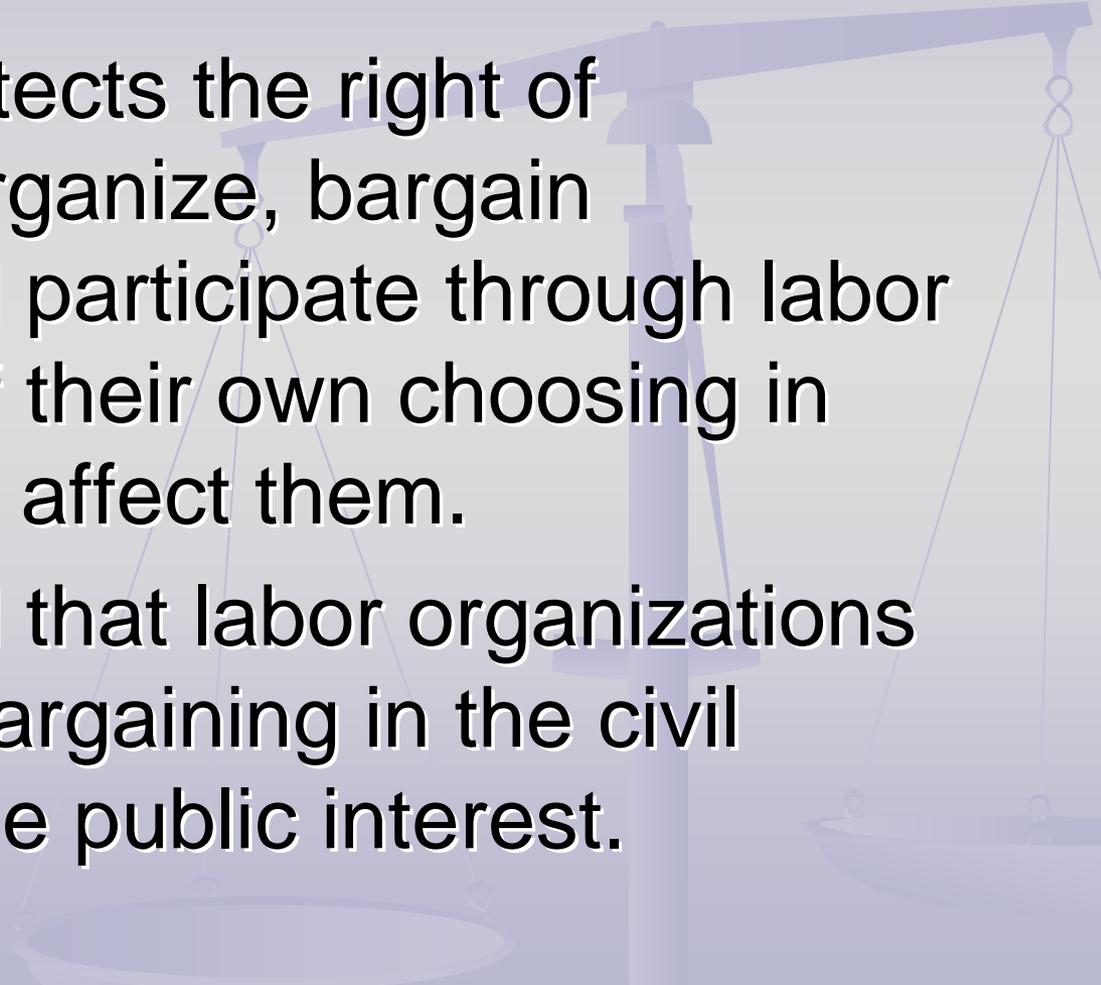


# THE FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE



# PURPOSES OF THE STATUTE

## 5 U.S.C. § 7101

- The Statute protects the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them.
  - Congress found that labor organizations and collective bargaining in the civil service are in the public interest.
- 

# Federal Labor Relations Authority

## Office of the General Counsel

*General Counsel*  
Julia Akins Clark

### *Regional Offices*

- Atlanta
- Boston
- Chicago
- Dallas
- Denver
- San Francisco
- Washington, D.C.

## Authority

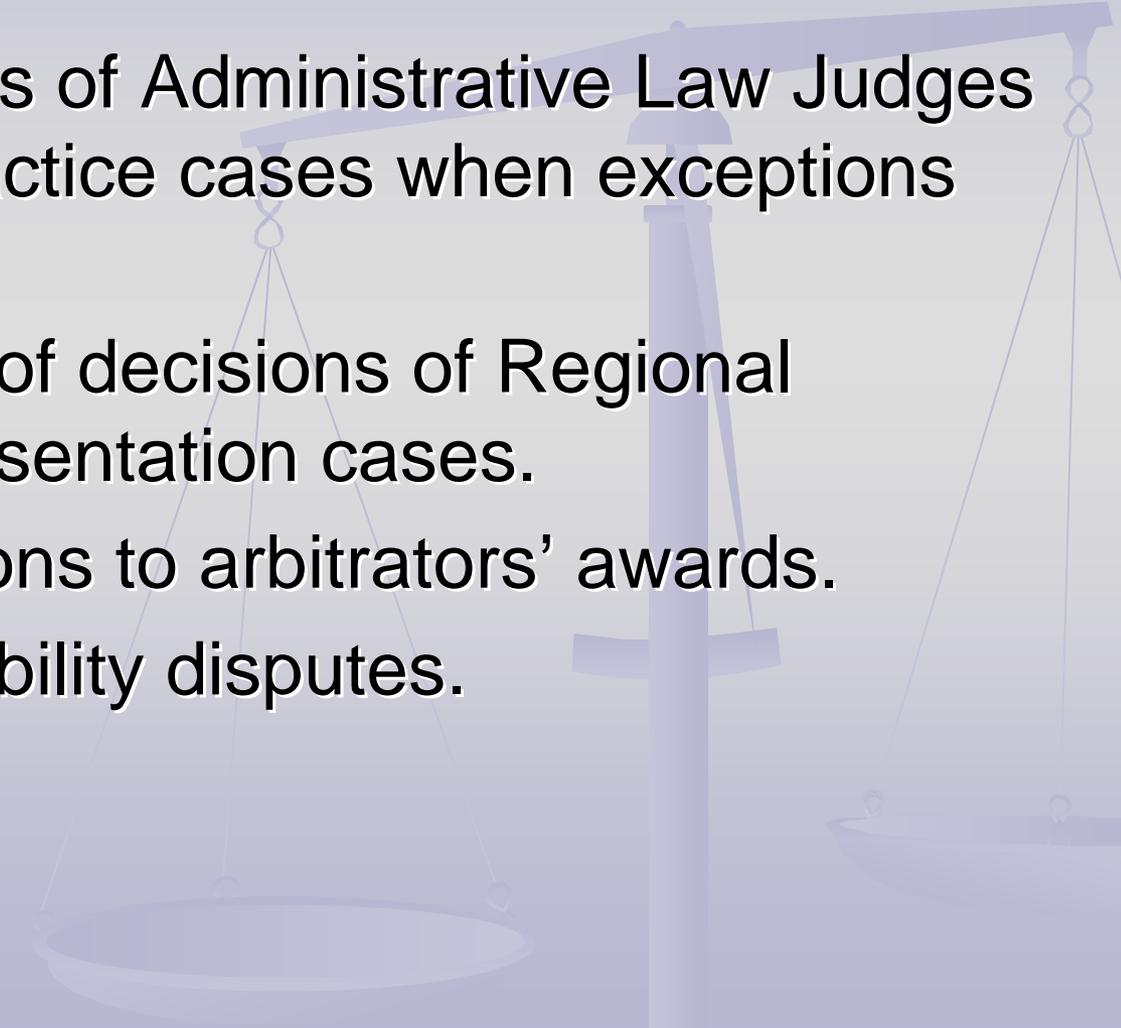
*Chair*  
Carol Waller Pope  
*Members*  
Thomas Beck  
Ernest DuBester

