

46 Status of a labor organization

A. Compliance with section 7103(a)(4) of the Statute.

A labor organization is defined in section 7103(a)(4) of the Statute as:

[A]n organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment

Section 7103(a)(4) also provides four statutory exemptions in defining labor organization under the Statute:

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by an agency; or

(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike.

Basis for challenge: Section 2422.11(a) of the regulations states that the **only** basis on which a challenge to the status of a labor organization may be made is compliance with 5 U.S.C. 7103(a)(4).

The Authority has held that challenges may also be filed pursuant to section 7111(f)(1) of the Statute. Section 7111(f)(1) prohibits granting exclusive recognition to a union which is subject to corrupt or undemocratic influences. See **Part B** below.

Note: There are major differences between the private sector and federal sector definitions of a labor organization. Private sector precedent on this issue may be misleading.

Relevant information:

- 1) full and correct name of the organization;
- 2) affiliation, if any;
- 3) manner and extent of employee participation in the organization;
- 4) nature and extent of the organization's "dealings with" the agency;
- 5) discussion of whether dealings concern grievances and conditions of employment (include examples);
- 6) information concerning whether employees pay dues, fees or assessments to the organization and in what manner; and
- 7) information concerning whether the parties have been involved in earlier Authority proceedings in which the party currently challenging the status of the labor organization failed to raise the issue.

B. Claims made pursuant to section 7111(f)(1) of the Statute that a labor organization should not be accorded exclusive recognition under the Statute because the labor organization is subject to corrupt influences or influences opposed to democratic principles.

In 1997 the Authority issued cases stating that a petition or a challenge raising claims pursuant to section 7111(f)(1) may be filed and addressed by the FLRA. If filed as a petition, there is nothing in the Statute or its legislative history that suggests that a petition filed pursuant to section 7111(f)(1) requires a showing of interest or is subject to the timeliness requirements. In all other respects, such a petition is processed according to the regulations concerning petitions which do not require a showing of interest. *See Division of Military And Naval Affairs (New York National Guard), Latham, New York and National Federation of Civilian Technicians (NYNG), 53 FLRA 111 (1997) and U.S. Information Agency, Washington, D.C. and American Federation of Government Employees, Local 1812, AFL-CIO, (USIA), 53 FLRA 999 (1997). See also CHM 20.1.8 and RCL 10B.*

Section 7111(f)(1) of the Statute, provides that:

- (f) Exclusive recognition shall not be accorded to a labor organization—
 - (1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to

democratic principles;

For Case Handling Procedures, see CHM 5.10, 19.1, 20.1.8, 23.9.3.

For additional guidance for analyzing these cases, see RCL 10B.

Relevant information:

- 1) Obtain a copy of the constitution and bylaws; obtain testimony from a union officer concerning whether and how they meet the criteria set forth in 5 U.S.C. 7120a.
- 2) Evidence must be introduced by the challenging party that the presumption that the labor organization is free from corrupt and anti-democratic influences is rebutted as set forth in 5 U.S.C. 7120b.
- 3) Such evidence must be in the form of a finding by a third party with jurisdiction over the allegations asserted to establish corrupt or anti-democratic influences.
- 4) If a third party with jurisdiction over the conduct alleged to establish the requisite reasonable cause finds a violation based on the same facts raised by the 7111(f)(1) challenge, the Hearing Officer accepts that finding as evidence that there is reasonable cause to believe that the presumption of freedom from corrupt or anti-democratic influences has been rebutted.
- 5) If the presumption is rebutted, the burden of proof under section 7111(f) shifts to the accused labor organization to demonstrate that, in fact, it is free from influences that would preclude recognition. Consistent with the requirements of section 7120(b), the accused labor organization is then asked to furnish evidence to the Hearing Officer of its freedom from such influences.

A labor organization meets this burden by providing evidence, for example, that:

- (a) the violation found by a third party has been cured (for example, that sanctions imposed by a parent organization have been lifted); or
- (b) the violation found by a third party is in effect de minimis and thus is insufficient to warrant denial or revocation of certification.

