

THE REGULATIONS
SUBPART A OF PART 2423

**SUBCHAPTER C--FEDERAL LABOR RELATIONS AUTHORITY AND GENERAL COUNSEL OF THE
FEDERAL LABOR RELATIONS AUTHORITY
PART 2423--UNFAIR LABOR PRACTICE PROCEEDINGS**

SUBPART A--FILING, INVESTIGATING, RESOLVING, AND ACTING ON CHARGES

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§ 2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination whether to issue a complaint.

(a) *Resolving unfair labor practice disputes prior to filing a charge.* The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the collaborative efforts of all persons covered by that law. The General Counsel encourages all persons to meet and, in good faith, attempt to resolve unfair labor practice disputes prior to filing unfair labor practice charges. If requested, or agreed to, by both parties, a representative of the Regional Office, in appropriate circumstances, may participate in these meetings to assist the parties in identifying the issues and their interests and in resolving the dispute. Attempts to resolve unfair labor practice disputes prior to filing an unfair labor practice charge do not toll the time limitations for filing a charge set forth at 5 U.S.C. 7118(a)(4).

(b) *Resolving unfair labor practice disputes after filing a charge.* The General Counsel encourages the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to a determination on the merits of the charge by a Regional Director. A representative of the appropriate Regional Office, as part of the investigation, may assist the parties in informally resolving their dispute.

§ 2423.2 Alternative Dispute Resolution (ADR) services.

(a) *Purpose of ADR services.* The Office of the General Counsel furthers its mission and implements the agency-wide Federal Labor Relations Authority Collaboration and Alternative Dispute Resolution Program by promoting stable and productive labor-management relationships governed by the Federal Service Labor-Management Relations Statute and by providing services which assist labor organizations and agencies, on a voluntary basis: To develop collaborative labor-management relationships; to avoid unfair labor practice disputes; and to resolve any unfair labor practice disputes informally.

(b) *Types of ADR Services.* Agencies and labor organizations may jointly request, or agree to, the provision of the following services by the Office of the General Counsel:

(1) *Facilitation.* Assisting the parties in improving their labor-management relationship as governed by the Federal Service Labor-Management Relations Statute;

(2) *Intervention.* Intervening when parties are experiencing or expect significant unfair labor practice disputes;

(3) *Training.* Training labor organization officials and agency representatives on their rights and responsibilities under the Federal Service Labor-Management Relations Statute and how to avoid litigation over those rights and responsibilities, and on utilizing problem solving and ADR skills, techniques, and strategies to resolve informally unfair labor practice disputes; and

(4) *Education.* Working with the parties to recognize the benefits of, and establish processes for, avoiding unfair labor practice disputes, and resolving any unfair labor practice disputes that arise by consensual, rather than adversarial, methods.

(c) *ADR services after initiation of an investigation.* As part of processing an unfair labor practice charge, the Office of the General Counsel may suggest to the parties, as appropriate, that they may benefit from these ADR services.

§ 2423.3 Who may file charges.

(a) *Filing charges.* Any person may charge an activity, agency or labor organization with having engaged in, or engaging in, any unfair labor practice prohibited under 5 U.S.C. 7116.

(b) *Charging Party.* Charging Party means the individual, labor organization, activity or agency filing an unfair labor practice charge with a Regional Director.

(c) *Charged Party*. Charged Party means the activity, agency or labor organization charged with allegedly having engaged in, or engaging in, an unfair labor practice.

§ 2423.4 Contents of the charge; supporting evidence and documents.