Office of  
Administrative Law  
Judges

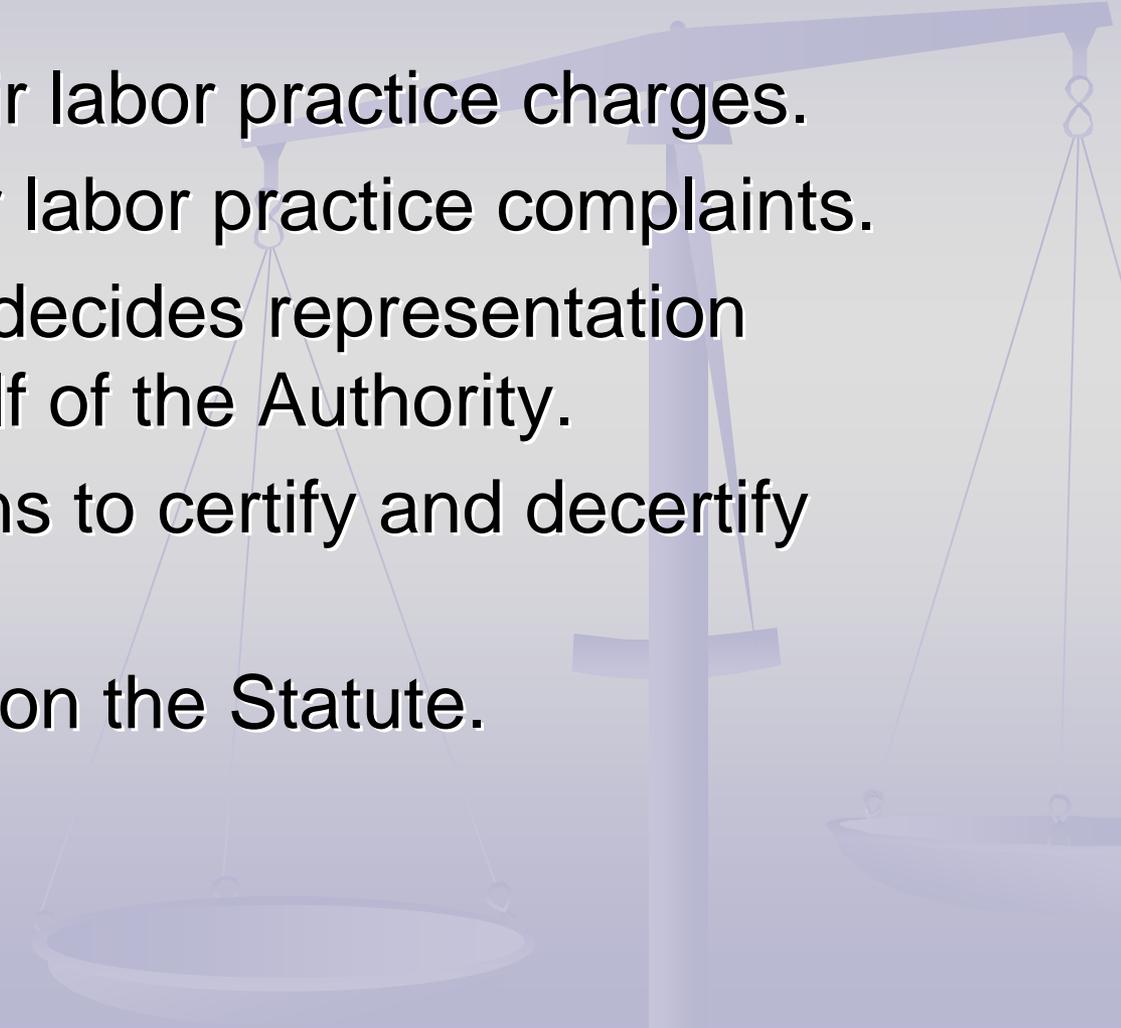
## Federal Service Impasses Panel

*Chair*  
Mary Jacksteit  
*Members*  
Martin Malin  
Barbara Franklin  
Marvin Johnson  
Thomas Angelo  
Edward Hartfield  
Don Wasserman

# AUTHORITY

- Reviews decisions of Administrative Law Judges in unfair labor practice cases when exceptions are filed.
  - Decides appeals of decisions of Regional Directors in representation cases.
  - Rules on exceptions to arbitrators' awards.
  - Resolves negotiability disputes.
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# OFFICE OF THE GENERAL COUNSEL

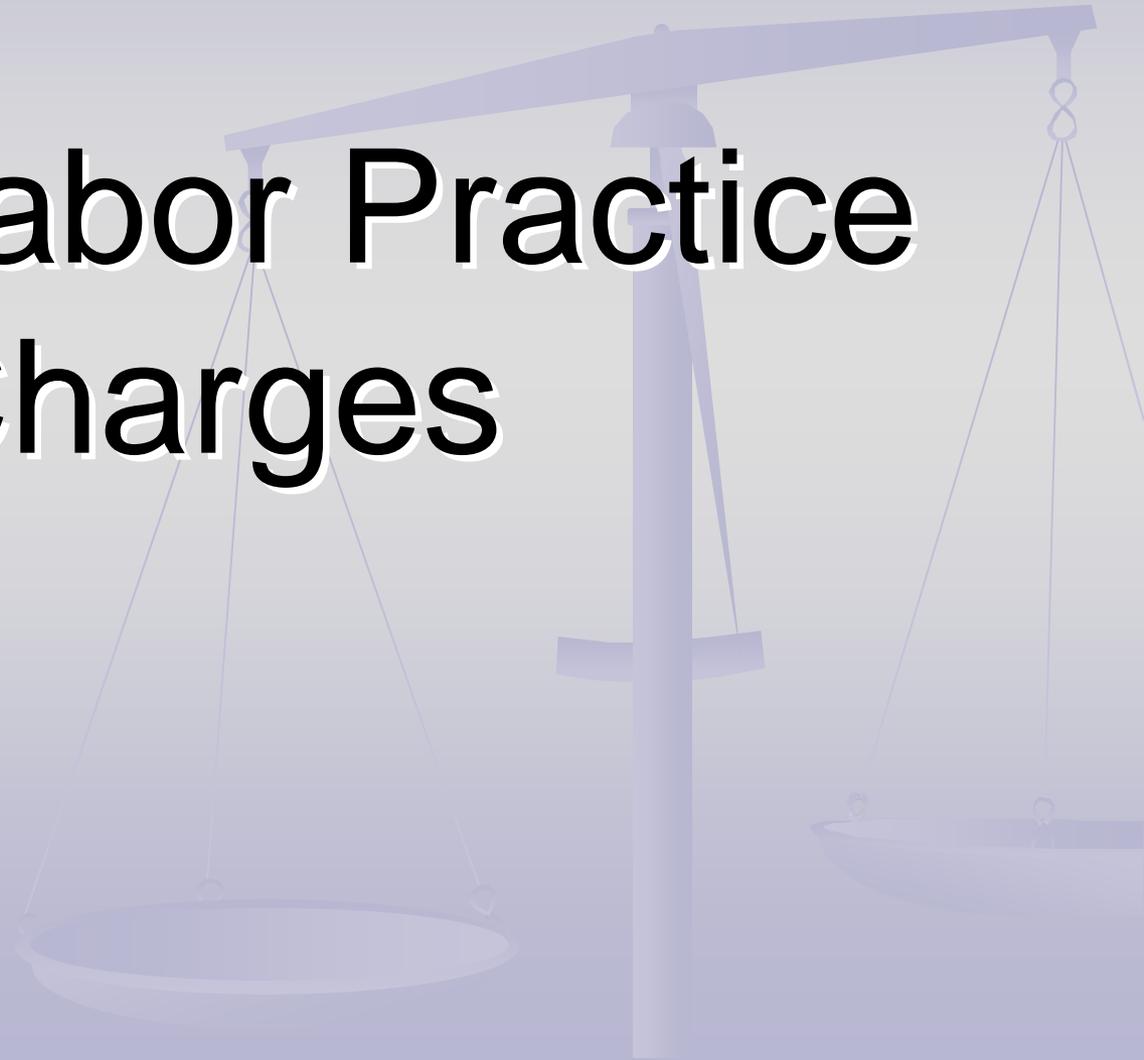
- Investigates unfair labor practice charges.
  - Prosecutes unfair labor practice complaints.
  - Investigates and decides representation petitions on behalf of the Authority.
  - Conducts elections to certify and decertify bargaining units.
  - Provides training on the Statute.
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# FEDERAL SERVICE IMPASSES PANEL

