

Section 220 – Collective Bargaining and Unionization

Collective Bargaining

Section 220 of the Congressional Accountability Act (CAA) applies certain rights, protections and responsibilities of chapter 71 of title 5, United States Code relating to Federal service labor-management relations. Under chapter 71, employees have – for the purpose of addressing issues of terms and conditions of employment – the right “to form, join or assist a labor organization or to refrain from such activity freely and without fear of penalty or reprisal.” The law also vests employing offices and labor organizations with rights and responsibilities with respect to both the establishment and the conduct of a collective bargaining relationship.

Congress has adopted substantive regulations implementing section 220(d) of the CAA, which are found in the substantive regulations of the Office of Compliance (“Office of Compliance Regulations”).

1. Coverage

The covered employees and employing offices subject generally to the CAA are described in the “Covered Employees” section of the *CAA Handbook* and the Office of Compliance web site (www.compliance.gov). Employees who are employed in offices named in section 220(e) of the CAA are presently not covered under section 220.

2. Right to Engage In, or Refrain From, Organizing and Bargaining Collectively

Covered employees (except those employed in offices listed in section 220(e)) have a right to form, join, or assist a labor organization or to refrain from such activity freely and without fear of penalty or reprisal. This right includes acting for a labor organization in the capacity of a representative and, in that capacity, presenting the views of the labor organization to the heads of agencies and other officials of the Executive Branch of the Government, the Congress, or other appropriate authorities. Employees also have the right to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.

3. Process By Which Employees Decide the Question of Representation

Where employees desire to be represented by a labor organization for the purpose of collective bargaining, the labor organization must file a petition with the Office of Compliance requesting that it conduct a secret ballot election among the employees. The petition must be supported by a showing of interest by at least 30% of the employees who are claimed to comprise an appropriate bargaining unit. If a different union also seeks to represent employees involved in the petition, upon a showing of interest of at least 10% of the employees in the specified unit, it may – in a timely manner – request intervention so as to participate in the case and be included on the ballot. Labor organizations that already represent the bargaining unit may also be included on the ballot by showing a valid or recently expired collective bargaining agreement (or other evidence that it is the employees’ exclusive representative).

The Office of Compliance investigates the information contained in the petition, including the bona fide status of the labor organization(s), the appropriateness of the employee bargaining unit, and which employees should be excluded from the unit because of their exempt status under section 220 of the CAA (such as managers and supervisors). In addition, the Office of Compliance works out details with the employing office and the labor organization(s) over the timing and manner in which an election will be held among employees.

The Office of Compliance supervises the actual conduct of the election. If a majority of the voting employees vote to be represented by a particular labor organization, the Board of Directors

Section 220 – Collective Bargaining and Unionization

of the Office of Compliance will certify the labor organization as the exclusive bargaining agent of the unit employees. If a majority of voting employees does not wish union representation, the Board of Directors will certify that result of the election.

4. Rights and Responsibilities of Employing Offices

Upon the certification of a labor organization as the exclusive bargaining representative, an employing office is under an obligation to recognize the labor organization as the bargaining agent of its unit employees. At the request of the labor organization, the employing office must meet and negotiate in good faith for the purpose of collective bargaining. (See Section 8, “Unfair Labor Practices,” below)

An employing office has an obligation to furnish the exclusive representative, upon request and to the extent not prohibited by law, data which is normally maintained by the employing office in the regular course of business; reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining, and which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

The CAA recognizes the management rights of an employing office which are defined by statute to include the right to determine the mission, budget, organization, number of employees, and internal security practices of the office. In addition, in accordance with applicable law, an employing office has the right to hire, assign, direct, layoff, and retain employees in the office and the right to suspend, remove, reduce in pay or grade, or take other disciplinary action against employees. However, upon request, an employing office must negotiate the procedures it will observe in exercising management rights and appropriate arrangements for employees adversely affected by the exercise of such rights.

5. Rights and Responsibilities of Labor Organizations

As the exclusive representative of employees, a labor organization has both the right and the obligation to negotiate in good faith with an employing office over conditions of employment. A labor organization is responsible for representing the interests of all employees in the unit it represents without regard to labor organization membership.

As exclusive representative, a labor organization must be given an opportunity to be represented in any formal discussion between one or more representatives of the employing office and one or more employees in the bargaining unit or their representatives concerning any grievance, personnel policy, practice, or other general condition of employment. A labor organization also must be given the opportunity to be present at any examination of a unit employee by a representative of the employing office in connection with an investigation, if an employee reasonably believes that the examination may result in disciplinary action and if the employee requests representation.

6. Collective Bargaining

“Collective bargaining” is the performance of the mutual obligation of the representative of the employing office and the exclusive representative of the unit employees to meet at reasonable times and to consult and bargain in a good faith effort to reach an agreement with respect to the conditions of employment affecting such employees. Upon reaching an agreement, if requested

Section 220 – Collective Bargaining and Unionization

by either party, a written document incorporating the agreement must be executed by the parties. It should be noted that the legal obligation to bargain does not compel either party to agree to a proposal or to make a concession.

Conditions of employment means personnel policies, practices, and matters – whether established by rule, regulation, or otherwise – affecting working conditions, except that the term does not include policies, practices, and matters relating to prohibited political activities, position classifications, or subjects that are specifically provided for by Federal statute.

7. General Unavailability of Economic Weapons

Unlike the private sector, there is no right to strike, nor is there a right to engage in a work stoppage or slowdown. Chapter 71, as applied by the CAA, does not permit picketing of an employing office in a labor-management dispute if such picketing interferes with an employing office's operations.

8. Unfair Labor Practices

Chapter 71, as applied by the CAA, prohibits various types of management and labor organization conduct.

