUE during the disciplinary or adverse action process. *See* TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.G.

110. An NDO is being interviewed by an Agency Representative in connection with an investigation and reasonably believes that discipline may result. The NDO has requested union representation. Would the Union Representative come from the NDO's home airport or location of deployment? *New!*

Assignment of the Union Representative is AFGE's decision. They may assign a Union Representative from any location as long as the Union Representative's attendance does not cause an unreasonable delay of the Agency's examination. The reasonableness of the delay will be assessed based on the individual circumstances of each case in consideration of TSA's mission. *See* TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.B.1. *See also* Article 15, Sections E.3, E.4.

d. Choosing the Union Representative *New!*

111. In a situation in which the Weingarten elements are met, does TSA determine which Union Representative will attend the examination? *New!*

No, TSA does not determine which Union Representative will attend the discussion. AFGE, as the exclusive representative, has the right to designate its representatives when fulfilling its representational responsibilities.

However, the Agency Representative can disallow a specific Union Representative from representing the BUE but only in "special circumstances." An example of "special circumstances" is when the Union Representative's participation might compromise the investigation. *See* TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.C. If an Agency Representative is considering disallowing a specific Union Representative, the Agency Representative should first seek advice from TSA Labor Relations and/or field counsel before proceeding.

Additionally, it is the BUE's responsibility to work with the union to secure a Union Representative. The arrangements made to accommodate union representation may not cause an unreasonable delay of the Agency's examination. The reasonableness of the delay will be assessed based on the individual circumstances of each case in consideration of TSA's mission. *See* TSA MD 1100.63-4, *Union Representation During Examination*,

Section 7.B.1. *See also* Article 15, Sections E.3, E.4.

112. An NDO is being interviewed by an Agency Representative in connection with an investigation and reasonably believes that discipline may result. The NDO has requested union representation. Would the Union Representative come from the NDO's home airport or location of deployment? *New!*

Assignment of the Union Representative is AFGE's decision. They may assign a Union Representative from any location as long as the Union Representative's attendance does not cause an unreasonable delay of the Agency's examination. The reasonableness of the delay will be assessed based on the individual circumstances of each case in consideration of TSA's mission. *See* TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.B.1. *See also* Article 15, Sections E.3, E.4.

e. Union Representative's Participation

113. What can the Union Representative do during the examination?

The Union Representative can actively participate in the investigation. They can:

- Assist and consult with the affected BUE;
- Speak or otherwise participate on the record in a formal proceeding;
- Seek clarification of questions and suggest other avenues of inquiry;
- Elicit favorable facts from the BUE;
- Engage in private conferences outside the presence of the investigator during an investigatory examination if necessary to afford the Union Representative the ability to effectively represent the BUE and does not interfere with the integrity of the investigation; and
- Have confidential communications with the BUE that occur during the course of representation (unless confidentiality has been waived or the agency establishes an overriding need for the information).

See TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.D.1

114. Are there any limitations on what a Union Representative can do during the examination?

Yes, the Union Representative may not:

- Interfere with agency's ability to achieve the legitimate objectives of the investigation;
- Interfere with the integrity of the investigation; and
- Be verbally abusive or interfere with the interview by interrupting the BUE's answers.

For example, the Union Representative cannot answer for the BUE, instruct the BUE not to answer questions or to not answer questions fully.

See TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.D.2

115. What can the Agency Representative do if the Union Representative engages in a prohibited action(s) during the examination?

If a Union Representative engages in one or more of the prohibited actions (described in Section 7.D(2) of TSA MD 1100.63-4), the Agency Representative conducting the interview should inform the Union Representative of the violation(s) and proceed with, or discontinue, the interview.

- (1) If the Agency Representative decides to discontinue the interview, they will inform the BUE that the interview will be recessed for a reasonable time, as determined by TSA management, to allow the BUE to obtain a replacement Union Representative. The reasonableness of the delay will be assessed based on the individual circumstances of each case in consideration of TSA's mission.
- (2) If another Union Representative is available in a reasonable time period, the interview will continue with the new Union Representative representing the BUE.
- (3) If another Union Representative is not available in a reasonable time period, the Agency Representative may continue the interview without a Union Representative representing the BUE.
- (4) Any prohibited conduct by the BUE's Union Representative will not be attributed to the BUE or negatively affect consideration of whether to propose or impose disciplinary or adverse action against the BUE.

See TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.F.

116. Is the Union Representative allowed to obtain information related to the examination?

In general, yes. The Union may have access to information that will allow the Union to become familiar with the BUE's circumstances and to effectively assist the BUE and participate in the interview. The Union's right to obtain relevant information for the interview is balanced against the interests of the Agency in investigating and disciplining misconduct. See TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.E.

Requests for information should be shared with the LMPOC before responding should additional guidance be needed from Labor Relations. Questions also can be brought to field counsel.

f. BUE's Obligations New!