- (a) *What to file*. The Charging Party may file a charge alleging a violation of 5 U.S.C. 7116 by completing a form prescribed by the General Counsel, or on a substantially similar form, that contains the following information:
- (1) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charging Party;
 - (2) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charged Party;
 - (3) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charging Party's point of contact;
 - (4) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charged Party's point of contact;
 - (5) A clear and concise statement of the facts alleged to constitute an unfair labor practice, a statement of the section(s) and paragraph(s) of the Federal Service Labor-Management Relations Statute alleged to have been violated, and the date and place of occurrence of the particular acts; and
 - (6) A statement whether the subject matter raised in the charge:
 - (i) Has been raised previously in a grievance procedure;
 - (ii) Has been referred to the Federal Service Impasses Panel, the Federal Mediation and Conciliation Service, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, or the Office of the Special Counsel for consideration or action;
 - (iii) Involves a negotiability issue raised by the Charging Party in a petition pending before the Authority pursuant to part 2424 of this subchapter; or
 - (iv) Has been the subject of any other administrative or judicial proceeding.
 - (7) A statement describing the result or status of any proceeding identified in paragraph (a)(6) of this section.

(b) *Declarations of truth and statement of service.* A charge shall be in writing and signed, and shall contain a declaration by the individual signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that individual's knowledge and belief.

(c) *Statement of service.* A charge shall also contain a statement that the Charging Party served the charge on the Charged Party, and shall list the name, title and location of the individual served, and the method of service.

(d) *Self-contained document.* A charge shall be a self-contained document describing the alleged unfair labor practice without a need to refer to supporting evidence documents submitted under paragraph (e) of this section.

(e) *Submitting supporting evidence and documents and identifying potential witnesses.* When filing a charge, the Charging Party shall submit to the Regional Director any supporting evidence and documents, including, but not limited to, correspondence and memoranda, records, reports, applicable collective bargaining agreement clauses, memoranda of understanding, minutes of meetings, applicable regulations, statements of position and other documentary evidence. The Charging Party also shall identify potential witnesses and shall provide a brief synopsis of their expected testimony.

§ 2423.5 [Reserved]

§ 2423.6 Filing and service of copies.

(a) *Where to file.* A Charging Party shall file the charge with the Regional Director for the region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the Regional Director in any of those regions.

(b) *Filing date.* A charge is deemed filed when it is received by a Regional Director.

(c) *Method of filing.* A Charging Party may file a charge with the Regional Director in person or by commercial delivery, first-class mail, or certified mail. Notwithstanding § 2429.24(e) of this subchapter, a Charging Party also may file a charge by facsimile transmission if the charge does not exceed 2 pages. If filing by facsimile transmission, the Charging Party is not required to file an original copy of the charge with the Region. A Charging Party assumes responsibility for receipt of a charge. Supporting evidence and documents shall be submitted to the Regional Director in person, by commercial delivery, first-class mail, or certified mail, not by facsimile transmission. Charges shall not be filed by electronic mail.

(d) *Service of the charge.* The Charging Party shall serve a copy of the charge (without supporting evidence and documents) on the Charged Party. Where facsimile equipment is available, the charge may be served by facsimile transmission in accordance with paragraph (c) of this section. The Region routinely serves a copy of the charge on the Charged Party, but the Charging Party remains responsible for serving the charge in accordance with this paragraph.

§ 2423.7 Alternative case processing procedure.

(a) *Alternative case processing procedure.* The Region may utilize an alternative case processing procedure to assist the parties in resolving their unfair labor practice dispute, if the parties voluntarily agree, by facilitating a problem-solving approach, rather than initially investigating the particular facts and determining the merits of the charge.

(b) *No evidence is taken.* The purpose of the alternative case processing procedure is to resolve the underlying unfair labor practice dispute without determining the merits of the charge. The role of the agent is to assist the parties in that endeavor by facilitating a solution rather than conducting an investigation. No testimonial or documentary evidence or positions on the

merits of the charge shall be gathered during the alternative case processing procedure or entered into the case file.

(c) *Investigation is not waived.* If the parties are unable to resolve the dispute, the Region conducts an investigation on the merits of the charge. The agent who is involved in the alternative case processing procedure shall not be involved in any subsequent investigation on the merits of the charge, unless the parties and the Regional Director agree otherwise.

§ 2423.8 Investigation of charges.

