

71 FLRA No. 91

NATIONAL RIGHT TO WORK
LEGAL DEFENSE FOUNDATION, INC.
(Petitioner)

0-PS-40

DECISION ON
REQUEST FOR GENERAL STATEMENT
OF POLICY OR GUIDANCE

December 23, 2019

Before the Authority: Colleen Duffy Kiko, Chairman,
and Ernest DuBester and James T. Abbott, Members
(Member DuBester concurring)

I. Statement of the Case

On August 19, 2019, the National Right to Work Legal Defense Foundation, Inc., (the Foundation) requested that the Authority issue a policy statement on the following topic:

[Whether] the [Federal Service Labor-Management Relations] Statute requires an election in each situation where a group of employees [is] added to a bargaining unit in order to determine whether that union enjoys majority employee support?¹

II. Background

In its request, the Foundation summarized the history of the Authority's "accretion" doctrine as one that allows the addition of a group of employees to an existing bargaining unit without an election following a "triggering event" or change in agency operations or organization.² The Foundation stressed that the doctrine disregards the principle of employee free choice, in particular bargaining-unit employees' right to refrain from "union activity."³ The request acknowledged that the Authority's

precedent accounts for employee self-determination by applying the accretion doctrine narrowly.⁴ The Foundation then argued that the accretion doctrine is inconsistent with the terms of the Statute, specifically §§ 7111(a) and 7112(a), which provide for secret ballot elections by bargaining-unit employees so that they may select an organization to be the exclusive representative in appropriate bargaining units that allow these employees the "fullest" freedom to exercise their rights under the Statute.⁵

III. Discussion

The Authority has carefully considered this request and has determined that the request does not satisfy the standards governing the issuance of general statements of policy and guidance set forth in § 2427.5 of the Authority's Regulations.⁶ The guidance sought by the Foundation can be more appropriately resolved in a case or controversy, and the Foundation provided no reason to conclude that the issuance of an Authority statement would prevent the proliferation of cases involving the same or similar question.

Likewise, while the request adequately summarized existing Authority precedent, we note that the request made no mention of a recent decision. In *Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire*, the Authority announced that while considering petitions for severance elections, employees' right to self-determination was a factor which should be given *equal* consideration with all other factors.⁷ This decision, read together with another 2019 case, *Export-Import Bank of the United States*,⁸ more than demonstrates awareness on the part of the Authority of the statutory significance of bargaining-unit employees' right to self-determination.

Finally, we find this request to be dependent upon the circumstances of the case at issue, so much so, that this issue of law and policy may be developed more fully in the context of an actual dispute. Accordingly, any policy statement or guidance issued by the Authority would be unlikely to prevent the proliferation of future cases.

IV. Decision

We deny the Foundation's request for a general statement of policy or guidance.

¹ Foundation Request at 1.

² See *U.S. Dep't of Interior, Bur. of Reclamation Columbia-Cascades Area Office, Yakima, Wash.*, 65 FLRA 491, 493 (2011).

³ Foundation Request at 3.

⁴ *Id.* (citing *U.S. Dep't of the Navy Commander, Navy Region Mid-Atl. Program Dir., Fleet & Family Readiness, Norfolk, Va.*, 64 FLRA 782, 785 (2010)).

⁵ See 5 U.S.C. §§ 7111(a), 7112(a).

⁶ 5 C.F.R. § 2427.5.

⁷ 70 FLRA 995, 999 (2018) (Member DuBester dissenting) (finding that while preventing unit fragmentation was an important consideration, employee interests, concerns, and self-determination were of equal importance when determining whether severance was warranted).

⁸ 71 FLRA 248, 255 (2019) (Member DuBester dissenting).

Member DuBester, concurring:

I agree that the request does not satisfy the standards governing the issuance of general statements of policy or guidance. Because the questions posed by the request can more appropriately be addressed in the context of facts and circumstances presented by parties in an actual dispute, I concur in the Decision to deny the request.