

10 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). A challenge to the status of a labor organization can be made by any party including the Regional Director. For guidelines on processing challenges to the status of a labor organization, see [CHM 19](#) of the Representation Case Handling Manual.

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.

Factors in determining status as a labor organization pursuant to section 7103(a)(4) of the Statute: The Authority looks to the facts and circumstances of each case to determine whether a petitioner or an intervenor is a labor organization within the meaning of section 7103(a)(4).

- ▶ A formal dues structure is not necessary to establish that a petitioner or an intervenor is a labor organization. Rather, in applying the broad definition of the term dues in section 7103(a)(5) of the Statute, the Authority examines whether there is evidence that employees paid dues, fees or assessments. See *U.S. Department of Veterans Affairs*, 35 FLRA 172 (1990).
- ▶ A union in the formative stages of developing its structure and operations as a labor organization, will not necessarily operate with the degree of formality or precision expected of an established organization. Such a lack of formality does not alone establish that a union is not a labor organization. *U.S. Department of Veterans Affairs* at 178.
- ▶ The fact that a union is in trusteeship, will not alone suffice to disqualify it as a labor organization. *Terminal System Inc.*, 127 NLRB 979 (1960).
- ▶ The Authority has revoked the certification of a federal sector union based on Section 7103(a)(4)(D) of the Statute, because the union engaged in an unlawful strike. The Authority held that the union was no longer a labor organization within the meaning of the Statute. See *Professional Air Traffic Controllers Organization, Affiliated with MEBA, AFL-CIO*, 7 FLRA 34 (1981).

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.

See HOG 46A for specific guidance on developing a record about this topic at hearing.

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 two decisions concerning section 7111(f) of the Statute that could have a significant impact on the manner in which the Regions process representation petitions: *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).

Both decisions concern challenges that a labor organization should not be accorded exclusive recognition under the Statute because the organization is subject to corrupt influences or influences opposed to democratic principles. The challenge in *NYNG* was raised by an incumbent union against a raiding union that had filed a petition for an election during an open period. The challenge in *USIA* was raised in a petition filed by an individual bargaining unit member seeking to decertify the incumbent, filed without a showing of interest. Neither the regulations expressly provide for this type of petition or this type of challenge. However, the Authority held in these two cases, 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 *USIA*, 53 FLRA 999, 1004 (1997) and *CHM 20.1.8*.

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;

In *NYNG*, the Authority established certain legal principles or rules of law for making section 7111(f)(1) determinations [*NYNG*, 53 FLRA 111, 119-125 (1997)]:

1. The Authority makes determinations concerning exclusive recognition under section 7111(f)(1) of the Statute:
 - (a) Only the Authority has jurisdiction to decide issues relating to the granting of exclusive recognition to labor organizations representing employees in the Federal sector.
 - (b) Freedom from corrupt and anti-democratic influences is a requirement that must be met before the Authority can certify a labor organization as an exclusive representative.

2. The Authority's framework for deciding challenges to exclusive recognition under section 7111(f)(1) of the Statute includes:
 - (a) The Statute does not define the terms "corrupt influences" or "influences opposed to democratic principles" in either section 7111(f)(1) or 7120. However, a labor organization is presumed free from corrupt and anti-democratic influences if the labor organization is subject to the governing requirements specified in section 7120(a)(1) through (4) of the Statute. This may be demonstrated by submission of a constitution and bylaws that meet the criteria set forth in section 7120(a). (NOTE: When a petition is filed by a labor organization, the labor/organization petitioner, by signing the petition form, certifies that it has submitted to the Department of Labor and to the activity/agency in the case, in compliance with section 7111(e) of the Statute, a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives. Thus, when the Region determines that a petitioner has complied with Reg. § 2422.3(b), the petitioner has demonstrated a presumption that it is not subject to corrupt or anti-democratic influences.)
 - (b) The presumption that a labor organization is free from corrupt and anti-democratic influences, established by

meeting the requirements of section 7120(a), may be rebutted by a showing that there is reasonable cause to believe that the labor organization is not free from such influences. The standards for rebutting the presumption are set forth in section 7120(b). Under section 7120(b), the presumption may be rebutted based on reasonable cause to believe that:

- (1) the organization was suspended or expelled from, or was otherwise sanctioned by, a parent organization, or federation of organizations with which it had been affiliated, based on its demonstrated unwillingness or inability to comply with the governing procedures set out in section 7120(a)(1) through (4); or
 - (2) the labor organization is in fact subject to corrupt or anti-democratic influences. *NYNG* at 121.
- (c) A finding by a third party with jurisdiction over the allegations asserted to establish corrupt or anti-democratic influences may establish reasonable cause for the Authority to proceed with the section 7111(f)(1) claim. The Authority will rely on the third party findings when the third party has jurisdiction over the matter asserted to establish the requisite reasonable cause. The Authority recognizes the “primacy” of other third party procedures for resolving specific disputes between unions and either individuals or other unions. In this regard, the Authority stated that “the representation proceedings provided by section 7111 are designed solely to certify and define the collective bargaining rights of employees and unions to engage in representational activity with agencies. They are not designed to adjudicate specific disputes with collective bargaining representatives and they provide no remedies other than the grant or denial of certification. Such disputes are appropriately resolved through the procedures designed to adjudicate them...” *USIA*, 53 FLRA 999, 1004 (1997). For instance, the Department of Labor has jurisdiction for enforcing standards of conduct set forth in section 7120. See also *NYNG*, 53

FLRA at 122, n.12 and 13.

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 Authority will accept 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. Consistent with the requirements of section 7120(b), the accused labor organization must furnish evidence to the Regional Director of its freedom from such influences.

- (d) 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. A labor organization meets this burden by demonstrating, for example, that: (1) the violation found by a third party has been cured (for example, that sanctions imposed by a parent organization have been lifted); or (2) the violation found by a third party is in effect *de minimis* and thus is insufficient to warrant denial or revocation of certification.
- (e) Dismissal by a third party, such as DOL, will suffice to establish the absence of reasonable cause to believe that denial of certification is required under section 7111(f)(1).
- (f) The Authority will normally stay its proceedings when a case is pending before a third party that is based on the same or substantially similar allegations that support the section 7111(f)(1) claim.

CAUTION: Violations of Standards of Conduct Do Not Automatically Establish Corrupt Influences Warranting Revocation or Denial of Certification

It is significant to note the difference between the traditional remedies ordered in standards of conduct cases and the remedy which the Authority is required to order if it finds that a union is subject to corrupt or anti-democratic influences. For example, the Department of Labor may order

a respondent to cease and desist from violative conduct and may require a respondent to take such affirmative action as is deemed appropriate to effectuate the policies of the Statute.¹ Under the Statute, however, a labor organization that is found to be subject to corrupt or anti-democratic influences may not be recognized under the Statute as an exclusive representative and thus, either loses its existing recognition for any bargaining unit it may represent or is precluded from being recognized as the representative for any new bargaining unit.

If a third party with jurisdiction over conduct alleged to constitute reasonable cause to believe that a labor organization is subject to corrupt or anti-democratic influences find a violation, that finding establishes only reasonable cause to believe that the presumption of freedom from corrupt or anti-democratic influences has been rebutted. That finding does not establish that, in fact, the union is subject to corrupt and anti-democratic influences. Rather, that is the Authority's sole province. Thus, even though certain conduct may be found to be violations of standards of conduct requiring an affirmative remedy, that same conduct may not establish that a union is subject to corrupt or anti-democratic influences requiring the denial or revocation of certification. Moreover, if a union is found to be subject to corrupt or anti-democratic influences, it is unclear whether any revocation of certification extends to all bargaining units represented by that union under the Statute. For example, some locals and nationals represent more than one bargaining unit. The authority has not had an opportunity to provide guidance on these issues nor has it had a case before it in which it found the union to be 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.*

See also *HOG 46B* for guidance at a hearing if a case alleging a labor organization is subject to corrupt or undemocratic principles raised issues requiring a hearing.

¹ 29 C.F.R. § 458.91