(a) *Investigation.* The Regional Director, on behalf of the General Counsel, conducts such investigation of the charge as the Regional Director deems necessary. During the course of the investigation, all parties involved are afforded an opportunity to present their evidence and views to the Regional Director.

(b) *Cooperation.* The purposes and policies of the Federal Service Labor- Management Relations Statute can best be achieved by the full cooperation of all parties involved and the timely submission of all potentially relevant information from all potential sources during the course of the investigation. All persons shall cooperate fully with the Regional Director in the investigation of charges. Cooperation includes any of the following actions, when deemed appropriate by the Regional Director:

- (1) Making union officials, employees, and agency supervisors and managers available to give sworn/affirmed testimony regarding matters under investigation;
- (2) Producing documentary evidence pertinent to the matters under investigation; and
- (3) Providing statements of position on the matters under investigation.

(c) *Investigatory subpoenas.* If a person fails to cooperate with the Regional Director in the investigation of a charge, the General Counsel, upon recommendation of a Regional Director, may decide in appropriate circumstances to issue a subpoena under 5 U.S.C. 7132 for the

attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel or training within an agency or between an agency and the Office of Personnel Management.

(1) A subpoena shall be served by any individual who is at least 18 years old and who is not a party to the proceeding. The individual who served the subpoena must certify that he or she did so:

(i) By delivering it to the witness in person;

(ii) By registered or certified mail; or

(iii) By delivering the subpoena to a responsible individual (named in the document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended. The subpoena shall show on its face the name and address of the Regional Director and the General Counsel.

(2) Any person served with a subpoena who does not intend to comply shall, within 5 days after the date of service of the subpoena upon such person, petition in writing to revoke the subpoena. A copy of any petition to revoke shall be served on the General Counsel.

(3) The General Counsel shall revoke the subpoena if the witness or evidence, the production of which is required, is not material and relevant to the matters under investigation or in question in the proceedings, or the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. The General Counsel shall state the procedural or other grounds for the ruling on the petition to revoke. The petition to revoke, shall become part of the official record if there is a hearing under subpart C of this part.

(4) Upon the failure of any person to comply with a subpoena issued by the General Counsel, the General Counsel shall determine whether to institute proceedings in the appropriate district court for the enforcement of the subpoena. Enforcement shall not be sought if to do so would be inconsistent with law, including the Federal Service Labor-Management Relations Statute.

(d) *Confidentiality.* It is the General Counsel's policy to protect the identity of individuals who submit statements and information during the

investigation, and to protect against the disclosure of documents obtained during the investigation, as a means of ensuring the General Counsel's continuing ability to obtain all relevant information. After issuance of a complaint and in preparation for a hearing, however, identification of witnesses, a synopsis of their expected testimony and documents proposed to be offered into evidence at the hearing may be disclosed as required by the prehearing disclosure requirements in § 2423.23.

§ 2423.9 Amendment of charges.

Prior to the issuance of a complaint, the Charging Party may amend the charge in accordance with the requirements set forth in § 2423.6.

§ 2423.10 Action by the Regional Director.

(a) *Regional Director action.* The Regional Director may take any of the following actions, as appropriate:

- (1) Approve a request to withdraw a charge;
- (2) Refuse to issue a complaint;
- (3) Approve a written settlement agreement in accordance with the provisions of § 2423.12;
- (4) Issue a complaint; or
- (5) Withdraw a complaint.

(b) *Request for appropriate temporary relief.* Parties may request the General Counsel to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d). The General Counsel may initiate and prosecute injunctive proceedings under 5 U.S.C. 7123(d) only upon approval of the Authority. A determination by the General Counsel not to seek approval of the Authority to seek such appropriate temporary relief is final and shall not be appealed to the Authority.

(c) *General Counsel requests to the Authority.* When a complaint issues and the Authority approves the General Counsel's request to seek appropriate temporary relief (including a restraining order) under 5 U.S.C.