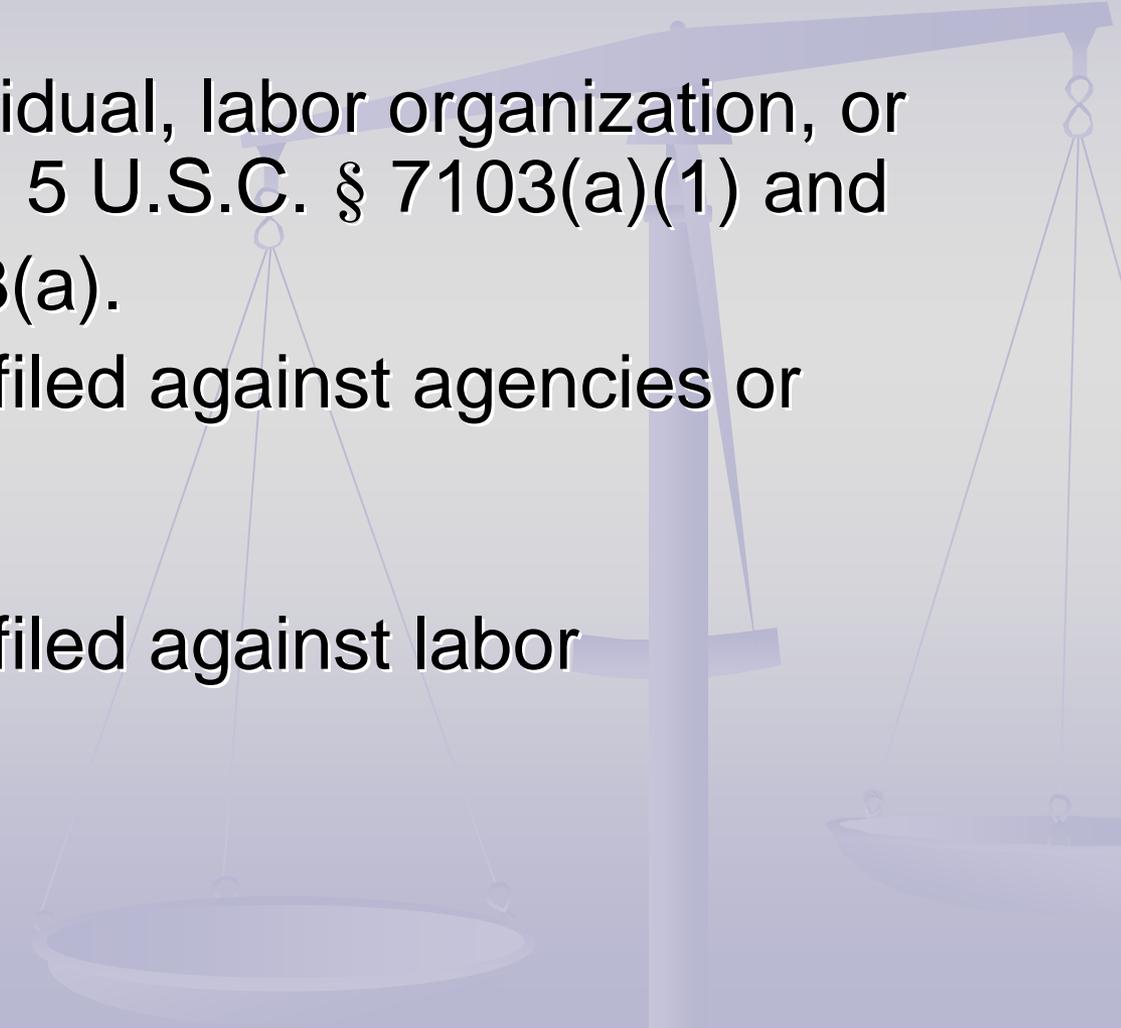
Resolves bargaining impasses between agencies and unions when voluntary arrangements, including the services of the Federal Mediation and Conciliation Service are unsuccessful.

- “Impasse” is defined in FSIP’s Regulations as *“that point in the negotiation of conditions of employment at which the parties are unable to reach agreement, notwithstanding their efforts to do so by direct negotiations and by the use of mediation or other voluntary arrangements for settlement.”* 5 C.F.R. § 2470.2(e) .

# Unfair Labor Practice Charges



# Who may file a charge?

- Any person (individual, labor organization, or agency) may file. 5 U.S.C. § 7103(a)(1) and 5 C.F.R. § 2423.3(a).
  - Charges may be filed against agencies or activities.
    - FLRA Form 22
  - Charges may be filed against labor organizations.
    - FLRA Form 23
- 

# Procedures for filing 5 C.F.R. § 2423

- Charges may be filed in person, via mail, or by facsimile. § 2423.6(c)
- Charge must include a clear and concise statement of facts alleged to constitute an unfair labor practice. § 2423.4(a)(5)
- Duty to submit supporting evidence and list of potential witnesses. § 2423.4(f)

# Where to file charge

- Charge is filed with the Regional Director for the region in which the alleged ULP occurred. (See [WWW.FLRA.GOV](http://WWW.FLRA.GOV))
- If ULP occurred in more than one Region, charge may be filed with the Regional Director in either Region.
  - § 2423.6(a)

# Contractual notification of intent to file requirements

- An agreement between a union and an activity which contains a requirement for pre-charge filing, notification or settlement efforts is enforceable.
- If the Region finds the charging party has not followed a required procedure, the charge is dismissed to allow for compliance with that required procedure.
- These agreements between an activity and a union do not limit an individual employee's right to file.
  - *Headquarters, Fort Sam Houston*, 8 FLRA 394 (1982).