Employing offices shall not:

- ◆ Interfere with, restrain, or coerce any employee in the exercise of rights under section 220 of the CAA. Prohibited examples include: threats of reprisal; making threatening statements to discourage the filing of a representation petition; conveying the impression that the employee's conduct will be closely monitored as a result of filing an unfair labor practice charge; making implied threats against union representatives for aiding employees in the filing and prosecution of grievances under the parties' negotiated grievance procedure.
- ◆ Encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment. Prohibited examples include issuing a written reprimand to a unit employee in retaliation for activity on behalf of the union, or failing to promote an employee because of that employee's union activities or lack of activity.
- ◆ Sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if they also are furnished on an impartial basis to other labor organizations having equivalent status. A prohibited example is taking an active part in assisting a labor organization in organizing its employees, such as handing out membership cards or petitions.
- ◆ Discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under section 220 of the CAA.
- ◆ Refuse to consult or negotiate in good faith with a labor organization as required by the statute. Prohibited examples include: unilaterally implementing a reorganization without proper notice to the exclusive representative; bypassing the exclusive representative by negotiating with employees in the representative's unit; refusing to provide the labor organization, upon request, with available and necessary information which is required to fulfill its representational obligations; unilaterally changing an established past practice, absent a clear and unmistakable waiver of bargaining rights.
- ◆ Refuse to cooperate in impasse procedures and impasse decisions as required by chapter 71, as applied by the CAA.

Section 220 – Collective Bargaining and Unionization

- ◆ Enforce any rule or regulation (other than those implementing prohibited personnel practices) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date of the rule or regulation was prescribed.
- ◆ Fail or refuse to comply with any provision of chapter 71, as applied by the CAA. Prohibited examples include: refusing to allow an employee union representative during an interview with management when such meeting could reasonably lead to disciplinary action; refusing to provide official time for contract negotiations which take place during an employee's regular work hours and when the employee would otherwise be in a work or paid leave status; refusing to honor dues allotment authorizations for an exclusive representative submitted by unit employees in the employing office; refusing to provide the exclusive representative the opportunity to be represented at a formal discussion within the meaning of chapter 71, as applied by the CAA.

Labor organizations shall not:

- ◆ Interfere with, restrain, or coerce employees in the exercise of rights assured them by chapter 71, as applied by the CAA, regardless of whether employees choose to join a union. Prohibited examples include informing an employee that membership in the union is required to obtain union assistance in processing a grievance.
- ◆ Cause or attempt to cause an employing office to discriminate against any employee in the exercise of his or her rights under chapter 71, as applied by the CAA. Prohibited examples include attempting to coerce management to discipline an employee who did not join a union or attempting to coerce management to discharge an employee because he or she was organizing on behalf of a different labor organization.
- ◆ Coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee, or the discharge of the member's duties as an employee. Prohibited examples include imposing fines on unit employees who exceed a certain pre-determined standard of efficiency, or restricting an employee from serving as an officer of the union if the employee has received an outstanding performance award.
- ◆ Discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or non-preferential civil service status, political affiliation, marital status, or handicapping condition.
- ◆ Refuse to consult or negotiate in good faith with an employing office as required by the statute. A prohibited example would be delaying the start of negotiations for an unreasonable length of time, when the employing office attempts to proceed.
- ◆ Fail or refuse to cooperate in impasse procedures and impasse decisions as required by chapter 71, as applied by the CAA.
- ◆ Call or participate in a strike, work stoppage, or slowdown, picketing of an employing office in a labor-management dispute (if such picketing interferes with an employing offices operations), nor may a labor organization condone any of the foregoing activities by failing to take action to prevent or stop such activity. Informational picketing which does not interfere with an employing office's operations is not an unfair labor practice.
- ◆ Otherwise fail or refuse to comply with any provision of chapter 71, as applied by the CAA.
- ◆ As the exclusive representative, deny membership to any employee in the appropriate unit represented by such representative except for failure to meet reasonable occupational standards uniformly required for admission, or to tender dues uniformly required as a condition of acquiring and retaining membership. A labor organization is not precluded from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with provisions of chapter 71, as applied by the CAA.

Section 220 – Collective Bargaining and Unionization

9. Process By Which Unfair Labor Practices Are Adjudicated and Resolved

The General Counsel of the Office of Compliance investigates and prosecutes unfair labor practice charges. Either an employing office, a labor organization, or an individual may file an unfair labor practice charge with the General Counsel. The charge must be filed within six months from the date the alleged unfair labor practice occurred.

If, upon investigation, the General Counsel reasonably believes that the charge is meritorious, he or she files a complaint and prosecutes the matter before a Hearing Officer appointed by the Executive Director of the Office of Compliance. The Hearing Officer will conduct an administrative trial, at which the General Counsel and the charged party will have an opportunity to introduce evidence, call and cross-examine witnesses under oath, and submit briefs and arguments on behalf of their respective positions.

Within 90 days after the conclusion of the hearing, the Hearing Officer shall issue a written decision containing findings of facts and conclusions of law, including a determination of whether a violation of the statute has occurred, and shall order such remedies or dismissals as are appropriate.

The decision of the Hearing Officer may be appealed to the Board of Directors, whose decision is subject to judicial review before a Federal appeals court. However, Section 220(c)(3) of the Congressional Accountability Act excepts certain cases concerning matters referred to in 5 U.S.C. 7123(a)(1) and (a)(2) of the Labor Management Relations statute from judicial review. These excepted cases are any that deal with an award ordered by an arbitrator, unless the order is in regard to an unfair labor practice; and any that deal with determinations of what constitutes an appropriate bargaining unit, which are made for the purpose of labor organization representation.