

**61 Security work**

Generally, employees engaged in intelligence, counterintelligence or national security work are excluded from bargaining units. Three sections of the Statute address these exclusions:

**Section 7103(a)(3)** specifically excludes from the definition of "agency" the following agencies engaged in national security work: (1) the Federal Bureau of Investigation; (2) the Central Intelligence Agency and (3) the National Security Agency. Thus, employees of these agencies cannot be in any bargaining units.

**Section 7103(b)(1)** allows the President to exclude employees of certain agencies or subdivisions from coverage of the Statute. This section provides:

The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that-

- (A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and
- (B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

In the past, Presidents have excluded entire agencies or subdivisions thereof from coverage of the Statute.

**Section 7112(b)(6)** excludes employees in certain categories from all bargaining units. This section applies to specific positions, rather than to an agency or subdivision. Section 7112(b)(6) excludes from any bargaining unit:

any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security.

Under section 7112(b)(6) the Activity must show (1) that the individual employee is engaged in the designated work, and (2) that the work directly affects national security.

***For specific guidance on each of these sections, see RCL 25.***

**Relevant information includes:**

- 1) Evidence of the mission of the agency, activity or subdivision in which the disputed position(s) are located.
  - a) Does the mission relate to the military, economic and productive strength of the United States?
  - b) In what respect does the work of the agency relate to the national security of the government?
- 2) Obtain organizational charts which identify the disputed position(s).
  - a) What is the chain of command of the employee in the position at question?
- 3) What are the duties of this employee, as they relate to intelligence, counterintelligence and national security matters?
  - a) Obtain testimony from the disputed employees and a copy of their position descriptions for the position(s) at issue.
  - b) To qualify for the position, what type of security clearance (e.g., secret, top secret) is the employee required to maintain?
  - c) What level of security clearance does the employee have?
  - d) Given the nature of this work, most likely agency or activity regulations exist, which describe and limit the authorities of an employee in this position. These documents are entered in the record.
- 4) Information as to the relationship of the position to intelligence, counter-intelligence or national security work.
  - a) Describe how this employee is involved in cases involving espionage, illegal drug sales, hijacking, kidnaping, and acts of terrorism.
  - b) Describe how this employee is involved in planning, directing and coordinating a command security system which includes security of information, personnel and operations.

- c) Does this employee maintain a vault or have access to a vault where top secret material is kept? How the employee maintains the vault and a description of the full range of his/her duties are necessary.
  - d) Describe the involvement of this employee in the operation of special communication systems used to communicate top secret material. The employee describes this system as extensively as possible as well as the employee's duties regarding the system. Often, due to the nature of the materials handled, this is difficult, since no one at the hearing has the proper clearances and representation hearings are public proceedings.
- 5) How is this employee involved in the granting of security clearances?
- a) Does the employee conduct investigations into individuals regarding the granting of security clearances and make recommendations, or grant such clearances? The investigatory process is described.
  - b) Is this employee functioning only as a fact-finder in reviewing applicants for positions, and is not otherwise involved in hiring determinations? The employee describes the way that s/he performs his/his work.
- 6) How is this employee involved with classified information?
- a) Does the employee maintain a classified material system and/or review classified material? The parties explore fully the employee's responsibilities and duties.
  - b) Does the employee control access to or the release of classified information or destroy information as needed as part of a system of protecting records? The employee describes his/her responsibilities and duties.
  - c) What is the classification level of the material this person handles (i.e., secret, top secret, crypto)?
- 7) If the position is a clerical one, a description of the actual work performed by the clerical is most important, so that determinations can be made as to whether the clerk's work is routine in nature, as it pertains to the sensitive documents.