# Regional Office Investigation

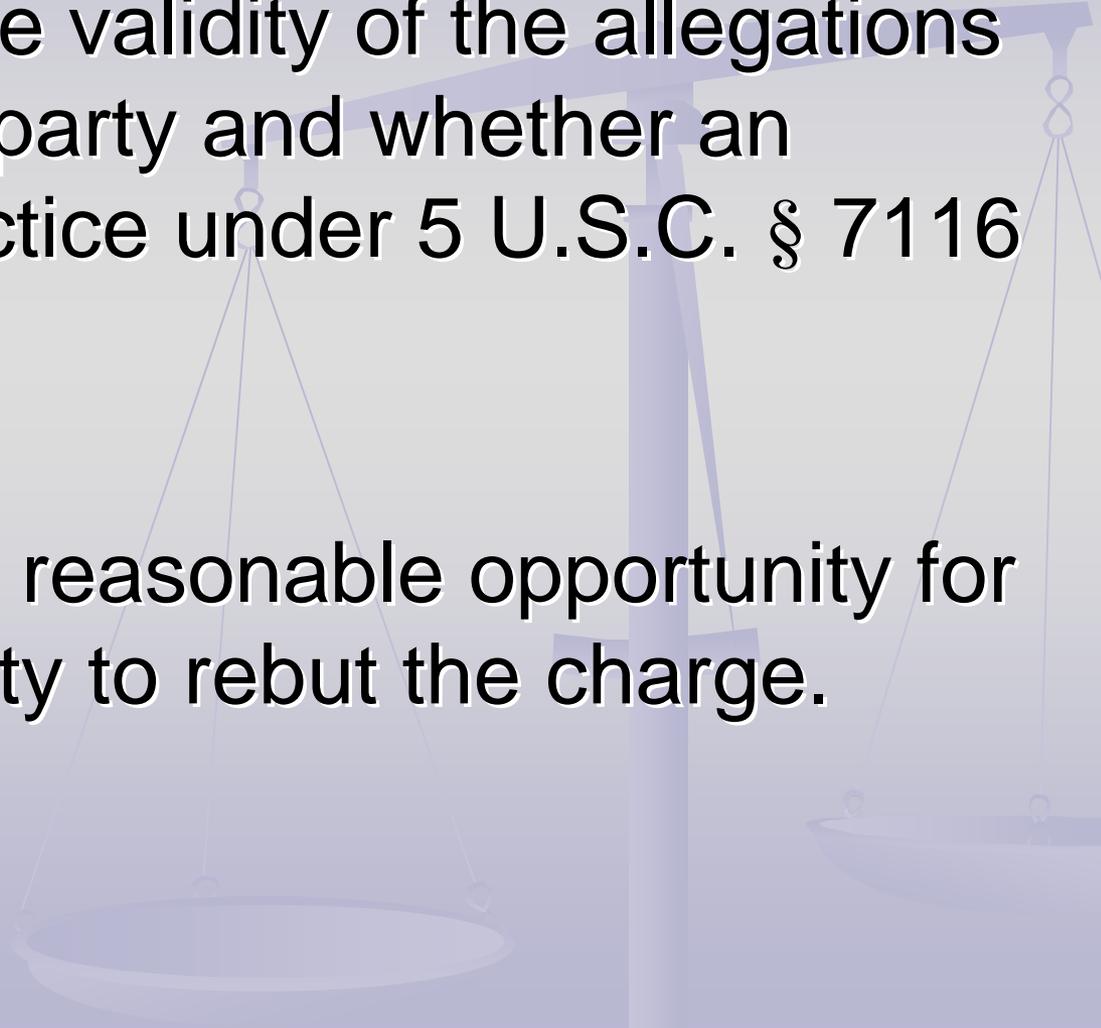
- All parties are afforded an opportunity to present their evidence and views to the Regional Director. § 2423.8(a)
- Investigation is to the extent the Regional Director deems necessary. § 2423.8(a)
- “All persons shall cooperate fully with the Regional Director in the investigation of the charges.” § 2423.8(b)

# Cooperation Includes

- Making relevant witnesses available to provide sworn/affirmed testimony
- Producing relevant documentary evidence
- Providing position statements

*5 C.F.R. § 2423.8(b)(1), (2), and (3)*

# Goals of the Investigation

- To determine the validity of the allegations of the charging party and whether an unfair labor practice under 5 U.S.C. § 7116 has occurred.
  - To provide for a reasonable opportunity for the charged party to rebut the charge.
- 

# Regional Director Decision

## ■ Complaint

- If all or part of the charge establishes a violation of the Statute and the Regional Director determines to proceed, the Region issues and serves a complaint which sets time and place for hearing.

*5 U.S.C. § 7118(a)(1), (2), and (3); 5 C.F.R. § 2423.10(a)(4).*

## ■ Dismissal

- If all or part of the charge does not establish a violation of the Statute, the Regional Director dismisses the charge or that part of the charge.

*5 U.S.C. § 7118(a)(1); 5 C.F.R. § 2423.11(b).*

## ■ Approve Withdrawal

- Charging party may request to withdraw the charge.

*5 C.F.R. § 2423.11(a).*

# Appeal of Decision not to Issue Complaint

- Charging party may appeal a decision not to issue a complaint to the General Counsel.
- Appeal must be filed within 25 days after service of the Regional Director's decision.  
*5 C.F.R. § 2423.11(c) (appeal of a dismissal letter and grounds); see also 5 C.F.R. § 2429 subpart B (general filing requirements).*

