

## 18 **Administering a labor relations statute**

Three sections of the Statute discuss exclusions based on duties related to “administering a labor relations statute.”

**Section 7103(a)(3)** excludes from the definition of “agency” the Federal Labor Relations Authority and the Federal Service Impasses Panel.

**Section 7112(b)(4)** excludes from any bargaining unit “an employee engaged in administering any provisions of the Statute.” This provision includes federal mediators of the Federal Mediation and Conciliation Service who were found to administer the provisions of Section 7119(a) of the Statute and, therefore, are not eligible for representation. *Federal Mediation and Conciliation Service, Region 7, San Francisco, California*, 3 FLRA 138 (1980); and *Federal Mediation and Conciliation Service*, 52 FLRA 1509 (1997).

In *United States Department of Labor, Office of the Solicitor, Region III (DOL Solicitor)*, 8 FLRA 286 (1982), the Authority concluded that employees who enforce section 7120(a) through (e) of the Statute are engaged in administering its provisions pursuant to section 7112(b)(4).

Other federal employees are employed by federal agencies which administer statutes that pertain to labor-management relations. As to their situation, **section 7112(c)** provides as follows:

Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization --

- 1) which represents other individuals to whom such provisions applies; or
- 2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provisions applies.

**Section 7112(c)** pertains solely to those employees who are involved in administering a law intended to affect or regulate, in some way, the **collective bargaining process** or other matters directly affecting the labor-management relationship. *U.S. Department of Labor, Pension and Welfare Benefits Administration*, 38 FLRA 65 (1990). Section 7112(c) of

the Statute does not prohibit these employees from being represented by a union in a bargaining unit. Rather, section 7112(c) places restrictions on the types of unions that can represent such employees. These restrictions were enacted "to prevent conflicts of interest and appearance of conflicts of interest which would result from represented employees administering labor laws that apply to other employees from their union." See *United States Department of Labor, Pension and Welfare Benefits Administration*, 30 FLRA 1229, 1234 (1988), citing the *Legislative History of the Federal Service Labor-Management Relations Statute, Title VII of the Civil Service Reform Act of 1978*, Committee Print No. 96-7 at 925.

For example, unlike the Department of Labor (DOL) employees who administer Section 7120 (a) through (e) of the Statute and are therefore excluded from coverage based on 7112(b)(4), the Authority reversed an earlier decision and found that DOL employees who administer the Employee Retirement Income Security Act (ERISA) are not precluded from being in a unit represented by AFGE. The Authority stated that ERISA is not a law relating to "labor-management relations" within the meaning of section 7112(c) of the Statute. Rather, the primary functions of ERISA are to regulate and investigate the funding and administration of employee benefit plans. Involvement with a labor organization is in the context of alleged violations of ERISA, not alleged violations of laws relating to collective bargaining or other matters particular to the labor-management relationship. *U.S. Department of Labor, Pension and Welfare Benefits Administration*, 38 FLRA 65 (1990) reversing in part *U.S. Department of Labor*, 23 FLRA 464 (1986).

***Interpreting the phrase "affiliated directly or indirectly" in section 7112(c):*** In *National Mediation Board*, 54 FLRA 1474 (1998), the Authority considered the meaning of "affiliated directly or indirectly" in the Statute for the first time. The NMB administers the Railway Labor Act. The Authority construed the phrase to include the relationship between unions that are linked to each other through their separate affiliation with the AFL-CIO. The Authority concluded that the relationship between the petitioner and other union affiliates of the AFL-CIO that represent employees covered by the Railway Labor Act falls within the phrase "indirect affiliation" under section 7112(c).

***Applying the definition "administer" to sections 7112(b)(4) and 7112(c):*** The Authority further elaborated on the word "administer" as construed by the Authority under section 7112(b)(4), stating that since section 7112(b)(4) and 7112(c) "were enacted for the same purpose -- to protect against a conflict of interest between administering employees and

the employees covered by the labor relations statute being administered – there appears to be no practical difference in the manner in which the word ‘administer’ as used in each of these provisions, is construed.” *National Mediation Board (NMB II)*, 56 FLRA 1 (2000). Thus, the Authority stated that “administer” means to have charge of, manage, and applies to both section 7112(b)(4) and 7112(c). Any other employees in the agency “who are not responsible for managing, implementing, carrying-out, or otherwise executing a provision of law relating to labor-management relations to be included in an appropriate unit.” *NMB II* at 5. (footnotes omitted).

***Employees administering laws affecting labor unions as employers:***

Labor unions that are employers are subject to laws and regulations relating to discrimination in employment and wage and hour standards, to name a few. Section 7112(c) does not apply to federal employees who administer these types of laws, because these laws do not pertain to the collective bargaining process. Any union can represent these federal employees, as long as the unit meets the appropriateness of unit criteria, as defined in section 7112(a)(1) of the Statute and as addressed in *RCL 1*.

***See HOG 54 for specific guidance about this topic at hearing.***

