

- 4** **STANDING TO FILE:** The Statute allows a petition to be filed by any “person.” “Person” is defined in 5 U.S.C. 7103(a)(1) as “an individual, labor organization, or agency.” An “agency” is defined in 7103(a)(3) as:

“agency” means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veteran’s Canteen Service, Department of Veterans Affairs), the Library of Congress, and the Government Printing Office, but does not include--

- (A) the General Accounting Office;
- (B) the Federal Bureau of Investigation;
- (C) the Central Intelligence Agency;
- (D) the National Security Agency;
- (E) the Tennessee Valley Authority;
- (F) the Federal Labor Relations Authority;
- (G) the Federal Service Impasses Panel; or
- (H) the Central Imagery Office.

A “labor organization” is defined in 5 U.S.C. 7103(a)(4). Its definition is set forth in [CHM 19 - challenge to the status of a labor organization](#), at [CHM 19.2](#) and will not be repeated in this section. An “individual” is not defined in the Statute, but see 5 U.S.C. 7103(a) (2), the definition of “employee”.

There are distinctions between the right to file a petition, as opposed to standing to have a petition processed. The regulations at § 2422.2 clarify a party’s standing to have a petition processed. The Ninth Circuit’s decision in *Eisinger v. FLRA*, No. 98-70866 (9th Cir. July 17, 2000) (*Eisinger*) that reviewed and reversed the Authority’s decision in *Small Business Administration*, 54 FLRA 562 (1998) raised issues concerning the Authority’s continued interpretation and application of § 2422.2. Contact the Office of the General Counsel whenever questions arise concerning a party’s standing to have a petition processed. Outlined below are the **general** guidelines that are described in the regulations pertaining to standing to file petitions. In several cases issued prior to the *Eisinger* case, the Authority clarified some of these rules as discussed below.

- 4.1** **Definition of petitioner:** A “petitioner means the party filing a petition under Part 2422 of the regulations” (see § 2421.18).

4.2 Petitions requiring a showing of interest:

- 4.2.1** A petition requesting an election to determine if employees in an appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative may be filed by a labor organization or by two or more labor organizations acting as joint-petitioners. [Regs. § 2422.2(a)]
- 4.2.2** A petition requesting a determination of eligibility for dues allotment in an appropriate unit without an exclusive representative may be filed by a labor organization or by two or more labor organizations acting as joint-petitioners. [Regs. § 2422.2(a)]
- 4.2.3** A petition requesting an election to determine if employees in a unit no longer wish to be represented for the purpose of collective bargaining by an exclusive representative may be filed by any employee or group of employees or an individual acting on behalf of any employees. [Regs. § 2422.2(b)]
- 4.3 Petitions seeking to clarify or amend a recognition or certification or a matter relating to representation** may be filed by a labor organization; two or more labor organizations acting as a joint petitioner; an activity or an agency; or any combination of the above. [Regs. § 2422.2(c)]
- 4.3.1** In *U.S. Army Reserve Command, 88th Regional Support Command, Fort Snelling, Minnesota, (Fort Snelling)*, 53 FLRA 1174 (1998), the Authority dismissed a petition requesting an amendment of certification following a reaffiliation vote, where the new union, rather than the certified union, filed the petition. Petitions to amend a certification or recognition based on a reaffiliation or merger (a *Montrose* case - see *RCL 7* and [HOG 43](#)) are filed by the certified or recognized incumbent labor organization, not the gaining labor organization. However, in *U.S. Department of the Interior, Bureau of Land Management (BLM)*, 56 FLRA 202 (2000), the Authority allowed the gaining union, AFGE, to file the application for review because the Petitioner, NFFE Local 376, had designated AFGE to act as its representative. Therefore, the Authority found that AFGE had authority to act on all matters in the case for NFFE Local 376.
- 4.3.2** In *Eisinger v. FLRA*, No. 98-70866 (9th Cir. July 17, 2000) the court reversed and remanded the Authority's decision in *Small Business Administration*, 54 FLRA 562 (1998), which held that individuals did not have standing to file petitions seeking amendments to, or clarifications of, a certification.

- 4.3.3** The Authority ruled on the court's remand in the *Eisinger* case in *Small Business Administration*, 56 FLRA ____, 56 FLRA No. 153 (2000) and stated:

Applying the court's decision to this case, we vacate our decision in 54 FLRA 562, and remand the matter to the Regional Director for further proceedings consistent with this decision.

If the regions receive any cases filed by an individual that are filed inconsistent with the current regulations at § 2422.2, the regions contact the Office of the General Counsel. [CHM 58.1.2.2](#)

- 4.4** **Petitions raising claims pursuant to 5 U.S.C. 7111(f)(1)** may be filed by an individual; a labor organization; two or more labor organizations acting as a joint petitioner; an activity or an agency; or any combination of the above. See *NYNG*, 53 FLRA 111 (1997) and *USIA*, 53 FLRA 999 (1997). If questions arise about a party's standing to file a petition pursuant to 5 U.S.C. 7111(f)(1), contact the Office of the General Counsel.
- 4.5** **Petitions to consolidate existing units** may be filed by a labor organization, or by an activity or agency, or by a labor organization and an activity or agency jointly who are parties to an existing recognition or certification. [Regs. § 2422.2(c)]
- 4.6** **Petitions seeking a determination of eligibility for national consultation rights or consultation rights** may be filed by a labor organization. [Regs. § 2426.2(b)(1) or § 2426.12(b)(1)]
- 4.7** **Standing to file a petition involving a nationwide exclusive bargaining unit or an agency-level consolidated unit:**
- 4.7.1** **Parties listed on the petition:** Petitions filed on a matter relating to the representation of employees who are already part of a nationwide exclusive bargaining unit or an agency-level consolidated unit name the parties to the certification on the petition. Specifically, the petitioner (item #5) is either the certified labor organization or the agency with whom the union holds exclusive recognition or both, if jointly filed. If a labor organization files the petition, the name of the agency in item #6 reflects the name of the agency on the certification, i.e., the agency at the level of recognition.