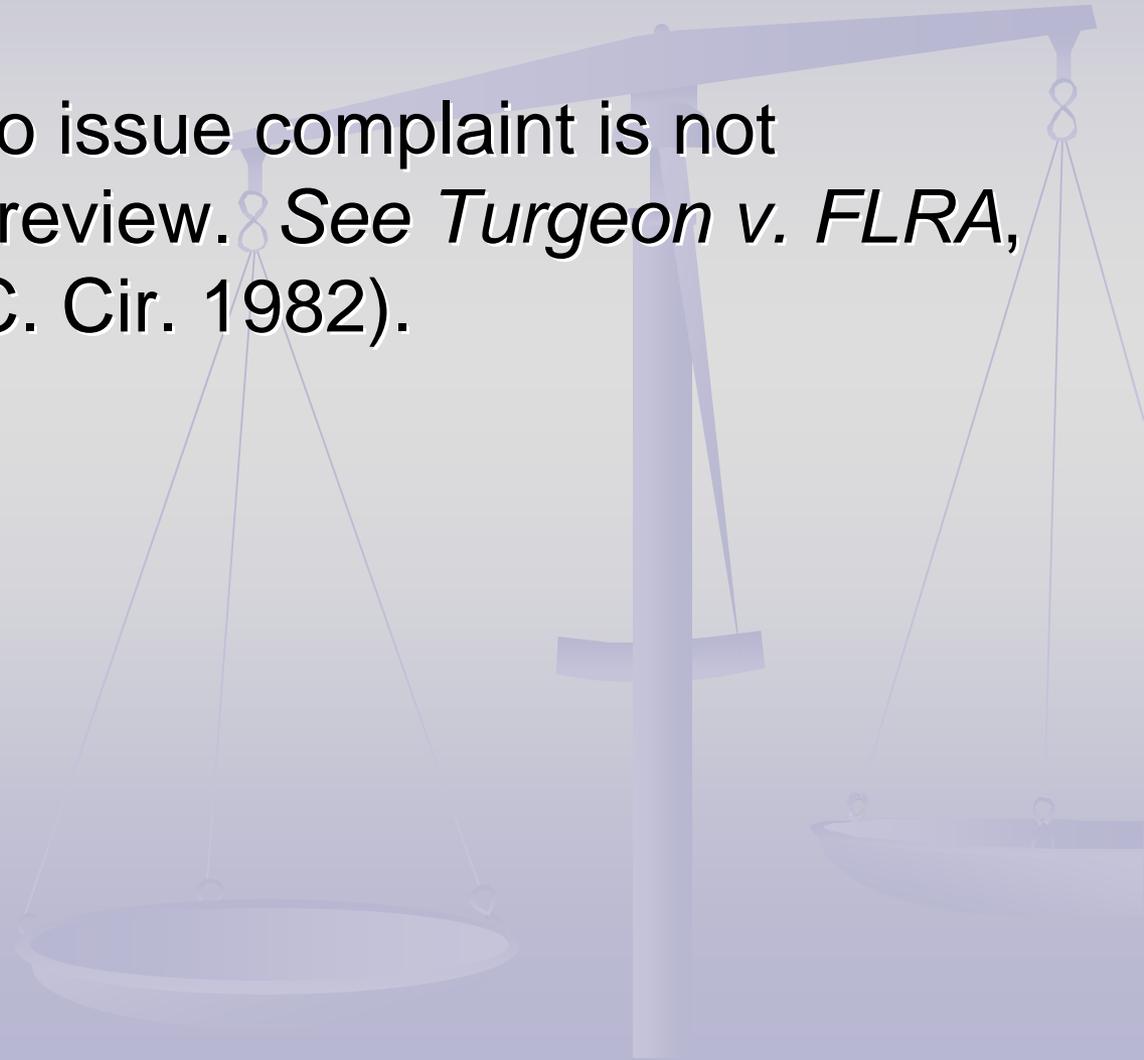
# Appeal

- The General Counsel may grant an appeal when the appeal establishes at least one of the following grounds:
  - The decision did not consider material facts that would have resulted in issuance of complaint;
  - The decision is based on a finding of a material fact that is clearly erroneous;
  - The decision is based on an incorrect statement of the applicable rule of law;
  - There is no Authority precedent on the legal issue in the case, or
  - The manner in which the Region conducted the investigation has resulted in prejudicial error.

*5 C.F.R. § 2423.11(e)*

# No Judicial review of decision to not issue complaint

- The decision not to issue complaint is not subject to judicial review. See *Turgeon v. FLRA*, 677 F.2d 937 (D.C. Cir. 1982).



# Answer and Hearing

- If a complaint is issued, the respondent (charged party) shall have the right to file an answer to the original and any amended complaint and to attend and give testimony at the hearing.

