

General Accounting Office

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(3) Issuance of a notice of hearing for the purpose of disposing of the remaining issues raised in the petition.

(b) The General Counsel's report shall be supplied to all interested parties, and, unless all parties agree to a shorter period, they shall have 15 days during which to file any response with the Board.

(c) The Board, as expeditiously as feasible after the expiration of the period specified in paragraph (b) of this section, but no later than 30 days thereafter, shall either approve the report and order appropriate steps to carry out its recommendations, or remand it to the General Counsel with further instructions.

(d) Where a hearing is ordered, an administrative judge shall be designated by the Board. The report of the administrative judge shall include Findings of Fact and Recommendations.

(e) After receiving the report from the administrative judge, and after providing the parties with an opportunity for comment, the Board shall issue a Decision and Order determining the appropriate unit, directing an election, dismissing the petition or making some other appropriate disposition of the matter.

(f) Final Decisions and Orders issued by the Board based on hearings held in accordance with paragraphs (d) and (e) of this section shall not be considered final decisions subject to appeal before the Circuit Courts of Appeal.

§ 28.116 Conduct of elections.

(a) The Board shall supervise any election it orders to be conducted, but may delegate ministerial functions relating to an election to any qualified independent organization; to members of the Board's full-time staff; or to temporary employees hired for this purpose.

(b) Appropriate notices setting forth details of the election shall be posted by GAO as directed by the Board.

(c) The Board shall, through its agents chosen to conduct the election:

(1) Provide the opportunity for all qualified voters to indicate their choices in secrecy;

(2) Offer qualified voters the opportunity to vote for any labor organiza-

tion on the ballot, or to reject all labor organizations;

(3) Permit all parties to observe all aspects of the election procedure other than any which would interfere with the secrecy of the ballot;

(4) Provide for all parties to challenge the eligibility of any voters, and to impound the ballots of such voters, subject to later determination of eligibility should the number of challenges potentially affect the results;

(5) Certify to all parties the results of the election.

(d) Upon receiving a report of the results of the election, the Board shall:

(1) If necessary rule on the challenges and adjust the results accordingly;

(2) Formally announce the results and, where appropriate, designate a labor organization as the exclusive collective bargaining agent, or withdraw such a designation;

(3) Order a runoff or an additional election, if the Board deems it appropriate, where the results of the original election are inconclusive because no choice on the ballot has secured a majority of the valid votes cast. Not more than one additional and one runoff election may be held.

(i) *Runoff election.* The Board may order a runoff election where one or more of the labor organizations on the ballot has received the vote of at least 30 percent of the employees eligible to vote, but none has gained a majority of the votes cast. The runoff election will be between the two choices receiving the largest and the second largest number of votes in the original election.

(ii) *Additional election.* The Board may order an additional election where there is a tie vote between all of the choices on the ballot or where a runoff election is not feasible because there is a tie between the choices receiving the second most votes in the original election. The additional election will include all the choices that appeared on the original ballot.

Subpart F—Special Procedures; Unfair Labor Practices

§ 28.120 Authority of the Board.

(a) The procedures in this subpart relate in part to the Board's function, under 31 U.S.C. 753(a)(6), to "consider

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and order corrective or disciplinary action in a case arising from * * * a matter appealable to the Board under the labor-management relations program under (31 U.S.C. 732(e)(2)) including a labor practice prohibited under (31 U.S.C. 732(e)(1)).”

(b) The system so established by the Comptroller General is required to provide that each employee of the GAO has the right to form, join or assist, or not form, join or assist an employee organization, freely and without penalty or reprisal, and for a labor-management relations program consistent with Chapter 71 of Title 5, U.S.C. (31 U.S.C. 732(e)).

§ 28.121 Unfair labor practices; Board procedures.

(a) Unfair labor practices are defined at GAO Order 2711.1. An allegation that a provision of GAO Order 2711.1 is inconsistent with Chapter 71 of Title 5, United States Code, and thereby denies to an employee or labor organization rights comparable to those granted by Chapter 71 of Title 5, United States Code, may also be raised under the unfair labor practice procedure.

(b) An allegation that unfair labor practices have been committed shall be subject to the procedures appearing in subpart B of this part for the filing of charges, investigation by the General Counsel, and the Board’s disposition, except as set forth in paragraphs (c) and (d) of this section.

(c) Except as provided in paragraph (d) of this section, no petition may be filed based on any alleged unfair labor practice which occurred more than 6 months before the filing of an unfair labor practice charge with the charged party, as provided in paragraph 15e of GAO Order 2711.1, or more than 9 months before the filing of a charge with the Office of General Counsel.

(d) If the Board determines that the charging party was prevented from filing the charge during the 6-month period referred to in paragraph (c) of this section by reason of:

(1) Any failure of the charged party to perform a duty owed to the charging party; or

(2) Any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period; the

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charge will be considered timely filed, provided it was filed with the charged party during the 6-month period beginning on the day of the discovery of the alleged unfair labor practice by the charging party.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69303, Dec. 12, 2003]

§ 28.122 Negotiability issues.

Where the GAO and an exclusive bargaining representative disagree on whether a matter is subject to negotiation as part of the requirement to bargain in good faith, the matter shall be appealable to the Board under the following procedures:

(a) When, in connection with negotiations, a proposal is declared nonnegotiable, the party submitting the proposal shall, prior to the close of negotiations, submit to the other party a Request for Formal Negotiability Determination reciting the proposal in question. The party declaring the proposal nonnegotiable shall, within ten (10) days, deliver to the other party a Formal Negotiability Determination stating the basis for the Determination.

(b) A Formal Negotiability Determination may be appealed to the Board within 20 days of its service by filing a Petition for Review with the Board. A complete statement of argument from the petitioner should accompany the Petition for Review.

(c) The Board shall serve the Respondent with a copy of the Petition for Review and accompanying argument. Respondent shall reply to the Petition for Review within 20 days of its service upon respondent.

(d) One or more members of the Board shall review the arguments, hold a hearing if the administrative judge deems it necessary, and issue a decision.

(e) The decision shall become final in accordance with § 28.87.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69303, Dec. 12, 2003]

§ 28.123 Standards of conduct for labor organizations.

(a) The GAO shall only accord recognition to labor organizations that are free from corrupt influences and