Examples include:

- < Item #5 of the petition, "Name of Petitioner," lists a local labor organization or activity, but the unit and the purpose of the petition reflect that the unit is part of an agency-level consolidated unit or nationwide unit.

- < Item #5 of the petition, “Name of Petitioner,” lists the proper name of the labor organization that is the certified representative of a nationwide or agency-level consolidated unit, but Item #6 lists a local activity rather than the agency.

The petitions in these examples are defective and cannot be processed without being amended to reflect the proper parties to the petition, i.e., the agency and labor organization listed on the certification. If the petition is not amended to reflect the proper parties to the certification, the petition is dismissed. (see [CHM 12.3](#) for defective petitions and [CHM 20.1.1](#) for processing).

- 4.7.2 Filing a petition involving a nationwide exclusive bargaining unit or an agency-level consolidated unit:** While a petition involving a nationwide exclusive bargaining unit or an agency-level consolidated unit may be completed properly, the party signing it may not always appear to be an authorized representative of the parties to the exclusive bargaining relationship. Any local or regional activity or labor organization or other entity that files a petition on a matter relating to the representation of employees who are part of a nationwide exclusive bargaining unit or an agency-level consolidated unit must be authorized as a representative of the appropriate party to the recognition/certification. For example,

- < Item #5 of the petition, “Name of Petitioner” and Item #6, Activity/Agency, list the proper names of a parties to a nationwide or agency-level consolidated unit, but Item #9 reflects that the representative is a local labor organization or activity, or Regional Vice-President.

The petition in this example is not defective because the proper names on the certification are listed on the petition. The issue is whether the party signing the petition form has been authorized to file the petition on behalf of the parties to the certification. The petition is sufficient if it reflects that the employee signing the petition is authorized to act on behalf of the national party. For example, the signatory line includes “..., President, Local X for ..., President of (*national union*),” or a designation of representative is attached to the petition. If it is not clear that the party signing the petition form is authorized to act for the national party, the region confirms with the petitioner or the national office that the signatory is authorized to file the petition. Once the designation has been confirmed, the parties to the national certification are served with copies of any correspondence relating to the processing of the petition ([CHM 14.2](#)). If the party is not authorized to file the petition, the region issues an *Order to Show Cause* (see [CHM 20.1.1c](#)).

- 4.8 The impact of trusteeships on petitions:** Standing to file issues may arise when a local union has been placed under trusteeship. Issues may arise regarding the local union officer's standing to file a petition. These issues may concern: 1) when the local union was placed under trusteeship and 2) the provisions in the national constitution relating to the imposition of the trusteeship on the local union. If the local union was placed under trusteeship after the petition was filed, it has standing to file the petition. If the local union was placed in trusteeship before the local officers filed the petition, the local's standing to file the petition may become an issue. Contact the Office of the General Counsel if any issues arise concerning a local union's standing to file a petition after it has been placed under trusteeship.

If a region learns that a local labor organization has been placed in trusteeship prior to the filing of the petition, the trustee is served with a copy of the petition (see [CHM 6](#), [15.7](#) and [15.8](#) for service and notification requirements).

- 4.9 Standing to file petitions involving units affected by a reorganization:** The Statute in section 7111(b) states that a petition may be filed with the Authority by any "person".... . The regulations at Regs. § 2422.2 clarify which entities have standing to file representation petitions. The Regs. § 2422.2(c) provides that only an agency or a labor organization may file a petition pursuant to Regs. §§ 2422.1(b) or (c). Regs. § 2422.1(b) pertains to petitions seeking to clarify matters relating to representation, including petitions filed to resolve the effects of a reorganization on an existing unit or a newly created unit. Neither the Statute nor the regulations clearly require that only the agency or activity that is a party to an exclusive bargaining relationship may file petitions to resolve matters relating to representation. However, the Authority in *Fort Snelling*, 53 FLRA 1174 (1998) dismissed a petition requesting an amendment of certification following a reaffiliation vote where the gaining union, rather than the certified union, filed the petition. It is unclear how the Authority would decide a similar issue involving an agency-filed petition where the agency is not a party to the certification filed a petition.

Normally, the parties to a certification file their own petitions to clarify or amend a matter relating to the representation of the employees in their bargaining unit. Therefore, if the Activity is still operational, the Activity has standing to file the petition and it is appropriate to name the Activity that is a party to the certification as the petitioner. In such cases, the Personnel Office may be designated to act on behalf of the petitioner.

The regions apply these rules flexibly. For instance, if the Activity was the subject of a base closure, or there are other extenuating circumstances, it is inappropriate to construe the regulation and the decision in *Fort Snelling* too narrowly without more guidance from the Authority. Thus, in base closure situations: (1) where no party raises the issue, or (2) after the initial

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processing of the petition, a party later challenges the authority of the personnel office to file these petitions, it would not effectuate the purposes of the Statute to dismiss these petitions on the ground that the petitioner did not have standing to file the petitions. The regulations were revised in 1996 “to streamline the regulations and make them more flexible in addressing the representational concerns of agencies, labor organizations, and individuals.” In these types of base closure situations, where a party other than a party to the certification files a petition pursuant to § 2422.1(b), that party plays the role of the petitioner/activity. It is not named as the employer. The employer is named on the caption of the case: employer/activity.

If there are any questions about opening these cases, see [CHM 12](#) for handling defective petitions that can be opened or call the OGC to consult about the case.