117. If a BUE wants to have a Union Representative present, do they have to request it?

Yes, if the BUE wishes to have a Union Representative present, the BUE must request it orally or in writing either before or during the interview. See TSA MD 1100.63-4, *Union*

Representation During Examination, Section 7.A.3.

118. Does a BUE still have to provide information if they have requested Union Representation?

Yes, BUEs interviewed in connection with an examination must: comply with a request to be interviewed and fully cooperate with the examination; and provide full and complete responses to questions posed during the interview. *See* TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.A.1-2. *See also* Article 15, Sections D, F.

119. There is an immediate and ongoing security incident at the checkpoint. Can a BUE refuse to answer management's questions until a Union Representative is present?

New!

No, the BUE cannot refuse to answer questions until a Union Representative is present. In an immediate and ongoing security incident at the checkpoint, TSA must be able to obtain all the information necessary to ensure the safety and security of the traveling public and the TSA workforce.

BUEs must cooperate fully with all TSA and DHS investigations and inquiries. *See* TSA MD 1100.73-5, *Employee Responsibilities and Code of Conduct*, associated Handbook, Section F. *See also* Article 15.D of the CBA; TSA MD 1100.63-4, *Union Representation During Examination*, Section 7.A.

Note: While management may obtain information from a BUE in this instance without a Union Representative present, management must still allow the BUE the opportunity to request representation.

g. Examples of Examinations New!

120. Is a Fact Finder, or a TSA Investigations Special Agent, conducting an interview of a BUE based on an allegation of misconduct considered an examination?

Yes, an interview of a BUE pursuant to a Fact Finding (administrative inquiry) is an examination for Weingarten purposes.

121. Is a Fact Finder conducting an investigation and requests a written statement from a BUE considered an examination?

Yes, a requirement for a BUE to provide a written statement is considered an examination for Weingarten purposes.

122. Is a management official who requires a BUE to come to their office to respond to questions regarding the BUE allegedly making an inappropriate comment at the checkpoint considered an examination?

Yes, a management official questioning a BUE regarding an allegation of misconduct is an examination for Weingarten purposes.

123. Is a Fact Finder, or a TSA Investigations Special Agent, conducting an interview of a BUE who is not the subject of the investigation considered an examination?

Yes, if the BUE reasonable believes that the examination may result in discipline against them, the questioning is considered an examination for Weingarten purposes.

124. Are the Field Evaluation Testing (FET) Post Test Reviews (PTRs), more commonly referred to as “hot washes”, examinations for Weingarten purposes? *New!*

Yes, PTRs could be considered examinations for Weingarten purposes. If a BUE reasonably believes that disciplinary or adverse action could result against them, the BUE may request union representation and the Union would be given the opportunity to be represented at it.

125. In a situation in which the elements of Weingarten have been met, does the Union Representative (who is a BUE) have to request and be approved for official time in advance of attending the examination on behalf of the Union? *New!*

Yes, unless the Union Representative (who is a BUE) is on break or otherwise off-duty or is on 100% official time, the Union Representative must request and be approved for official time prior to the formal discussion consistent with TSA MD 1100.61-7, *Official Time for Bargaining Unit Employees*.

h. Examples that Are Generally Not Examinations *New!*

126. Is an APR evaluation an examination for Weingarten purposes?

No, an APR evaluation is not considered an examination for Weingarten purposes. It is not an examination in connection with an investigation.

127. Is a meeting designed to counsel a BUE or provide performance feedback an examination for Weingarten purposes?

No, a meeting designed to counsel a BUE or provide performance feedback alone is not an examination for Weingarten purposes. However, the Agency Representative should look at the totality of the exchange to determine whether the meeting is truly a counseling. If the meeting is designed to solicit information from the BUE, is conducted in a confrontational manner, designed to secure an admission of wrongdoing, or designed for the BUE to explain their conduct, it could rise to the level of an examination for Weingarten purposes.

128. Is a meeting to inform a BUE of an Agency decision an examination for Weingarten purposes?

No, a meeting that is only to inform a BUE of an Agency decision is not an examination for Weingarten purposes. The purpose of the meeting is to communicate an Agency decision; it is not to solicit information from the BUE or have the BUE explain their conduct.

129. Is a meeting to counsel a BUE against future misconduct an examination for Weingarten purposes?

No, a meeting to counsel a BUE against future misconduct is not an examination for Weingarten purposes. However, if the meeting is also intended to solicit information from the BUE or have the BUE to explain prior misconduct, it could rise to the level of an examination for Weingarten purposes.

130. A BUE has been subpoenaed by the state to testify as to his role as the Property Search Officer on the checkpoint when he found drugs in a defendant's accessible property. TSA counsel will discuss safeguarding SSI with the BUE in advance of his testimony. Can the BUE ask for union representation in the discussion with counsel?

New!

No, as the discussion with counsel is not an examination in connection with an investigation, the BUE cannot request union representation. Also, the BUE likely would not have a reasonable belief that it could result in discipline or adverse action against the them.

* * * * *