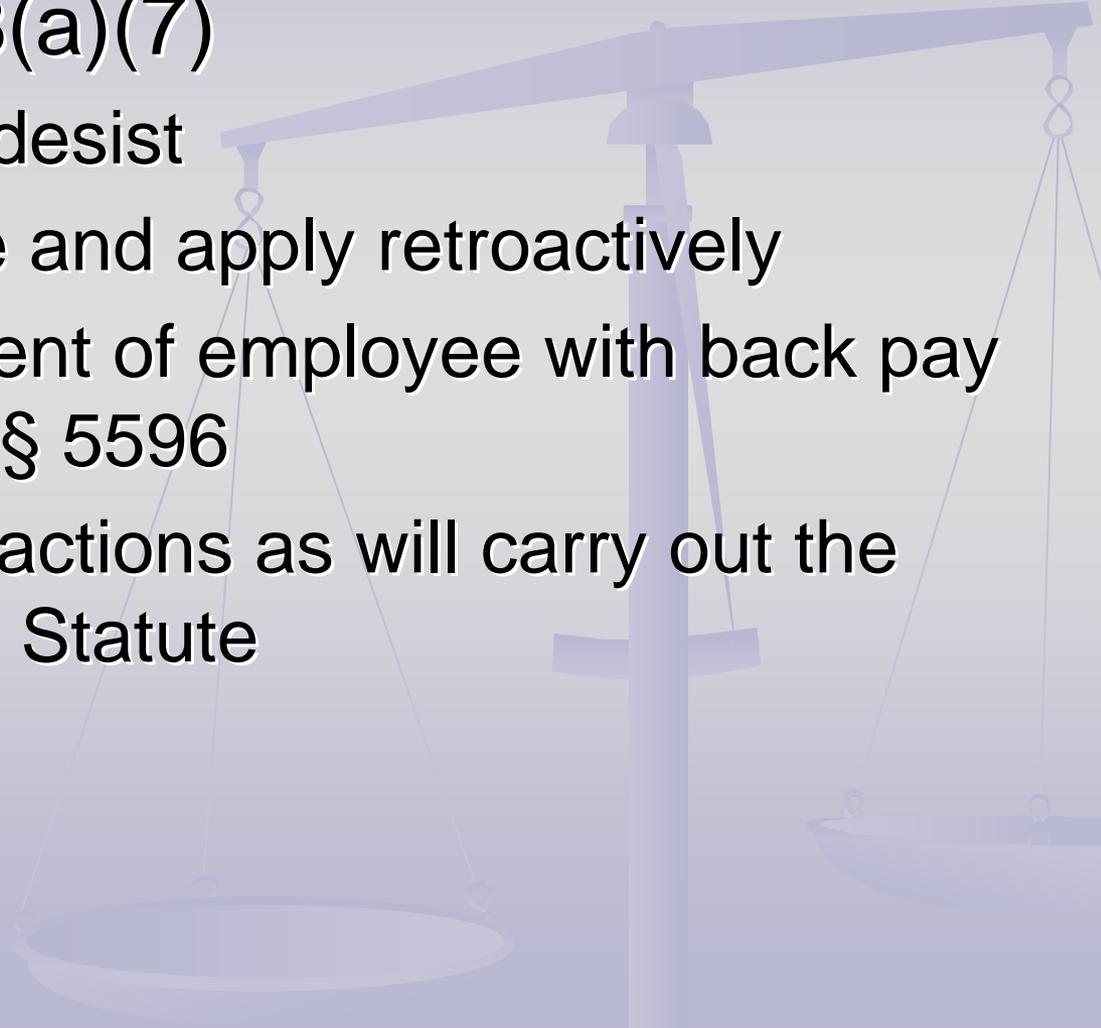
*5 U.S.C. § 7118(a)(3)*

# Litigation

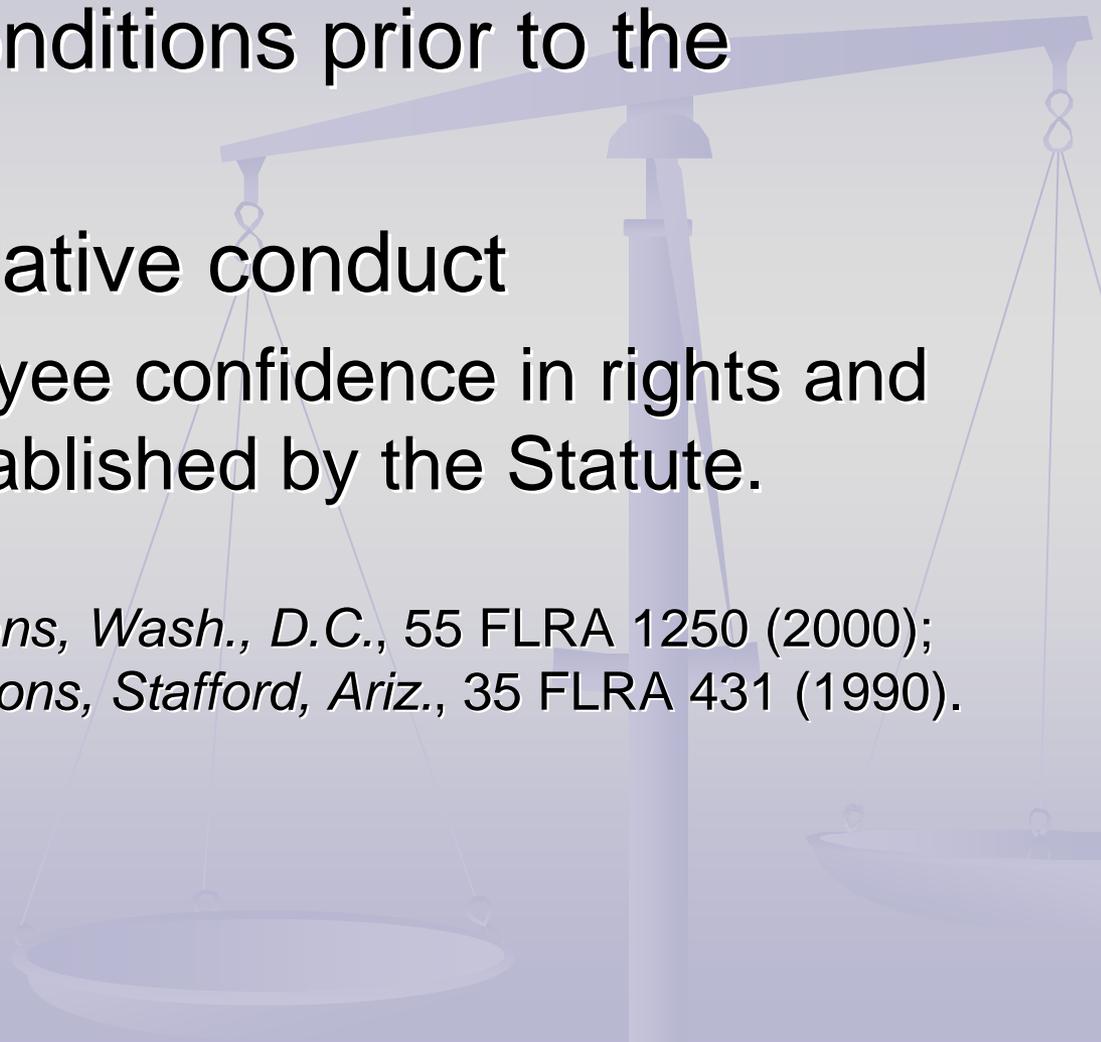
## 5 U.S.C. § 7118(a)(6)

- Complaints include Notice and date of Hearing, and filing date for the respondent's answer.
- Hearings are conducted by an FLRA Administrative Law Judge.
- The OGC is the moving party in the litigation and bears the burden of proving all elements of the complaint.
- After the Administrative Law Judge's decision, parties may file exceptions with the Authority.
- The Authority renders a decision on the record.

# Statutory basis for remedies

- 5 U.S.C. § 7118(a)(7)
    - (A) Cease and desist
    - (B) Renegotiate and apply retroactively
    - (C) Reinstatement of employee with back pay under 5 U.S.C. § 5596
    - (D) Other such actions as will carry out the purposes of the Statute
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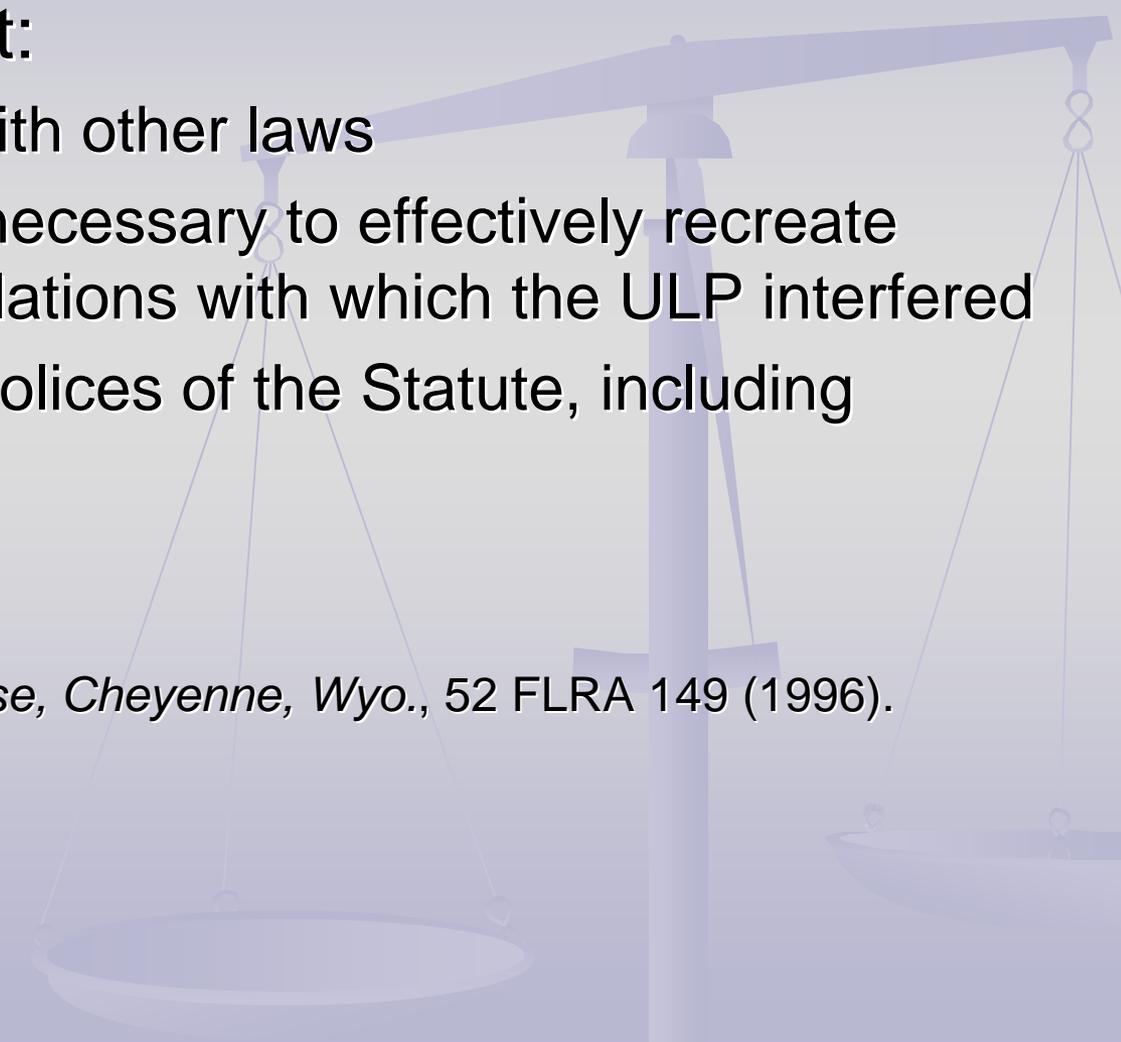
# Purpose of Remedies



- Recreate the conditions prior to the unlawful act
- Deter future violative conduct
  - Promote employee confidence in rights and procedures established by the Statute.