7123(d), the General Counsel may make application for appropriate temporary relief (including a restraining order) in the district court of the United States within which the unfair labor practice is alleged to have occurred or in which the party sought to be enjoined resides or transacts business. Temporary relief may be sought if it is just and proper and the record establishes probable cause that an unfair labor practice is being committed. Temporary relief shall not be sought if it would interfere with the ability of the agency to carry out its essential functions.

(d) *Actions subsequent to obtaining appropriate temporary relief.* The General Counsel shall inform the district court which granted temporary relief pursuant to 5 U.S.C. 7123(d) whenever an Administrative Law Judge recommends dismissal of the complaint, in whole or in part.

§ 2423.11 Determination not to issue complaint; review of action by the Regional Director.

(a) *Opportunity to withdraw a charge.* If upon the completion of an investigation under § 2423.8, the Regional Director, on behalf of the General Counsel, determines that issuance of a complaint is not warranted because the charge has not been timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the Regional Director may request the Charging Party to withdraw the charge.

(b) *Dismissal letter.* If the Charging Party does not withdraw the charge within a reasonable period of time, the Regional Director may, on behalf of the General Counsel, dismiss the charge and provide the parties with a written statement of the reasons for not issuing a complaint.

(c) *Appeal of a dismissal letter.* The Charging Party may obtain review of the Regional Director's decision not to issue a complaint by filing an appeal with the General Counsel within 25 days after service of the Regional Director's decision. A Charging Party shall serve a copy of the appeal on the Regional Director. The Office of the General Counsel shall serve notice on the Charged Party that an appeal has been filed.

(d) *Extension of time.* The Charging Party may file a request, in writing, for an extension of time to file an appeal, which shall be received by the General Counsel not later than 5 days before the date the appeal is due. A Charging Party shall serve a copy of the request for an extension of time on the Regional Director.

(e) *Grounds for granting an appeal.* The General Counsel may grant an appeal when the appeal establishes at least one of the following grounds:

- (1) The Regional Director's decision did not consider material facts that would have resulted in issuance of complaint;
- (2) The Regional Director's decision is based on a finding of a material fact that is clearly erroneous;
- (3) The Regional Director's decision is based on an incorrect statement of the applicable rule of law;
- (4) There is no Authority precedent on the legal issue in the case; or
- (5) The manner in which the Region conducted the investigation has resulted in prejudicial error.

(f) *General Counsel action.* The General Counsel may deny the appeal of the Regional Director's refusal to issue a complaint, or may grant the appeal and remand the case to the Regional Director to take further action. The General Counsel's decision on the appeal states the grounds listed in paragraph (e) of this section for denying or granting the appeal, and is served on all the parties. Absent a timely motion for reconsideration, the decision of the General Counsel is final.

(g) *Reconsideration.* After the General Counsel issues a final decision, the Charging Party may move for reconsideration of the final decision if it can establish extraordinary circumstances in its moving papers. The motion shall be filed within 10 days after the date on which the General Counsel's final decision is postmarked. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations. The decision of the General Counsel on a motion for reconsideration is final.

§ 2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.

(a) *Bilateral informal settlement agreement.* Prior to issuing a complaint, the Regional Director may afford the Charging Party and the Charged Party a reasonable period of time to enter into an informal settlement agreement to be approved by the Regional Director. When a Charged Party complies with the terms of an informal settlement agreement approved by the Regional Director, no further action is taken in the case. If the Charged Party fails to perform its obligations under the approved informal settlement agreement, the Regional Director may institute further proceedings.

(b) *Unilateral informal settlement agreement.* If the Charging Party elects not to become a party to an informal settlement agreement which the Regional Director concludes effectuates the policies of the Federal Service Labor-Management Relations Statute, the agreement may be between the Charged Party and the Regional Director. The Regional Director, on behalf of the General Counsel, shall issue a letter stating the grounds for approving the settlement agreement and declining to issue a complaint. The Charging Party may obtain review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 2423.11(c) and (d). The General Counsel shall take action on the appeal as set forth in § 2423.11(e)-(g).

§§ 2423.13 to 2423.19 [Reserved]