

DONNELLY & GROSS, P.A.
ATTORNEYS AND COUNSELORS
AT LAW
2772 N.W. 43rd Street, Suite S
Gainesville, Florida 32606
(352) 374-4001

UNILATERAL CHANGES

<u>SITUATION</u>	<u>SUGGESTED IMMEDIATE ACTION</u>
I. Wages, Hours, Terms and Conditions Established By Contract	<ol style="list-style-type: none">1. write letter objecting and demanding the employer cease and desist, and abide by the contract;2. file a grievance;3. file an unfair labor practice charge.
II. Wages, Hours, Terms and Conditions Established By Past Practice	
A. No contract language allows changes	<ol style="list-style-type: none">1) If contract specifically says they cannot change past practices: follow the steps in I., above.2) Otherwise:<ol style="list-style-type: none">1. write letter objecting, demanding bargaining, and demanding they cease & desist until the statutory bargaining process has been lawfully completed. Also, get dates & times to bargain and submit proposals;2. file a grievance;3. file an unfair labor practice charge.

B. Law allows changes
(subcontracting,
providing new services,
etc.) **or**
Contract language
allows changes or
waives past practice,
but does not waive
impact bargaining

1. write letter objecting
and demanding the employer
cease & desist from
implementing change until
meaningful impact
bargaining can occur and
the impact bargaining
process is complete;
2. in letter, specifically
identify the impacts to
wages, hours, terms and
conditions you want to
bargain;
3. file a grievance;
4. file an unfair labor
practice charge if the
change is implemented
without meaningful im-
pact bargaining
occurring, or
sufficient advance
notice and time for
meaningful impact bar-
gaining to be completed
(unless the contract
allows management to im-
plement the change).

C. Contract language
allows changes,
waiving right to both
past practice and
impact bargaining

1. YOU HAVE WAIVED YOUR
RIGHTS. GET THIS OUT OF
YOUR CONTRACT.

IMPORTANT NOTE: This is a general summary only. When you are confronted with these situations you should read the attached article, "Unilateral Changes and Your Rights," carefully and thoroughly. It goes into extremely important details you must consider.

UNILATERAL CHANGES AND YOUR RIGHTS

General Rule: An employer may not unilaterally change a term, wage, hour or condition of employment without completing the collective bargaining process. A "change" occurs when the employer takes action inconsistent with the contract or past practice, but this can get very tricky.

I. Wages, Hours, Terms and Conditions Established by Contract:

If the wage, hour, term or condition of employment that the employer wants to change is one specifically established by contract, and there is no language allowing the change, then the employer cannot make the change. For example, if the contract says you will get paid every Friday and management announces a change to biweekly pay, the change is illegal if you take the right steps.

1. write a letter of objection to the employer demanding it cease and desist, and abide by the contract; and
2. file a grievance and/or unfair labor practice charge if the change is implemented.

NOTE: Take action immediately or else you may be deemed to have waived the right to fight the change.

II. Wages, Hours, Terms and Conditions Established by Past Practice: Established past practices are those which (1) are unequivocal, (2) are known and accepted by the employer, union, and employees, (3) have existed for a substantial period of time, and (4) are reasonably expected by employees to continue. The right to have past practices continue, and the right to refuse to bargain over changes to past practices, is normally found in a prevailing rights, rules and regulations, entire agreement, duration, and/or zipper clause in the contract. The employer's right to make changes to past practice would typically be found in the management rights clause, if the contract contains one, but may be found in other places in the contract.

A. No contract provisions waive the right to past practice AND contract specifically says management cannot change past practice: If the contract specifically says management cannot make changes to past practices, you may have the same protection as if the wages, hours, terms and conditions are established by the contract. Therefore, follow the steps in **I**, above.

B. No contract provision waives the right to past practice, BUT contract does not specifically say management cannot change past practice: Where there is no express, clear and unmistakable provision in the contract giving the employer the right to make the changes to specific areas of wages, hours, terms and conditions established by past practice, and there is no contractual provision requiring the continuation of past practices, the employer must first notify the union of a desire to make a change. The purpose of requiring notice is to allow the union to make an "effective demand for bargaining." Whether sufficient notice has been given depends on the facts of each case. To be safe, if you hear or learn of the intent to make a change (for example, from other employees) assume the union is on notice. The union must then make an effective demand for collective bargaining, follow through by getting dates and times to bargain, and submit proposals. You must follow through on your bargaining demand or you waive your rights. **Immediately** upon first notification of the change:

1. write a letter of objection to the employer demanding bargaining and demanding it cease and desist until the statutory bargaining process has been lawfully completed. Ask for and get dates and times to bargain, submit proposals, etc.;
2. file a grievance; and
3. file an unfair labor practice charge if the change is implemented.