*See Fed. Bureau of Prisons, Wash., D.C., 55 FLRA 1250 (2000); U.S. DOJ, Bureau of Prisons, Stafford, Ariz., 35 FLRA 431 (1990).*

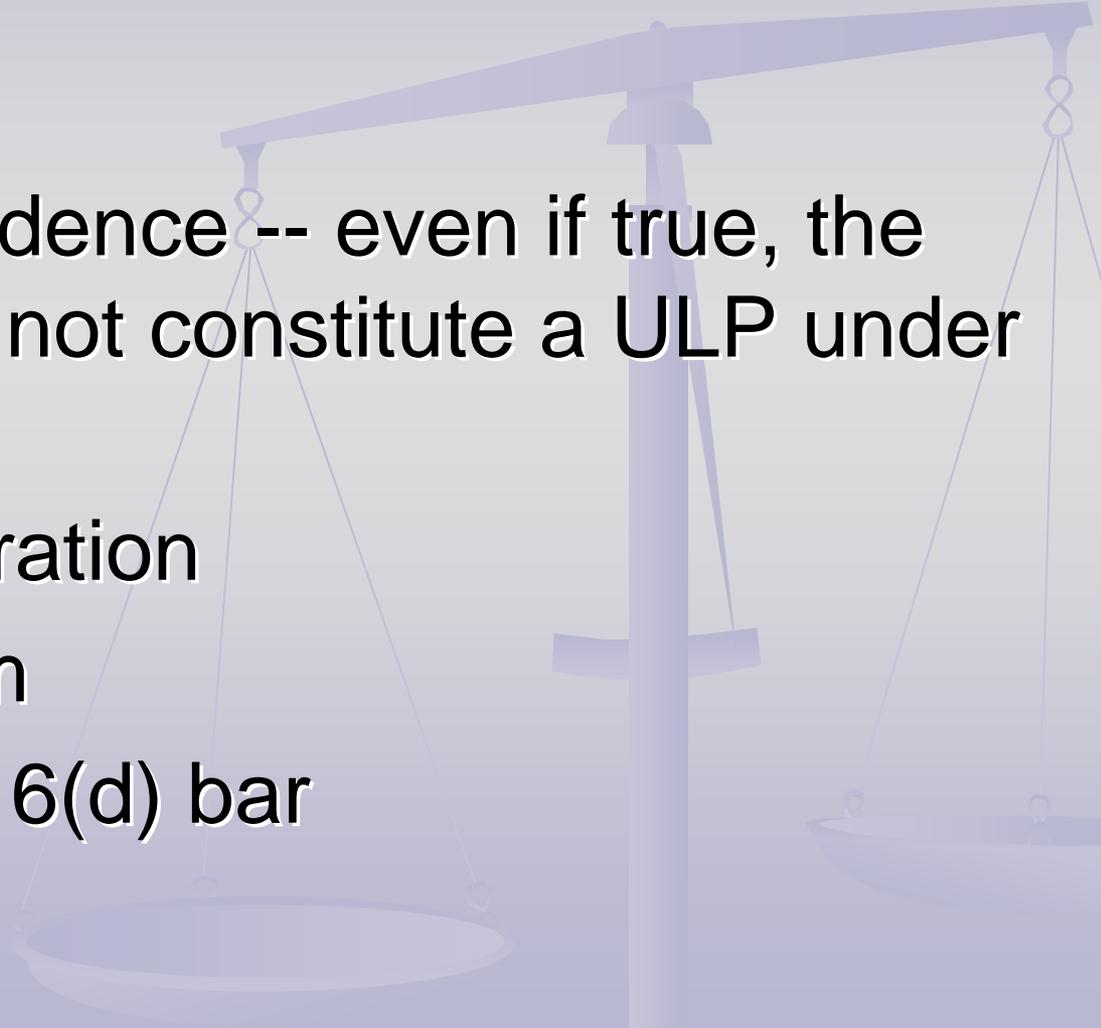
# Remedy Principles



- All remedies must:
  - (A) Be consistent with other laws
  - (B) Be reasonably necessary to effectively recreate conditions and relations with which the ULP interfered
  - (C) Effectuate the polices of the Statute, including deterrence
  - (D) Not be punitive

*F.E. Warren Air Force Base, Cheyenne, Wyo.*, 52 FLRA 149 (1996).

# Common Reasons ULP Charges are Dismissed

- Timeliness
  - Insufficient evidence -- even if true, the allegations do not constitute a ULP under the Statute
  - Lack of cooperation
  - Incorrect forum
  - 5 U.S.C. § 7116(d) bar
- 

# Timeliness

## Statute of Limitations

### 5 U.S.C. § 7118(a)(4)(A)

- General rule
  - No complaint shall be issued on any unfair labor practice which occurred more than 6 months before the filing of the charge.

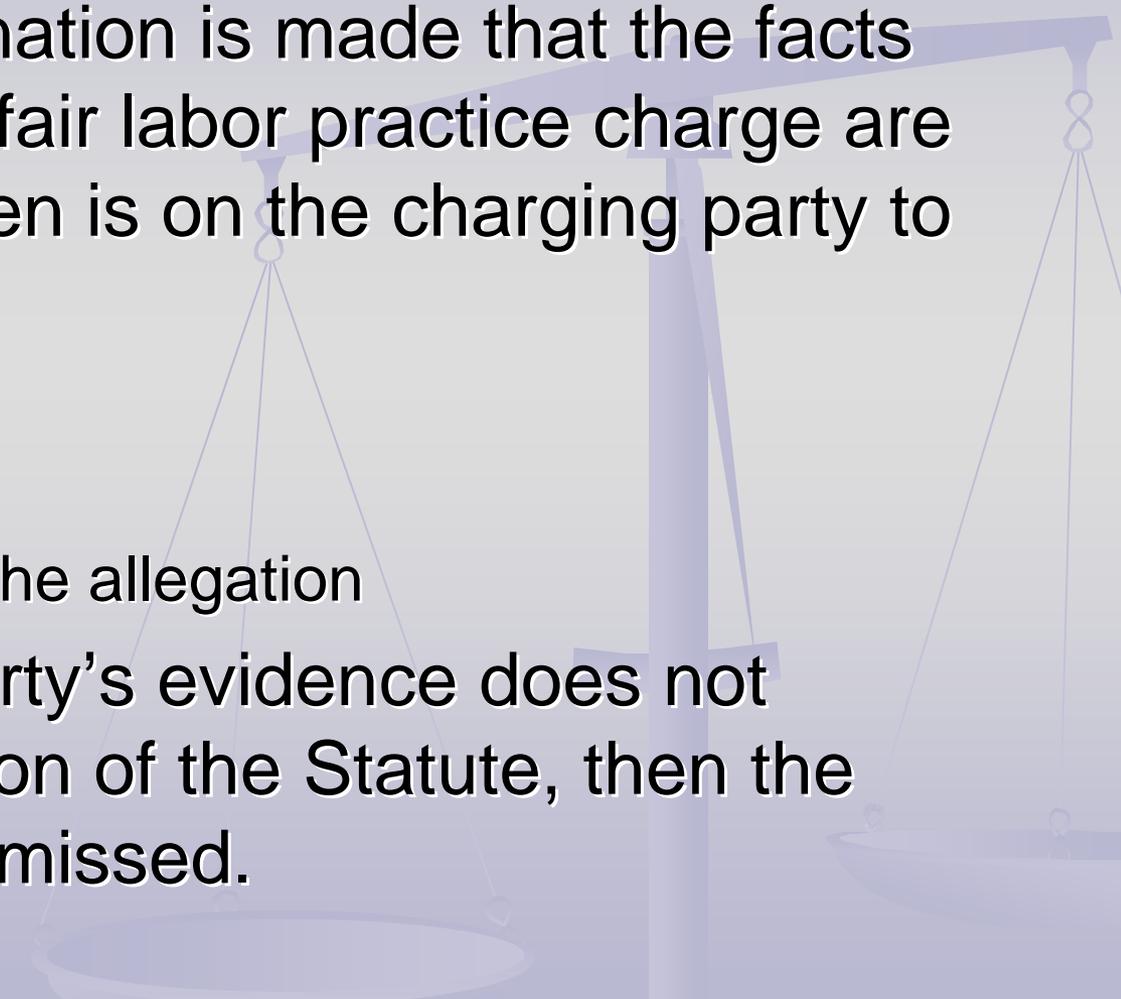
*U.S. DHS, Border & Transp., Sec. Directorate, Bur. Of Customs & Border Protection, Wash., D.C., 60 FLRA 943 (2005).*