NOTE: Again, take action immediately or you may be deemed to have waived the right to fight the change.

C. The law allows employer to make the decision (subcontracting, providing new services, etc.); or Contract provision waives right to past practice: If the law gives management the fundamental right to make the decision (for example to subcontract, provide new services, etc.) or if there is a management rights or other clause in the contract which gives the employer the clear and unmistakable unilateral power to change particular wages, hours, terms and conditions set by past practice, then the employer can make the change and does not have to bargain over the decision and whether the change can be implemented. However, depending on the following situations, you may be able to prevent management from implementing the change: 1) until meaningful impact bargaining occurs; and/or 2) if the employer did not give you sufficient advance notice to allow time for meaningful impact bargaining to be completed prior to the change being implemented.

1. No contract provision waiving the right to impact bargaining. The employer is usually required to provide notice of the decision to make a change in order to allow the union to demand and engage in impact bargaining. The employer is required to bargain over the impacts of the change **before** the change is implemented (unless the contract specifically, clearly and unmistakably waives the union's right to bargain the impact or specifically allows management to implement the change before impact bargaining is complete). However, in a recent case PERC indicated the employer might not have to wait for the entire statutory impasse process to be completed. That view from PERC has not yet been addressed by the appellate courts, and the case was not squarely on point. Nonetheless, we can predict that if PERC is confronted with a specific case on point, it will rule that management must impact bargain, but need not go all the way through impasse prior to implementing the change. If the contract does not waive impact bargaining, the remedy is to **immediately** upon first notification of the change or intent to make the change:

1. write a letter of objection to the employer demanding it cease and desist from implementing the change, and that it engage in impact bargaining. The letter must **specifically** identify the impacts/effects on wages, hours, terms and conditions you want to bargain. Ask for and get dates and times to bargain, submit proposals, etc.; and
2. file a grievance and/or unfair labor practice charge if the change is implemented: a) without meaningful impact bargaining occurring (unless the contract allows management to implement the change first); **or** b) without sufficient advance notice and time for meaningful impact bargaining to be completed.

NOTE: Again, take action immediately or you may be deemed to have waived the right to fight the change. Also, you may be able to get language in your contract, like some unions have, that requires impact bargaining be completed prior to changes being implemented.

Demanding impact bargaining is not easy under PERC's case law. PERC says that before the employer is required to bargain the effect or "impact" of a decision which management has the right to make by law or contract, the union must specifically identify each impact or effect on the wages, hours, terms and conditions it wishes to bargain. For instance, the union must specifically state how wages (premium pay, overtime, raises, work load, etc.) hours, scheduling, standards, seniority and other topics may be affected

by management proposing a change. These impacts must be specifically stated in your letter demanding impact bargaining.

Examples of Identifying Impacts:

1. Assume management has the right to reduce manning levels. You may be able to identify several impacts, such as:
 - days & hours of work, & work schedule issues;
 - altered schedules affecting part-time side jobs;
 - shift & station bidding;
 - vacation bidding;
 - safety of working with less manning;
 - training outside the work place;
 - substantially increased work load;
 - pay increase for greater work load.

2. Assume management upgrades, eliminates or changes job duties or qualifications. You may identify:
 - conditions for employment, discipline standards;
 - contract may provide for wage increases for certification;
 - pay increase for greater work;
 - promotional considerations in the bargaining unit;
 - costs to employees of new educational requirements;
 - other parts of your contract may be affected.

WARNING: Failure to demand impact bargaining properly can result in waiver of the union's and employees' rights. Moreover, PERC has frequently awarded attorneys fees and costs against unions for filing unfair labor practice charges over unilateral changes by the employer because the procedures outlined above were not properly followed by the union.

2. Contract provision waiving right to impact bargaining.

There is no legal remedy because the union has given up its rights if the contract clearly and unmistakably waives the union's right to bargain over changes to specific past practices and the impacts of the changes, or the impact of management exercising rights it may have.

IV. Summary: Remember, the best thing you can do is eliminate waivers of your rights in your contract, unless management pays for it somewhere else in your contract. These waivers, which are often found in management rights article but may be found in many other places in the contract, cannot be imposed on you through impasse. The fact that management is limited in what they can impose on you

is a powerful point to remember as you plan your bargaining strategy. In other words, use your power to prevent management from doing what they like to do most -- changing things whenever and however they want. You have the right to stop them as you bargain your next contract, and as you live through the one you now have. This gives you even more power!