# Statute of Limitations Exception

- If the charging party was prevented from filing the charge within six months of the event by:
  - (1) a failure of a party to perform a duty owed,  
or
  - (2) concealment prevented discovery,charging party may file within six months of learning of alleged violation.

*5 U.S.C. § 7118(a)(4)(B)*

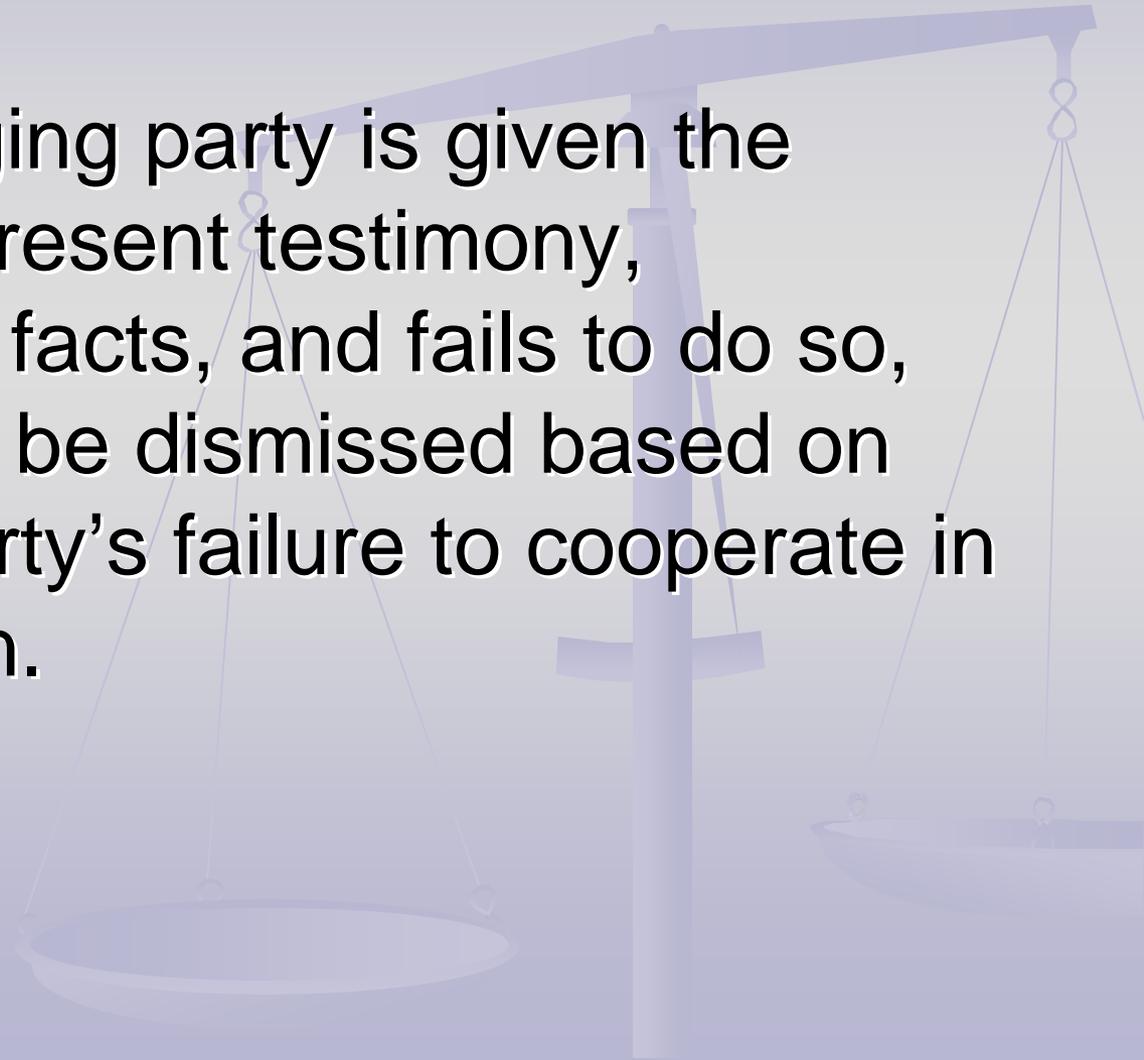
# Insufficient Evidence



- Before a determination is made that the facts underlying the unfair labor practice charge are meritorious, burden is on the charging party to produce:
  - Witnesses
  - Documents
  - Facts to support the allegation
- If the charging party's evidence does not establish a violation of the Statute, then the charge will be dismissed.

# Lack of Cooperation

- When the charging party is given the opportunity to present testimony, documents and facts, and fails to do so, the charge may be dismissed based on the charging party's failure to cooperate in the investigation.



# Incorrect Forum

- FLRA is not MSPB
  - When the factual predicate of the ULP and an MSPB appeal are the same, and the legal theory could be presented to MSPB, the Authority will decline to assert jurisdiction.
  - Distinction may be made between personal and institutional nature of appeal
    - *SBA & Wildberger*, 51 FLRA 413 (1995).
- The ULP process is not the proper forum to resolve contract disputes
- FLRA is not EEOC, OSC, NLRB or DOL
- Practice may be unfair, but not an unfair labor practice

# 5 U.S.C. § 7116(d) bar

- § 7116(d) -Where an issue may be raised as either a grievance or a ULP, it cannot be raised in both forums.
- Only one bite at the apple – the first bite.
- Bar exists if parties, facts and legal theory are the same.

*See U.S. Dep't of Labor, Wash., D.C., 59 FLRA 112 (2003); OLAM, S.W. Air Def. Sector, 51 FLRA 797 (1996); U.S. Dep't of the Army, Army Finance & Accounting Ctr., Indianapolis, Ind., 38 FLRA 1345 (1991); Lowry Air Force Base, Denver, Colo., 32 FLRA 792 (1988).*